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CONSIDERATIONS REGARDING THE LEGAL ASPECTS AND SOCIAL POLICY ISSUES RELATED TO MIGRATION PHENOMENON IN THE EU: THE CASE OF ROMANIA

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Abstract

In this paper, we aim to analyze some of the most recent measures taken at the level of the European Union for the protection of migrants. More specifically, we intend to reveal and analyze the new EU legal provisions regarding the conditions for obtaining the Blue Card and how these provisions were integrated into Romanian legislation. In order to achieve this goal, we first describe and analyze the general legal frame and the content of the prior provisions on this matter. We also examine if, during these reforms regarding the Blue Card, the process of integration is actually facilitated and how the national provisions of the Member States influence the obtaining of the mentioned document, which represents a legal form to get the right to live and work on a territory with all the rightful benefits. To provide material and moral support for the refugees, legal measures are constantly being taken at the Union level. In conclusion, we consider that even though the EU authorities are constantly trying to adjust the migrant labor legislation in order for it to be more permissive and efficient, the Union is still far from being inclusive enough. On the other hand, Romanian legislation also continuously adapts to new provisions, but the situation differs from those of other EU countries.

Keywords: Migrant, Refugee, Blue Card, Human Rights, Social Policy, Labor Market, Romania

JEL Classifications: F66, F68, I38

1. Introduction

The object of this study is composed of the legal frame of integration for migrants and refugees who are highly skilled/qualified professionals in the EU Member States territories, with particular regard to the case of Romania. We are interested in this phenomenon from the perspective of Romania as an EU Member State since it receives foreign, highly skilled/qualified professionals from third countries and grants them the Blue Card. Even though the new legal provisions regarding the Blue Card are very recent, and their applicability has not been high, it is clear that the aim is to eliminate some of the inconveniences that led to a very low rate of integration in the past.

When analyzing the literature, it is evident that most experts consider the old Blue Card directive a failure based on the numbers. It failed because of two major reasons: a very small number of people could fulfill the conditions, and the national provisions of the EU Member States led to confusion since they were distinctly different. It was clear to the experts and EU Commission that changes were necessary to increase the number of Blue Card holders.

For people living in those parts of the globe where military conflicts, wars, or other similar types of conflicts still occur, a new life in Europe appears as a constant solution. Probably many of the people who leave their country, the decision is very hard, and the moment in which they leave behind members of their family, homes, and friends is very painful and challenging, but they make this choice to ensure their future. Their state of mind is not the object of this paper, but it cannot be ignored. The road they take to Europe is often full of dangerous situations, but the risk is probably worth it; otherwise, they wouldn't take it.

So, the EU Member States must treat this delicate matter seriously and properly. Similarly, Belcheva (2021, p. 25) mentioned that "as the Member States share the same core values based on open borders and freedom of movement, they must have a common approach to ensure high standards of refugee protection. At the same time, procedures must be accurate, transparent, fair, and effective throughout the EU, with no abuse".

Many migrants or refugees who arrive in the European Union do not speak foreign languages and find themselves in desperate situations: no financial resources, no place to stay, and so on. So, it is the mission of EU institutions and national institutions to help them integrate, learn the language, get a job, and reunite with their families.

According to Gropas (2021, p. 73), "today there are around 22 million third-country nationals legally residing in the EU, constituting approximately 4.2% of the EU's total population".

In Romania, the percentage of migrants and refugees is small, and their integration into the labor market is also very small. The situation in which the Romanian population migrates towards better-evolved states looking for better living conditions is more common. However, in 2020, Romania had a significant increase in the number of asylum solicitations, with a number of 6138 refugees (Costea, 2021). This represents an increase of 137% compared to 2019.

As we refer both to migrants and refugees, we should specify that refugees are those people who leave their countries because of wars or other types of similar situations that are potentially dangerous for their lives, and migrants are those who leave their country of origin looking for better living conditions, but their lives are not under any immediate danger. In the matter of proper integration and obtaining a decent living or lifestyle, it is very important that the migrants, asylum seekers, and refugees are integrated into the labor market and the children have access to schools in order to achieve a proper education.

