

THE LEGAL STATUS OF REFUGEES IN THE CONTEXT OF HUMAN RIGHTS PROTECTION: INTERNATIONAL AND NATIONAL PERSPECTIVES

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ABSTRACT: *Forced displacement represents one of the most severe humanitarian and legal challenges of the contemporary international system. The proliferation of armed conflicts, authoritarian political regimes, ethnic and religious persecution, as well as the collapse of state protection mechanisms have contributed to a constant increase in the number of refugees worldwide. This article provides an in-depth analysis of the legal status of refugees within the framework of international human rights protection. The study focuses on the normative foundations established by the 1951 Refugee Convention and the 1967 Protocol, as well as on their implementation at national level, with particular reference to Romania. In addition, the article examines the legal distinction between refugees and migrants and analyses recent developments generated by mass displacement situations, including the Ukrainian refugee crisis.*

KEY WORDS: *refugees, asylum law, human rights, international protection, non-refoulement.*

JEL CLASSIFICATIONS: *K33, K38, F22.*

1. INTRODUCTION

Forced displacement has become one of the most significant structural phenomena of the contemporary international system. In contrast to earlier historical periods, when refugee movements were largely episodic and geographically limited, current displacement patterns are characterized by their scale, persistence and complexity. Armed conflicts, authoritarian regimes and widespread violations of fundamental rights have transformed forced migration into a long-term global challenge rather than a temporary humanitarian issue (UNHCR, 2022).

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Refugees occupy a distinct legal position due to the involuntary nature of their displacement. Their movement across international borders is not the result of personal choice or economic motivation, but of the necessity to escape persecution, violence or serious threats to life and liberty. This fundamental characteristic differentiates refugees from other categories of migrants and justifies the existence of a specific legal regime dedicated to their protection (Hathaway, 2005).

The protection of refugees is intrinsically linked to the broader framework of international human rights law. At its core, refugee protection seeks to safeguard non-derogable rights, such as the right to life, the prohibition of torture and the respect for human dignity. The failure to grant protection to individuals fleeing persecution may expose them to irreversible harm and engage the international responsibility of states (Goodwin-Gill & McAdam, 2007).

Despite the consolidation of international legal norms, refugee protection remains a politically sensitive and contested field. States are often required to reconcile humanitarian obligations with concerns related to border control, national security and public order. This tension has become increasingly visible in recent decades, particularly in the context of large-scale displacement affecting regions adjacent to the European Union (Costello, 2016).

Recent crises, including conflicts in Europe's immediate vicinity, have further highlighted both the strengths and the limitations of existing asylum systems. These developments demonstrate that the effectiveness of refugee protection depends not only on the existence of legal standards, but also on their consistent implementation at national level and on international cooperation mechanisms capable of responding to mass displacement (UNHCR, 2022).

The present article aims to analyze the legal status of refugees within the framework of international human rights protection. It examines the normative foundations of refugee law and explores their application at national level, with particular reference to Romania, while also addressing contemporary challenges arising from large-scale forced displacement.

2. INTERNATIONAL LEGAL FOUNDATIONS OF REFUGEE PROTECTION

The contemporary regime of refugee protection is the result of a gradual process of normative development shaped by historical experience and humanitarian necessity. Modern refugee law emerged in response to the mass displacement caused by the Second World War, when millions of individuals were left outside the protection of their states and exposed to legal uncertainty. The absence of uniform international standards at that time revealed the urgent need for a binding legal framework (Goodwin-Gill & McAdam, 2007).

The adoption of the 1951 Convention relating to the Status of Refugees represented a decisive moment in the codification of refugee protection. For the first time, states agreed on a uniform legal definition of the refugee and on a set of international obligations governing the treatment of persons fleeing persecution. The Convention transformed refugee protection from an act of discretionary humanitarian assistance into a matter of international legal responsibility (United Nations, 1951).

