

## SPECIAL ASPECTS REGARDING WOMEN AND CHILDREN REFUGEES

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### **Abstract**

*In this article we aim to analyze the problems faced by the most vulnerable categories of refugees: women and children. The first problem refers to the fact that the Geneva Convention from 1951 does not differentiate between the situations and rules applicable depending on the sex and age of refugees who require asylum or other form of protection. It was only after 1980 when procedures began to be drafted and measures adequate to the protection of refugee women and children to be taken. The Constitution of Romania establishes at Article 18 paragraph (2) that "the right of asylum is granted and withdrawn under the law, while complying with the international treaties and conventions to which Romania is a party", thus aligning to international rules applicable. Women are a very vulnerable category, as they often go in remote and different countries (from a cultural, economic, linguistic point of view etc.), alone, (without a partner), being the only responsible for raising and educating their children, and the adaptation and change of their social role can be extremely difficult. Children, especially the unaccompanied ones, are also very vulnerable. The authorities of the states where they take refuge are up difficulties in identifying and protecting them, many of them simply disappearing without any trace.*

**Keywords:** *human rights; refugee; women and girls at risk; unaccompanied children; means of protection*

### **1. General Aspects Concerning Refugees in Romania**

In Romania, between 2014 and 2016 have been registered a total of 609 female refugees, out of which 87 aged between 0 and 4 years, 98 aged between 5 and 11 years, 69 aged between 12 and 17 years, 406 aged between 18 and 59 and 30 over 60 years of age. These data are summarized in the UNHCR statistics<sup>3</sup>) through which is summarized the number of refugees in all the world's countries. Of course, the actual number of refugees in Romania is likely to be bigger than this, being known that our country is being passed through by illegal migrants on their way to the final destination, usually a state in the Western Europe.

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<sup>3</sup> www.unhcr.org, extracted from the UNHCR Population Statistics Reference Database.

Currently most refugees in Romania are coming from Syria, this country being affected by very tough war, and some of them come also from Iraq, Yemen and Eritrea.

Most refugees are reaching Italy, Greece and Turkey. Many Syrian refugees choose Turkey since it borders Syria and is also a Muslim country, thus with similar religion, culture and customs, making it easier to adapt and carry on daily life. From the data made available by the UNHCR it follows that in Turkey, between 2014 and 2016, there have been registered 6790 female refugees between zero and four years of age, of which 671 were in Istanbul, the total number being much higher<sup>1</sup>.

When these people manage to leave their homes (or fallen houses) in war areas, they seek to choose a country in which they can continue to live safely, and this is why some of them are targeting western European states (which enable a higher standard of living), while others are looking for secure places closer from the religious and cultural point of view. The Romanian Government announced that between 2018 and 2019, in our country, there will be received 109 refugees of Syrian origin, initially being in Turkey on a temporary basis.

As we have already mentioned, most often Romania is used by migrants as a transit country and, after receiving one of the forms of protection provided by the law, refugees request legal permission to travel in the European area. Between 2015 and 2017, through *the European Union Decisions No. 2015/1523<sup>2</sup> and respectively No. 2015/1601 establishing provisional measures in the field of international protection for the benefit of Italy and Greece<sup>3</sup>*, before Romania has been set a task to accept 4,808 persons to be relocated intra-EU from Italy and Greece, where there were most illegal migrants (last year in Italy there were over 62,000 people in this situation, and in Greece their number exceeded 45,000).

Nevertheless, the number of refugees actually relocated to Romania was much lower than the one originally estimated, mainly because very few of them are virtually eligible (according to the the legal rules) to be moved. Thus, until last year in July, according to the data provided by the General

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<sup>1</sup> [www.unhcr.org](http://www.unhcr.org) , extracted from the UNHCR Population Statistics Reference Database, on 15.03.2017.

<sup>2</sup> Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL\\_2015\\_239\\_R\\_0011](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOL_2015_239_R_0011), no longer in force.

<sup>3</sup> Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015D1601> , no longer in force.

Inspectorate for Immigration, at the accommodation centers of the applicants for asylum from Romania (located in Bucharest, Giurgiu, Galați, Rădăuți and Șomcuța Mare), there have been registered 521 Syrians (out of which 95 women and 168 children), 131 Iraqis (out of which 23 women and 45 children), 45 persons from Eritrea and 13 from Yemen.