The experts and scholars identify two key dimensions of the integration of asylum seekers, migrants, and refugees: legislation that ensures their access to the labor market in order to be able to gain their existence and similarity of their working conditions to the native population of that state (Federico *et al.* 2021). In the matter of the right to work, migrants or refugees are allowed to work after a different period. In Italy, they could work after 60 days if specific conditions are fulfilled, and in other countries, such as the Czech Republic, this period is one year. Surely, there are all types of work, and some of them include the necessity of speaking the local language, a condition that is often hard to fulfill (for more, see Federico *et al.* 2021).

The situation in the field in Romania is different from other EU member states as the country is situated in Eastern Europe, and it does not do economically as well developed as other EU states and, therefore, is not as attractive for migrants. Therefore, there are not many Blue Card requests. Nevertheless, the Romanian authorities developed a legal framework based on which the Blue Card can be obtained by the solicitants. The analysis of the Romanian regulations revealed that they are in accordance with the EU provisions in this matter.

In the present study, we used the document analysis method and focused on two sources: the legal framework and the literature. Regarding the legal framework, we referred to the most important EU documents and compared their content and the Romanian legal provisions. From the literature, we referred to the work of experts who focused their research on this matter. Our purpose is to compare the old provisions with the new one and conclude if these new conditions, which are easier to fulfill, will lead in the future to a more significant rate of inclusion for highly skilled/qualified professionals from third countries.

We also referred to the situation of migration in Romania. First, we must mention that the migration phenomenon is not as significant in Romania as in other EU countries has a small number of people who come to work in highly skilled/qualified professions and less qualified ones. As Romania is one of the EU's poorest countries, the migrants do not find it attractive. The Romanian population tends to migrate; therefore, the number of those who come, and stay is relatively low. We referred to this situation in a section of this paper.

In the final section, we attempted to draw some conclusions on our subject: the EU authorities and the Romanian authorities are trying, through legal provisions, to improve the integration of highly skilled/qualified professionals who are third-country nationals, and this is an ongoing process. In the next period, we will be able to verify if the new measures are helpful in this direction or if more changes are needed in order to achieve this goal.

2. EU legal framework regarding the migrant integration and the right to work

First, we have to mention that the European Union and most international organizations were aware of the problems involving the presence of migrants and refugees on the territories of the member states from the beginning. In many parts of the world, some rather in close geographical distance, wars and armed conflicts still occur. The civil population of those countries is entitled to leave those territories and seek asylum in safe countries. The EU member states are well-developed countries with a very stable economic system, and it is desirable to live in such countries.

The main international document that mentions the necessity of a legal framework in order to protect migrants and asylum seekers is the Treaty on the Functioning of the European Union (TFEU, 2012). According to Article 78(1) of this document, "the Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement." In the following paragraph, the European Parliament and Council established that the conditions for asylum in the EU countries as well as the conditions for other special situations (such as for subsidiary protection and temporary protection for displaced persons) should be similar in all member states of the EU. At the end of this article, in the last paragraph, it is established that if one of the EU member states is confronted with an emergency or a crisis in the matter of refugees or migrants from third countries (a large number of people needing such protection), the Council may adopt measures in order to help that member state to get over that delicate situation.

Furthermore, in the next article, namely 79(1), it is established the necessity to apply a fair treatment of third-country nationals residing legally in Member States. That means that this vulnerable social category must receive proper attention and help in order to be able to get a place to live, a place to work, access to school and education for the children and young adults, learn the language of the country they are staying in, access to the health system, the possibility to reunite the families and so on.

The migrants, refugees, or asylum seekers must be offered to legally reside in the EU member states to work and raise their children. In order to be able to do that, article 79(2) establishes that the Union has, therefore, the power to legislate on 'the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits' as well as on 'the rights of third-country nationals residing legally in a Member State'. In this way, the general international regulation provides the basis for the national legal framework, which is meant to allow the actual everyday existence of the migrants and refugees in similar conditions to the native population. We believe that this is the most fundamental basis for democracy and human rights.

The most important thing for a proper and successful integration for the third-country nationals is to find a job and support themselves and their families. It is crucial for their state of mind that they have the opportunity to find employment. Having a workplace is a source of income that can ensure the payment of rent, food, clothes, and all the other necessities. Also, a legal place of work ensures access to medical health care and school.