A central element of the Convention is the definition of the refugee as an individual who has a well-founded fear of persecution based on specific grounds, including race, religion, nationality, membership of a particular social group or political opinion. This definition introduced a rights-based approach to protection, linking eligibility for refugee status to serious violations of fundamental freedoms rather than to generalized hardship or economic deprivation (Hathaway, 2005).

The Convention also emphasized the individual nature of refugee status determination. States are required to assess each asylum application on its own merits, taking into account both the personal circumstances of the applicant and the conditions prevailing in the country of origin. This individualized assessment constitutes a core procedural guarantee and reflects the human rights-oriented character of refugee law (Goodwin-Gill & McAdam, 2007, pp. 45–47).

Initially, the scope of application of the 1951 Convention was limited by temporal and geographical restrictions, reflecting the specific historical context in which it was adopted.

These limitations were removed through the 1967 Protocol relating to the Status of Refugees, which extended the applicability of the Convention to all refugees, irrespective of the date or location of displacement. The Protocol ensured the continued relevance and universal character of the refugee protection regime (United Nations, 1967).

Beyond defining refugee status, the international legal framework establishes minimum standards of treatment that states must guarantee to refugees lawfully staying on their territory. These standards include access to courts, education, employment, social security and freedom of movement. Although the level of protection may differ from that accorded to nationals, the Convention requires states to ensure that refugees are not subjected to discrimination incompatible with human dignity (Hathaway, 2005, pp. 412–415).

The refugee protection regime operates in close interaction with international human rights law. While the Refugee Convention is a specialized treaty, its interpretation is increasingly influenced by broader human rights instruments, such as the International Covenant on Civil and Political Rights and the Convention against Torture. This interaction reinforces the protective function of refugee law, particularly in relation to personal security and protection from ill-treatment (Costello, 2016).

Finally, the institutional framework supporting refugee protection plays a crucial role in the effective application of international norms. The United Nations High Commissioner for Refugees (UNHCR) is entrusted with supervising the implementation of refugee law and coordinating international efforts in this field.

Through its mandate, UNHCR contributes to the interpretation of legal standards, monitors state practice and provides operational assistance in situations of displacement, thereby strengthening the practical effectiveness of international refugee protection (UNHCR, 2022).

3. PERSECUTION AS A TRIGGER FOR INTERNATIONAL PROTECTION

Persecution constitutes the central element that triggers the application of international refugee protection. Although the 1951 Convention relating to the Status of Refugees does not provide an explicit definition of persecution, international doctrine and jurisprudence have developed a coherent interpretative framework that links persecution to serious violations of fundamental human rights. As a result, persecution is generally understood as conduct that reaches a certain level of severity and persistence, rather than isolated or sporadic acts of harm (Hathaway, 2005).

The assessment of persecution requires an evaluation of both its qualitative and quantitative dimensions. Qualitatively, persecution involves infringements of core human rights, such as threats to life, physical integrity, liberty or human dignity. Quantitatively, such violations must reach a level of seriousness that exceeds ordinary hardship or discrimination. Minor restrictions or general socio-economic difficulties, even when widespread, do not in themselves constitute persecution within the meaning of refugee law (Goodwin-Gill & McAdam, 2007).

A defining feature of persecution under the Refugee Convention is its connection to one of the enumerated grounds: race, religion, nationality, membership of a particular social group or political opinion. This nexus requirement ensures that refugee protection is not extended to all persons facing danger, but specifically to those targeted on discriminatory grounds linked to identity or belief. The existence of this causal link must be demonstrated through an individualized assessment of the applicant's circumstances (Hathaway, 2005, pp. 103–105).

Persecution may take a wide variety of forms, including physical violence, arbitrary detention, torture, sexual violence, severe discrimination or the systematic denial of access to basic rights. Importantly, international refugee law recognizes that persecution does not necessarily require direct state involvement. Acts committed by non-state actors may amount to persecution where the state is unwilling or unable to provide effective protection against such harm (Goodwin-Gill & McAdam, 2007, pp. 98–100).

