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ASYLUM APPLICATION FOR INTERNATIONALPROTECTION. LAW PROVIDES SOLUTIONS, INVOLVEMENT OFFERS PROPER ACCESS TO IT

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Abstract
The differences between these notions lie in the working tools for the correct approach to the current international situation. Temporary protection does not preclude the granting of the international protection forms to an alien or refugee, or subsidiary protection status. Asylum seekers have not only rights but also obligations, each of which must be communicated to them in a language they understand, or that can reasonably be expected to understand. Communication is a solution and it starts with registration in the Eurodac system. Subsidiary protection is the correct legal approach as a solution in principle between refugee and subsidiary protection status.

Keywords: temporary protection, international protection, refugee status, subsidiary protection status

I. Current situation and existing legal provisions

A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Union. Such a policy should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.

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This year has seen a remarkable increase in arrivals of people by sea, with the latest UNHCR statistics putting the number at 752,072 people, of which 608,970 arrived in Greece.

In order to determine the quality of international protection applicant, the provisions of the Geneva Convention relating to the status of Refugees on 28 July 1951 should be taken into consideration – an international character instrument, representing the fundamental legal document for the international protection of the refugees. This is complemented by its 1967 Protocol and represents the primary source for accurate information on the definition of persons requesting a form of international protection, their rights and obligations.

Our analysis tries to clarify some issues related to today's growing interest for the situation of the refugee waves that Europehas been confronted with lately.Thus, based on primary international conventions, European laws have been developed, the purpose of which is to determine the framework for the reception of persons applying for a form of international protection, created in order to ensure equal treatment of applicants throughout the whole EU.

One such law is Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (hereinafter "Directive on reception", whose transposition period, in reference to the majority of its Stand Body, was on July 20, 2015).

According to the European Commission Bulletin on 23 September 2015, 25 letters of formal notice were sent to 19 Member States for failure to communicate transposition measures. This requirement was for each of the member states, in accordance with art. 31 para. (2) of the Directive on reception. These laws form a coherent whole, which aims to ensure implementation of asylum rules within the Member States in a fair and consistent way.

Therefore, failure to implement these laws jeopardizes the overall efficiency of the system.

However, failure to transpose the Directive within the established deadline is not such an alarming fact in the current situation, since under Article 3 pt. 3 of the Directive on reception, this Directive shall not apply when the provisions of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection *in the event of a mass influx of displaced persons* and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof are applied.

Temporary protection means a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection.

This is the definition of art. 2 pt. 1 of Council Directive 2001/55/EC of 20 July 2001, which considers that the European Union can now offer a solution to address the flow of refugees arriving by sea.

We consider that the concept of *displaced persons* means third-country nationals or stateless persons who have had to leave their country or region of origin, or have been evacuated, in particular in response to an appeal by international organisations, and are unable to return in safe and durable conditions because of the situation prevailing in that country. These persons may fall within the scope of Article 1A of the Geneva Convention or other international or national instruments giving international protection, with particular attention to persons who have fled areas of armed conflict or endemic violence.

In this case, it must be emphasized that the existence of a mass influx of displaced persons shall be established by a Council Decision adopted by a qualified majority on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council.

The duration of temporary protection shall be one year, but it may be extended automatically by six-month periods for a maximum of one year. One of the most important benefits is that the temporary protection shall not prejudge recognition of refugee status under the Geneva Convention.

To enable the effective application of the Council Decision, Member States shall register the personal data, with respect to the persons enjoying temporary protection on their territory. Under Eurodac Regulation (EU) No. 603/2013[2], all asylum seekers and migrants in an irregular situation apprehended in connection with an irregular border crossing – except for children under the age of 14 years – must provide their fingerprints. These are stored in a large-scale database called Eurodac. When Member States apprehend migrants in an irregular situation within their territory, they can compare their fingerprints with the Eurodac database.

A Member State shall take back a person enjoying temporary protection on its territory, if the said person remains on, or, seeks to enter without authorisation onto the territory of another Member State during the period covered by the Council Decision. This provision is consistent as provided in Regulation (EU) No. 604/2013[3] of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a

[2]http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0001:0030:EN:PDF
[3]http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013R0604

third-country national or a stateless person, including those settled by art. 9 and 10 which refer to the situation in which the applicant has a family member, regardless of whether the family was previously formed in the country of origin, who has been allowed to reside as a beneficiary of international protection in a Member State. The law also establishes that the Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing. The solution will be the same if the applicant has a family member in a Member State whose application for international protection in that Member State has not yet been the subject of a first decision regarding the substance, when that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.

Where it is established, on the basis of proof or circumstantial evidence, including the data referred to in Regulation (EU) No. 603/2013, that an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for international protection. The reference to Eurodac Regulation is on basis that asylum seekers and migrants in an irregular situation apprehended in connection with their unauthorised border crossing have a duty to provide fingerprints for Eurodac. Member States are obliged to take their fingerprints, but there are limitations on how to enforce such obligation so as not to violate fundamental rights. There are nongovernmental organizations or other organisations like European Union Agency for Fundamental Rights[4] that are intended to assist authorities and officers who have been assigned the task of taking fingerprints for

[4]http://fra.europa.eu/en/research

Eurodac to act in compliance with fundamental rights, parts of which are also useful for individual officers.

II. Duration of temporary protection, rights of those under this form of protection and their records according to the Eurodac Regulation

What is often omitted by the authorities entrusted with examining an asylum application is that that responsibility shall cease 12 months after the date on which the irregular border crossing took place.

Returning to the temporary protection that may be granted in the case of an influx of migrants, we consider that accurate information on nationals to third-country States would facilitate the integration of these people and diminish the feeling of insecurity which of course cannot be denied in the occurrence of a situation that could not be anticipated either by authorities or by those who are subject to this massive movement.