## **2. Protection of Women and Girls Refugees - Legislative Rules and Historic**

Although usually women represent two-thirds of the world's total number of refugees, only around 1980 there have been drafted and developed special programs intended to ensure respect for women's rights and measures have been taken to respond social, cultural, religious and of any other nature problems.

At the initial time of enacting and entering into force of the 1951 Geneva Convention which is the international legal instrument for refugee protection, completed by the Protocol acts in 1967, there were not expressly considered the specific situations coming from the differences between men and women (gender situations). These international rules have been ratified by the signatory states, included in the domestic legislations of the states, and have had the role of protecting all refugees: men, women and children, without distinguishing the situations specific to women. "When national legislation, premised upon the 1951 Convention, fails to explicitly recognize gender-based persecution and its causes, the consequences are that women do not have equal protection under existing national legislation or equal access to the asylum process."<sup>1</sup>.

Thus as held by the authors Bloch, Galvin and Harrell-Bond in their article published in 2000 "women remained relatively invisible within the debate on refugees and asylum-seekers. As a result, insufficient attention has been paid to the policy and legislative dimensions of gender persecution. Additionally, the specific factors affecting women as asylum applicants and their resettlement in host societies have largely been ignored."<sup>2</sup>

Unfortunately, even though the law and forms of protection did not distinguish between women and men, the persecution of women in certain states was very distinctive. The persecution mainly targeted political activities, and women, although most of them were doing childcare and

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<sup>1</sup> Bloch, Alice; Galvin, Treasa; Harrell-Bond, Barbara, - *Refugee Women in Europe: Some Aspects of the Legal and Policy Dimensions*, International Migration Vol. 38 (2), 2000, Published by Blackwell Publishers Ltd., <https://onlinelibrary.wiley.com/doi/epdf/10.1111/1468-2435.00106>, p. 170.

<sup>2</sup> *Ibidem*, p. 170.

had domestic responsibilities, could be persecuted, detained, tortured or even killed for both their own political activity and for the political choices of men in the family, religious group or community they belonged to.

On the other hand, even if they did not carry out properly activities in the struggle for political power, they received in their homes people wanted by the authorities, were used to transmit information, etc. which made them extremely vulnerable to persecution and abuse by the political or religious opponents. Although we have mentioned these aspects as if they used to be done only in the past, in fact this sort of activities are still being carried out in the zones of war or of political/military conflict.

In some societies, the rules relating to the role, lack of power and lives of women in the society are very strict and tough, they being victims of atrocities of their own families or social groups: "ritual practices in the form of honour killings, genital mutilation, dowry death (also known as bride burning), temporary pleasure marriages and exclusion from societal resources, may give rise to human rights abuses and persecution issues of specific relevance to women."<sup>1</sup>

It is true that the discriminatory and abusive treatment of women in certain societies by virtue of the fact that they are women does not constitute a political persecution in the meaning of the provisions of the Geneva Convention. "As a result, women often face problems providing evidence which demonstrates their credibility as asylum applicants, particularly in cases of sexual violence"<sup>2</sup>. So initially, even if they came from countries where their life is in great danger, women may of actually been confronted with difficulties in trying to get asylum, which has an important political component.

Even though "until the mid-1980s, little research or analysis of migration trends focused on gender issues, with the increasing feminization of internal and international migration, and the hanging role of women more generally, significantly more attention is paid today to these issues by both researchers and policymakers."<sup>3</sup>

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<sup>1</sup> Bloch, Alice; Galvin, Treasa; Harrell-Bond, Barbara, - *Refugee Women in Europe: Some Aspects of the Legal and Policy Dimensions*, International Migration Vol. 38 (2), 2000, Published by Blackwell Publishers Ltd., <https://onlinelibrary.wiley.com/doi/epdf/10.1111/1468-2435.00106> , p. 172.

<sup>2</sup> Refugee Women's Legal Group, 1998 *apud*. Bloch, Alice; Galvin, Treasa; Harrell-Bond, Barbara, 2000, p. 173.

<sup>3</sup> Forbes Martin, Susan, *Women and Migration*, United Nations Division for the Advancement of Women (DAW) Consultative Meeting on "Migration and Mobility and how this movement affects Women" Malmö, Sweden 2 to 4 December 2003, p. 30.