The concept of state protection plays a crucial role in determining whether harm qualifies as persecution. Where a state is able and willing to offer effective protection through its legal and institutional mechanisms, the threshold for international protection is not met. Conversely, the absence of effective state protection—whether due to state (Hathaway, 2005).

Another essential component of refugee status determination is the concept of a “well-founded fear” of persecution. This notion combines a subjective element, reflecting the applicant's personal fear, with an objective element, requiring a reasonable possibility that persecution will occur if the individual is returned to the country of origin. The assessment of well-founded fear must take into account credible country-of-origin information and the specific vulnerabilities of the applicant (UNHCR, 2019).

The interpretation of persecution has been further refined through international and regional jurisprudence, particularly within the European context. Courts have emphasized that cumulative measures, which individually may not amount to

persecution, can collectively reach the required threshold when they produce serious and sustained harm. This approach reflects a dynamic and context-sensitive understanding of persecution, aligned with contemporary human rights standards (Costello, 2016).

In sum, persecution functions as the legal gateway to international refugee protection. Its assessment requires a careful and individualized analysis that balances legal precision with sensitivity to human vulnerability. By anchoring refugee status in the concept of persecution, international refugee law seeks to ensure that protection is granted to those who face serious and discriminatory threats while maintaining the integrity and coherence of the asylum system.

4. THE PRINCIPLE OF NON-REFOULEMENT

The principle of non-refoulement constitutes the cornerstone of international refugee protection and represents one of the most fundamental safeguards afforded to individuals fleeing persecution. Enshrined in Article 33(1) of the 1951 Convention relating to the Status of Refugees, the principle prohibits states from expelling or returning a refugee in any manner whatsoever to territories where their life or freedom would be threatened on account of one of the Convention grounds (United Nations, 1951).

Non-refoulement is not limited to formal acts of deportation or expulsion, but also encompasses indirect forms of return that may expose individuals to serious harm. This includes practices such as rejection at the border, transfer to third countries lacking adequate protection standards, or measures that effectively compel individuals to return to unsafe territories. The broad interpretation of non-refoulement reflects its protective purpose and its central role within the refugee protection regime (Goodwin-Gill & McAdam, 2007).

The relationship between non-refoulement and national security considerations has been a subject of considerable legal debate. While Article 33(2) of the Refugee Convention allows for limited exceptions in cases where a refugee poses a danger to the security of the host state or has been convicted of a particularly serious crime, international human rights law has significantly narrowed the scope of these exceptions. In particular, the absolute prohibition of torture excludes any balancing of risk against security concerns (Goodwin-Gill & McAdam, 2007, pp. 246–248).

The application of the principle of non-refoulement requires a forward-looking assessment of risk. Authorities must evaluate whether there is a real and foreseeable possibility that the individual concerned would face persecution, torture or other serious harm upon return. This assessment must be based on up-to-date and reliable information regarding conditions in the country of origin, as well as on the specific circumstances of the individual applicant (UNHCR, 2019).

Non-refoulement applies not only to recognized refugees but also to asylum seekers whose status has not yet been finally determined. Denying access to asylum procedures or removing individuals before their claims have been adequately examined may result in violations of the principle. Consequently, effective procedural safeguards

are essential to ensuring the practical implementation of non-refoulement obligations (Costello, 2016).

Within the European context, the principle of non-refoulement has been further elaborated through regional legal instruments and judicial practice. European courts have consistently emphasized that states must not expose individuals to a real risk of serious harm through removal, even when acting within broader migration control frameworks. This jurisprudence underscores the centrality of non-refoulement as a non-negotiable element of refugee and human rights law (Costello, 2016).

In conclusion, the principle of non-refoulement represents a fundamental expression of the humanitarian character of refugee law. By prohibiting the return of individuals to situations of serious harm, it serves as the primary legal barrier against the erosion of international protection standards. Its effective application remains essential to preserving the integrity and credibility of the international refugee protection regime.