Considering all this, in Article 153(1), TFEU stipulates that as part of its social policy support, the Union shall complement the activities and measures of the Member States regarding the 'conditions of employment for third-country nationals legally residing in Union territory'. In this matter, the EU, as well as the Member States, must also take into account their actual needs in the labor market. Some third-country nationals may already have a proper education, but in most cases, this education must be completed with special courses in the EU Member State. Even if the migrants are highly educated, they might not find a job in their original line of work. So, in most cases, they need to adjust to the labor market. Also, they might need classes in order to learn the language of the EU Member State, and usually, they need a while to adapt. Afterward, when they become financially stable, they need to reunite with their families in a secure environment. So, it is a continuous process during which the EU authorities, as well as the member state authorities, must provide a secure legal framework.

Another important legal document in this matter is Charter of Fundamental Rights of European Union (2012). In this international document, Article 15(3) stipulates that "nationals of third countries who are authorized to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union". So, if a third country-national comes and works on the territory of a Member State, he or she must benefit from the same working conditions, meaning the same rights regarding wages, vacations, working hours, and medical care. Specifically, Article 30 grants "every worker (...) the right to protection against unjustified dismissal". Furthermore, Article 31 grants "every worker (...) the right to working conditions which respect his or her health, safety and dignity, and to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave".

In May 2009, the Council issued a Council Directive 2009/50/EC, the Blue Card Directive, on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. The Directive "sets out a simplified procedure for third-country nationals applying for a residence and work permit in a Member State, as well as a common set of rights to be granted to illegal immigrants" (Belcheva, 2021, p. 27). This is a very important legal document because these legal provisions establish the conditions for residence, family reunion, and other specific rights accorded to highly qualified employees coming from third countries. Even though several matters were left for the Member States to decide, it was considered that a common general procedure was needed. Also, the Blue Card Directive left the Member States the possibility to establish special criteria for admission and residence of the third-country national. This aspect led to confusion, resulting in 25 different Blue Card systems. This confusion has not contributed to the Blue Card's stated goal of facilitating the mobility of highly qualified professionals across Europe, nor has it served its intended purpose of being a magnet for international talent (Desiderio, 2016).

Given the differences between Member States regarding the policies and resources devoted to integration issues, the outcomes of Europe's TCNs differ greatly across the Union. The impact of the EU framework on promoting the integration of third-country nationals and preventing labor exploitation has been limited. But it is legitimate to leave some aspects to the

Member States' internal regulations because the economic and labor conditions differ, and these conditions must reflect the social realities and needs of both parties.

3. New conditions of the Blue Card directive

We should start by mentioning that “the Blue Card was the first Directive on TCNs labor immigration to be adopted by the EU. [...And] the Directive’s flexibility regarding how member states might make use of the scheme might be one of the reasons that the Directive was passed.” (Cerna, 2013, p. 186). But, the provisions of the first Blue Card Directive were not very effective and did not lead to a proper degree of integration. So, it pretty soon became clear to the EU authorities that significant changes were needed in order for the EU provision to be more adequate to the realities of the labor market. Still, such changes are hard to make, so it took some years for the new Blue Card Directive to be elaborated and adopted.

An initial “recast was proposed in 2016, but negotiations were blocked because, for one, the Member States wanted to keep parallel national entry schemes, so a wish for full harmonization was absent. However, following the September 2020 New Pact on Migration and Asylum, negotiations have come to life” (de Lange, 2020, p. 274).

In September 2020, the European Commission announced on its official site that “is proposing a new Pact on Migration and Asylum, covering all the different elements needed for a comprehensive European approach to migration. It sets out improved and faster procedures throughout the asylum and migration system. And it sets in balance the principles of fair sharing of responsibility and solidarity. This is crucial for rebuilding trust between Member States and confidence in the capacity of the European Union to manage migration” (EU Commission, 2020). The initial conditions for getting the Blue card implied allowing the high-skilled professionals with a job offer to work in a Member State for a maximum period of four years. In order to be eligible for the Blue Card, the applicants had to present a recognized diploma or have at least five years of professional experience in the work field and have been offered a wage salary in quantum of 1.5 times the average of the medium wages.