### 3. Women and Girls at Risk

As a general rule, the refugee women and children are resettled in third countries from part of a complete family unit. In response to the difficulties faced by women at risk, UNHCR has identified the need for special "Women at Risk" programs for the admission of refugee women who face specific protection problems.

The women and girls at risk are "those women or girls who have protection problems particular to their gender, and *lack effective* protection normally provided by male family members."<sup>1</sup> They are, for example: single women who raise children and support children or families on their own, with no partner, girls or women without families, or who live with family members (but are victims of domestic violence).

Even though at the very beginning, the protection of women refugees suffered many shortcomings and was rather ignored, after a while the international institution (together with the nationals) became aware that special programs of protection for women and girls are needed. The program called Women at Risk is one of these programs. The authorities must take into account that "refugee women or girls may be at risk of or have suffered from a wide range of protection problems, including expulsion, *refoulement* and other security threats, sexual violence, physical abuse, *corrective* rape of women perceived to be lesbians, intimidation, torture, particular economic hardship or marginalization, lack of integration prospects, community hostility, and different forms of exploitation."<sup>2</sup>

UNHCR considers as that the women at risk those who are confronted with problems regarding their protection: "and are single heads of families or are accompanied by an adult male who is unable to support and assume the role of the head of the family. They may suffer from a wide range of problems including expulsion, *refoulement* and other security threats, sexual harassment, violence, abuse, torture and different forms of exploitation. Additional problems such women face could derive from persecution as well as from particular hardships sustained either in their country of origin, during their flight or in their country of asylum. The trauma of having been uprooted deprived of normal family and community support or cultural ties, the abrupt change in roles and status, in addition to the absence of an adult male head of family, renders some women, under certain circumstances, more vulnerable than others"<sup>3</sup>.

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<sup>1</sup> UNHCR Resettlement Handbook, p. 263, <http://www.unhcr.org/46f7c0ee2.pdf>

<sup>2</sup> UNHCR Resettlement Handbook, p. 263, <http://www.unhcr.org/46f7c0ee2.pdf>

<sup>3</sup> *Ibidem*, p. 263.

According to the UNHCR Resettlement Handbook "women and girls may face unique or gender related forms of prosecution or violence, and specific action is required to ensure that women and girls enjoy access to durable solution on an equal basis and with man and boys."<sup>1</sup>

In order to actually help the women and girls at risk is important: "to provide international protection and assistance through resettlement to refugee girls and women who face particular protection problems related to their gender, to obtain expeditious processing and accelerated departure for those refugee girls and women considered *at risk* and to ensure that refugee women and girls at risk receive specialized care, if needed, and appropriate support upon arrival in the country of resettlement with a view to achieving socio-economic integration and self-sufficiency."<sup>2</sup> Also the authorities involved must take into account the special internal situations which require special measures for the girls and women at risk and also the special circumstances of each person such as: age, religion, sexual orientation, past experiences, economical situation, family etc.

Also for especially hard circumstances, the UNHCR Handbook states the following: "resettlement may be the preferred and often only solution. This could be the case when women have been raped and when in their society and in their country of refuge a survivor of rape is ostracized. Such a situation could be aggravated when the refugee woman gives birth to a child conceived through rape. In addition to the possible serious consequences of a rape on her physical and mental health, the refugee woman may suffer lifelong rejection by her own family and community."<sup>3</sup>

#### **4. The Protection of Children Refugees**

Deepening the ideas with which I started analyzing the protection of women refugees, it should be mentioned that, similar to the case of not including special provisions for the protection of women refugees (the gender situation), the 1951 Geneva Convention, relating to refugee status, does not state also any special provision regarding the age of persons being in a situation of needing asylum or other form of protection, and even the definition of the refugee is the same regardless of age.

It is obvious that, if a woman is much less likely to be involved in political activities or other activities that might entail the need to obtain political asylum than men, as concerns children this possibility is excluded. They

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<sup>1</sup> UNHCR Resettlement Handbook, p. 262, <http://www.unhcr.org/46f7c0ee2.pdf>

<sup>2</sup> *Ibidem*, p. 262.