The European legislator settled that the Member States shall authorize, for a period not exceeding that of temporary protection, persons enjoying temporary protection to engage in employed or self-employed activities, subject to rules applicable to the profession, as well as in activities such as educational opportunities for adults, vocational training and practical workplace experience. For reasons of labour market policies, Member States may give priority to EU citizens and citizens of States bound by the Agreement on the European Economic Area and also to legally resident third-country nationals who receive unemployment benefits. The general law in force in the Member States applicable to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment shall apply.

We consider that this is one of the provisions that can maintain a stable framework between EU nationals and those

seeking Union states protection. However, although this seems to be one of the answers to the current issues concerning the migratory waves, we believe that situations that stem from establishing identity issues and ensuring social security for the migrants will certainly occur very soon.

Taking into account the fact that, out of security or unexpected departure reasons, migrants do not usually have their identity papers on them, we do believe that a possible solution to this problem can be the use of the data stored in the Eurodac System, taking appropriate measures for the protection of personal character data.

Thus, it must be remembered that Regulation (EU) No. 603/2013 establishes the rules for "Eurodac", the purpose of which shall be to assist in determining which Member State is to be responsible pursuant to Regulation (EU) No. 604/2013 (The Dublin Regulation - known also as the Dublin III Regulation) for examining an application for international protection lodged in a Member State by a third-country national or a stateless person, and otherwise to facilitate the application of Regulation (EU) No. 604/2013 under the conditions set out in this Regulation.

In the 9th article[5] Eurodac Regulation establishes that each Member State shall promptly take the fingerprints of all fingers of every *applicant for international protection* of at least 14 years of age and shall, as soon as possible and no later than 72 hours after the lodging of his or her application for international protection, transmit them together with data about the Member State of origin, place and date of the application for international protection to the Central System.

We can identify here a first breach of the Regulation in that it refers only to applicants for international protection, which conditions the possibility of fingerprinting on formulating an

[5]http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013R0603

application for international protection by the non-European member just arrived in the Member State. However, we appreciate that there will be only few situations in which people arrived on the territory of a Member State will not apply for a form of protection, having an interest in being the beneficiary of the non-refoulement principle established by art. 33 of the 1951 Geneva Convention.

Even if they do not require a form of protection, there is an obligation of each Member State to take the fingerprints of all fingers of every third-country national or stateless person of at least 14 years of age who is apprehended by the competent control authorities in connection with the irregular crossing by land, sea or air of the border of that Member State having come from a third country and who is not turned back or who remains physically on the territory of the Member States and who is not kept in custody, confinement or detention during the entirety of the period between apprehension and removal on the basis of the decision to turn him or her back.

However, it should not be overlooked that each set of data relating to a third-country national or stateless person shall be stored in the Central System for 18 months from the date on which his or her fingerprints were taken. Upon expiry of that period, the Central System shall automatically erase such data.

III. Reaction of judicial authorities and considering the nearest judicial review

We wonder if, according to the latest data on the third-country people's entry on the EU territories, the European receiving system is able to respond positively by respecting the minimum obligation to acknowledgment of people's both obligations and rights in a language they understand or that can be reasonably assumed that they understand.

According to data provided by European Asylum Support Office[6] (EASO), the latest information received by EASO indicates that, by the end of October 2015, 1 million application marks will be passed. Most of the applications in recent months come from Syrian, Iraqi and Afghan citizens. Thus, in September 2015, EU countries received over 62 000 applications from Syrians, an increase of 26% compared to August and almost three and a half times the level recorded in the same month of 2014. Also, the rise in the number of Iraqi applicants accelerated lately, more than 25.000 applications in the EU being registered, which represented the highest monthly level since 2008 and an increase of 115% compared to August, whereas the number of applications from Afghans rose to 21 000.

Although these data may seem worrying, for every problem there can be found both legal and social solutions that the European Union has created and that are in its power.

We consider that the most important right that must be respected is communication of rights and obligations to those people in vulnerable situations. The problem arising here is where to find people speaking Farsi, Kurdish and any other Arabic language since none of the European countries could have anticipated this need, until the emergence of this wave of migrants.

Certainly, universities can find students able to speak these languages, who might be exempted from taking an exam in humanistic studies, and who could provide translation services for a limited period on a voluntary basis.

The resolution must be seen as one of cooperation of all institutions, not just those responsible for ensuring security and public safety. We assess as positive the outcome of statistics at European level, whereby in September 2015, EU countries issued 53 990 decisions at first instance and in the EU as a whole, the share

[6]https://easo.europa.eu/wp-content/uploads/Latest-Asylum-Trends-snapshot-Sept-2015.pdf

of positive decisions was 44% of total decisions in first instance. Syrians continued to be the ones receiving the highest number of decisions at first instance. In September, EU countries issued 12 256 decisions on Syrian applications, 9 % more than in August. Of those decisions, 97% resulted in a positive outcome, with 77% granting refugee status and 20% granting subsidiary protection.

A discussion can be made on the accuracy of these decisions, towards the issues in Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted that defines[7] *"international protection"* as being refugee status and subsidiary protection status, the *"refugee"* as being a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and the *"person eligible for subsidiary protection"* as being a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15 and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country.

[7]http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32011L0095

To conclude, regarding the fact that Article 15 c) from Directive 2011/95/EU of the European Parliament and of the Council appoints that serious harm consists of serious and individual threat to a civilian's life or person by reason of indiscriminate violence *in situations of international or internal armed conflict,* we consider that the form of international protection that may be granted in such a situation, unless proving a justified fear that falls within the definition of refugee, is that of subsidiary protection, a form of protection that is welcome in the light of the possibility of giving narrower rights to the people in such need and that enables greater control of the Member State over the situation.

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