The Blue Card holder was allowed to move to another EU country after 18 months, bring their families, and get a work permit for the spouse. At the same time, many of the conditions for granting the Blue Card were left to be decided by the national legislation. This situation led to very high differences between the member states and turned out to be confusing.

As time passed, the beneficiaries and the Member States were confronted with several issues and problems preventing people from getting the Blue Card. The problems referred to the fact that the legal conditions were too restrictive, and most of the applicants could not fulfill them, such as matching the required considerable wage level to be reunited with the family even after a very long period of time.

These problems also led to a low level of integration and revealed that similar issues would occur in the future. Changes were necessary in order to improve the level of proper integration. Therefore, in EU was issued the Directive (EU) 2021/1883 of the European Parliament and of the Council on 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment. This new directive is meant to fix some of the problems that appeared when the first directive was applied and to adjust the legal framework to the new realities. The most significant legal changes brought by this new legal document refer to aspects such as access conditions, obtaining the residence permit, the wage level, and the time required to work in order to obtain the blue card. We will refer to each modification and explain its content and consequences.

Firstly, the new criteria ensure more flexible conditions regarding the conditions of access to the Member State territory and obtaining long-term residence. Secondly, a lower threshold of the required minimum wage has been established in order to obtain the Blue Card. Now it is necessary for the third country national to prove that they receive a quantum between minimum wage and 1.6 of the average wage per year. Previously the quantum was higher; it had to be higher than 1.5 of the average wage per year. Another important aspect is that it also enshrines an extension of beneficiaries' rights to move within the EU and reunite with family quicker. So,

according to the new regulations, the beneficiaries can get the Blue Card if they present a minimum of six months' work contract. Before that, the prior regulations imposed the third-country national would have a work contract for a minimum one-year period. Therefore, we can observe that the duration of the contract has been halved. Indeed, the legislator considered that a one-year contract is hard to obtain, and it diminishes the chances of the third-country nationals to get the Blue Card. The Blue Card is necessary to obtain more stability and raises the opportunities to get more stable work contracts for the recipients of this norm.

Furthermore, the new Blue Card Directive establishes that the beneficiaries will be able to move to another EU country together with their families after one year of working in the first EU state where they obtained the Blue Card. So, the period needed in order to relocate is now significantly shortened. Also, the provision according to which it was allowed for the owner of the Blue Card and their family to enter, stay, or return to the country for which the Blue Card was issued. These new conditions are to be applied in all EU Member States except for Denmark and Ireland.

There are several aspects taken into consideration with the occasion of taking new measures for the social inclusion of third-country nationals that are highly skilled such as "aging populations, labor shortages, pressures on social security systems, decreasing competitiveness vis-a-vis the USA and Asia to its self-identified goal of developing a knowledge-based economy" (Cerna, 2013, p. 180). The European authorities are aware of the fact that 50 years from now, the local workforce will be diminished, and the work of these people coming from third countries will contribute significantly to the European labor market. This has been highlighted before, when the EU Commission's (2010) agenda for new skills and jobs estimated a shortage of about one million professionals in the health sector and up to two million if we also consider ancillary healthcare professions. And these numbers will increase as time passes.

The EU population is an aging one. It is rather old and will become older over time. In these conditions, it is estimated that in the future (10 or 20 years from now), the native European population will be unable to provide specialists for certain professions. But professional activities will still be needed. And of course, the most logical solution will be to attract professionals from outside the EU to keep the economy going and satisfy the needs of the EU population. Even if some activities, which do not need high skills or exceptional education, can be carried out outside the EU territory, such as factories for clothing in countries like India, some other activities cannot be externalized outside the EU territory. In such conditions, the creation of attractive conditions for highly skilled professionals from outside the EU is a reasonable measure to take.

The prior legal frame appeared to contain *de jure* non-discriminatory legal conditions in order for the foreigners to get the Blue Card, but, *de facto*, it turned out that it was really hard for the applicants to fulfill them. So, even though the legislation allowed people to request the blue card, obtaining it was merely an illusion as a very small percentage of them could fulfill the legal conditions. These new regulations are meant to ensure better social inclusion for asylum seekers and refugees. Also, it is a humane gesture to help those who can no longer live with dignity in their native countries. Nobody has merits or faults regarding their place of birth, and we are all human beings with dignity.