<sup>3</sup> *Ibidem*.

have neither the capability nor the power to be involved in such activities, even if they are sometimes used for sending messages or other similar actions whose true meaning they can not even understand. It is clear that these children may be victims of political persecution only in connection with the political and religious activity or affiliation of their parents.

Regarding the unaccompanied children, the situation is much more complicated. They can come from persecuted families, but either their family members have died or are missing (their location is unknown), or have been separated due to the circumstances of their parents and brothers. It can be assumed that if a minor is in a group of refugees, he is in turn a refugee, but the situation should be investigated on a case-by-case basis. Thus, "determining whether an unaccompanied minor fulfils the conditions for being granted a refugee status is carried out, first and foremost, depending on his/her intellectual development and maturity"<sup>1</sup>.

As concerns unaccompanied children, for their interviewing, it is required the presence of psychologists, child behavior specialists along with the translator and another person, possibly a guardian appointed by authorities to ensure that "the interests of the minor applicant for refugee status are fully protected".<sup>2</sup>

As a general rule, it is considered that a 16-year-old minor has discernment and can be regarded as a politically persecuted person. However, this does not apply to all minors who have reached the age of 16 and, with the help of specialists, it can be estimated on a case-by-case basis regarding the discernment of each applicant and can be proceeded accordingly.

Also, there should also be taken into account the circumstances of the parents and their situation in the country of origin. "If there are reasons to believe that parents want him/her to be outside the country of origin, believing righteously that in such a way it would be avoided his/her persecution, it will be assumed that the child has also such a fear"<sup>3</sup>

In the event that nothing is known about the choice of the parents or whether it is different (possibly opposite) to the children, "the examiner, in cooperation with the specialists assisting it, will have to make a decision as concerns the reliability of the minor's application, based on all known

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<sup>1</sup> Handbook and Recommendations on Procedures and Criteria for Determining the Refugee Status, 2011, Reedited, Geneva, UNHCR, 2011 paragraph 214, p. 61.

<sup>2</sup> *Ibidem*.

<sup>3</sup> Handbook and Recommendations on Procedures and Criteria for Determining the Refugee Status, 2011, Reedited, Geneva, UNHCR, 2011 paragraph 218, p. 61.

circumstances, in which case being required an interpretation of the benefit of the doubt”.<sup>1</sup>

In the Romanian legislation, the Emergency Ordinance No. 194/2002 regarding the regime of foreigners in Romania with subsequent amendments and supplements<sup>2</sup>, regulates, in Article 131 The legal regime applicable to unaccompanied foreign minors, according to which, for these children are taken measures in order to find their parents, to establish their situation and to be given them the possibility to stay in Romania if there are indications that they will not be received in the country of origin and Article 132 Access of foreign minors in education, which provides that these children should benefit from the access to free education, similar to their own citizens.

Respecting children's fundamental rights implies, as a general rule, the following measures: the introduction into domestic law of international rules concerning child protection, the dissemination of the content of these rights and the careful monitoring of their observance (which also implies the sanctioning of those who violate them), continuous evaluation and monitoring of children in risk families or situations, combating child trafficking, campaigns for the prevention of abandonment and providing social assistance adequate for refugee families with children or for asylum applicants.

Regarding the unaccompanied refugee children, we think that they form the most vulnerable social category and encounter major difficulties as concern survival in refugee camps.

According to the law, refugee children must, in the countries where they live, the same rights enjoyed by children who are citizens of the state in question<sup>3</sup>. So, the Committee on the Rights of the Child a statut la paragraful 46 al General Comment no. 6: *Treatment of unaccompanied and separated children outside their country of origin* from 9 september 2009 that "states are

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<sup>1</sup> Handbook and Recommendations on Procedures and Criteria for Determining the Refugee Status, 2011, Reedited, Geneva, UNHCR, 2011 paragraph 219, p. 62.

<sup>2</sup> <https://lege5.ro/Gratuit/geytinjtge/ordonanta-de-urgenta-nr-194-2002-privind-regimul-strainilor-in-romania>

<sup>3</sup> Costache, Mirela, *Social, Psychological and Legal Arguments Supporting the Objective Side of the Civil Tort of Parents for their Children's Underage Illegal Act or Those Placed Under Judicial Interdiction*, International Multidisciplinary Scientific Conferences On Social Sciences & Arts SGEM 2014, Albena, Bulgaria, 1-9 septembre 2014, vol. I, ISBN: 978-619-7105-22-3, ISSN: 2367-5659, DOI: 10.5593, pp. 793-800.

obligated to ensure that unaccompanied and separated children have access to healthcare as children who are [...] nationals [...]”<sup>1</sup>.

”In spite of their particular vulnerability, irregular migrant children up to a certain age are entitled to the same level of access to healthcare as nationals in four countries only, namely Greece, Portugal, Romania and Spain.”<sup>2</sup> Also, the other EU states regulate various forms of social and medical protection for unaccompanied children or refugee children in general but not by assimilating them with their own citizens.

In Greece, according to article 84 paragraph (1) from Law no. 3386/2005 all children have the right of free medical services until 14, no matter if they are legal residents or not. In Romania, article 43 from the Law on the protection and the promotion of the rights of the child no. 272/2004<sup>3</sup> states that all children under 18 benefit of free healthcare regardless their citizenship or their parents’ insurance status. In Portugal all foreign minor children are protected and have free healthcare and are registered in a special register. Also in Spain all minors are entitled to free healthcare without having to fulfill any requirements as states the Law no. 4/2000.

Thus, theoretically they should not be deprived of food, medication, education, protection, a place to live, etc. Practically, they are the most vulnerable category of people: the most exposed to disappearances (Europol announced that 10,000 refugee children were missing<sup>4</sup>), sexual abuse (in many of the refugee camps there are no separate toilets for men and women, no safe and sufficient sleeping places, this situation creating a climate favorable for the sexual abuse of children and women), physical abuse, negligence etc.

For example, in Greece, where the number of refugees is very high, the authorities have found that many of the refugee children who were not accompanied by adults simply disappeared and nothing is known about their fate.<sup>5</sup> Unfortunaely, the same situation also occurred in Sweden and in other countries. Due to the fact that these children do not have identity papers, it is very difficult to keep a record of them. It is complicated even when they are declared missing, due to the lack of data needed to record their disappearance. Two legal measures to protect these unaccompanied

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<sup>1</sup> Fundamental Rights of Migrants in an Irregular Situation in the European Union, Comparative Report, 2013, doi: 10.2811/15127, p. 78.

<sup>2</sup> *Ibidem*.

<sup>3</sup> [www.dreptonline.ro/legislatie/legea\\_protectiei\\_copilului.php](http://www.dreptonline.ro/legislatie/legea_protectiei_copilului.php)

<sup>4</sup> According to Asile et Migration vers l’UE en 2015, FRA - Agence des droits fondamentaux de l’Union europeenne, Luxembourg: Office des publications de l’Union Europeenne, doi: 10.2811/331535 (on line version) and doi: 10.2811/75483 (print version) 2016, p. 23.

<sup>5</sup> *Ibidem*.

children (as they either have been separated from their family or their relatives have died) are to be fingerprinted (creating the possibility of being subsequently identified based on this procedure) and to be appointed a guardian that would care for them and respond for them. In the European Union states, efforts are being made to build special locations for children and their families.

## **5. Conclusions**

The situation of women and children refugees in the world continues to be difficult and captious, even if international and domestic efforts are being made to ensure the best chances of survival, education, social protection and a decent standard of living. Most of the time these persons come from regions where women's responsibilities and rights are limited to marrying and raising children, they being deprived of education and, as a consequence, of the opportunity to earn their own lives. These problems add to the difficulties of cultural and linguistic adaptation, new social rules and rupture by the family that offered them material, emotional and safety support. Women and girls at risk have additionally a number of extremely traumatic experiences that have to be overcome with professional help and that sometimes creates the need to be relocated to areas where they are protected from abusers and persecutors, who sometimes even come from their own family.

Children are also extremely vulnerable, especially those who are not accompanied by adults and do not benefit from the protection of anyone. They often do not have identity documents with them, which makes their protection very difficult and favors their abusing and even killing. Therefore, given that the wars around the world go on, that there are still internal struggles for power, civil and military dictatorships, the domestic and international measures to protect the people affected by these situations must continue to be improved in order to respond as adequately as possible to the needs to all affected people, especially to the most vulnerable: women and children.

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