4. Findings and discussion on refugees and migrants in Romania

According to the prior form of the Blue Card Directive and Romanian legislation, in order to obtain the Romanian Blue Card, an applicant had "to demonstrate post-secondary educational qualification and an annual salary of at least four times the average gross annual salary for a similar position (about 24,000/year). If working in a regulated profession, s/he has to have relevant educational qualifications or work experience necessary" (Cerna, 2013, p. 192). Regarding the legal provisions, Romania adopted permissive conditions for migrants to work. It is not very appealing because the wages in Romania are smaller than in other EU countries. According to legislation in Romania, in order to apply for the blue card in Romania, the applicant must fulfill the following conditions: having a valid work contract or binding job offer for highly qualified employment with a duration of at least one year, meeting the minimum salary threshold in

Romania, having documents proving that the national legal requirements for the followed profession are met or the professional qualifications are met; having a valid travel document or long-term visa and proof of sickness insurance. Also, the person should not represent a threat to the peace and order in the member state.

As mentioned, the number of refugees and asylum seekers is smaller in Romania than in other EU countries since the economy is underdeveloped. Some of the foreigners who are third-country nationals came to Romania to study, mostly medicine. In recent years, the number of students from this category increased, and some of them remain after graduation and choose to work and live in Romania. Also, the requests for the blue card in Romania are affected by social, economic, and political context, as we discuss in the following paragraphs. In the new situation created by the war between Russia and Ukraine, Romania received a large number of refugees from Ukraine. Most of them stay in transit for a few nights, but some remain here until the end of the war and are already looking for jobs. Some of them are highly qualified, for instance, doctors. The Romanian authorities are taking measures to ensure their integration and people of Romania remain empathic towards their situation.

The integration is not easy because the Romanian language is hard to learn to speak. The migrants have the possibility to attend classes to learn the language. Also, in the places where there are more Ukrainian people, centers were opened for their children, trying to create a normal environment for them to continue school in their native language.

The real economic problem is that the jobs are poorly paid in Romania, compared with other EU Member States, and the migrants mainly see Romania just as a transit country towards the west of Europe.

As we mentioned above, the Romanian population is very helpful and empathic with the Ukraine refugees. Still, as the Romanian economy is not highly developed, well-paid jobs are not easy to find, so the native population is not very happy to hear that foreigners take some jobs. The term 'foreigners' is used in its most general meaning, with no distinctions made between refugees and economic migrants. So, these 'foreigners' can often be perceived and portrayed in public discourses as 'job stealers' from native-born workers, regardless of labor market segmentation, which, in several countries, keep natives and migrants in separate labor market segments and therefore not compete for the same jobs (Ambrosini 2001; Allievi 2018).

5. Conclusion

A few years after the European Blue Card Directive 2009/50 was adopted, it was clear to the specialists and experts that the directive had failed (de Lange, 2020). The social and economic changes in the EU led to the necessity to re-frame the Blue Card legislation. The Blue Card is considered to be the legal basis for the integration of migrants. The EU is most interested in integrating high-skilled migrants rather than low-skilled ones, even if this last category of work is needed. The low-skilled workforce is still preferred to build factories in foreign territories and then import the merchandise.

Moreover, the EU now faces new challenges, as the war between Russia and Ukraine started in February 2021. This armed conflict is leading to a large number of refugees from Ukraine towards the Member States, which affects the economy and labor market. It is necessary for refugees to receive material and moral support. Also, in the economic field, many changes occur, leading to a crisis, and the labor market will have to include the people running away from war. Certainly, the Blue Card is an ongoing process, as its implementation will raise new issues, and to ensure its success, the EU and the Member States have to be open to new negotiations and changes.

Some of the Ukraine refugees stop and live in Romania, but for most of them, Romania is only a transit country. For those who stayed, the Romanian authorities provide economic support, enable the inclusion of children in schools, the possibility to learn the local language, and integrate into the labor market. They receive special support, different from the blue card applicant, as they did not leave their country to work but to save their lives and families. As we

mentioned, since they came to Romania in large numbers, the current situation constitutes a challenge for the authorities in Romania, as well as in the EU.

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