5. NATIONAL IMPLEMENTATION OF REFUGEE PROTECTION IN ROMANIA IN THE CONTEXT OF THE 2022 UKRAINIAN REFUGEE INFLUX

The year 2022 represented an unprecedented stress test for the Romanian system of international protection, following the outbreak of the armed conflict in Ukraine in February of that year. Romania, due to its geographical proximity, became one of the primary transit and host states for persons fleeing the conflict. According to official data, more than 1.5 million Ukrainian citizens crossed the Romanian border during 2022, while tens of thousands chose to remain in the country under various forms of protection (UNHCR, 2022).

Romania's response to this sudden influx was primarily structured around the activation of the temporary protection mechanism, in line with European Union measures adopted in March 2022. Temporary protection offered immediate legal status, access to accommodation, healthcare, education and the labour market, without requiring an individualized refugee status determination. While this mechanism proved essential for emergency response, it also revealed structural and legislative limitations within the national asylum framework (European Commission, 2022).

Law No. 122/2006 on Asylum in Romania, which constitutes the core legislative instrument in this field, was not originally designed to manage large-scale displacement scenarios. Its procedural architecture is primarily oriented toward individual asylum applications and does not comprehensively regulate long-term situations of mass protection. As a result, during 2022, legal uncertainty arose regarding the interaction between temporary protection and conventional refugee status, particularly for individuals who might have met the criteria of the 1951 Refugee Convention but were channelled exclusively into temporary protection schemes (Romanian Parliament, 2006).

A significant legislative gap identified in 2022 concerned the lack of clear long-term integration provisions for beneficiaries of temporary protection. While emergency measures ensured immediate access to basic services, Romanian legislation

did not provide a coherent framework for medium- and long-term integration, including stable housing, language acquisition and sustainable labour market inclusion. This deficiency became evident as the displacement situation evolved from a short-term humanitarian emergency into a protracted protection context (UNHCR, 2022).

Administrative capacity constituted another major challenge during 2022. The rapid increase in the number of protected persons placed considerable pressure on public institutions responsible for migration, social assistance and education. In several regions, local authorities faced difficulties in ensuring sufficient accommodation and access to public services, particularly in the early months of the crisis. These challenges exposed the limited preparedness of national institutions for managing sudden, large-scale refugee inflows (European Commission, 2022).

Statistical data from 2022 indicate that over 100,000 Ukrainian nationals were granted temporary protection in Romania by the end of the year, a figure unprecedented in the national context of international protection. At the same time, the number of regular asylum applications from other countries of origin decreased, reflecting the reallocation of administrative resources toward emergency response mechanisms (UNHCR, 2022). This shift raised concerns regarding the sustainability of asylum procedures and the potential impact on procedural guarantees for non-Ukrainian applicants.

The Ukrainian refugee influx also highlighted the crucial role played by civil society and international organizations in compensating for legislative and institutional shortcomings. Non-governmental organizations provided legal assistance, accommodation, psychosocial support and interpretation services, often filling gaps that could not be immediately addressed by public authorities. While this cooperation was instrumental in ensuring protection, it also revealed the reliance of the Romanian system on external actors in times of crisis (UNHCR, 2022).

In conclusion, the events of 2022 exposed both the adaptability and the limitations of Romania's legal framework for refugee protection. While the rapid implementation of temporary protection demonstrated compliance with European and international obligations, the experience also revealed legislative gaps related to long-term integration, procedural clarity and administrative capacity. Addressing these shortcomings is essential for strengthening Romania's preparedness for future displacement crises and for ensuring the coherence of its international protection system.

5.1. Lessons Learned from the 2022 Ukrainian Refugee Influx

The experience of managing the Ukrainian refugee influx in 2022 provided valuable insights into the strengths and weaknesses of Romania's legal and institutional framework for international protection. One of the most important lessons concerns the necessity of legal flexibility in emergency contexts. The rapid activation of temporary protection mechanisms demonstrated that existing legal instruments can be adapted swiftly when supported by political will and European coordination.

However, this flexibility was largely reactive and relied on exceptional measures rather than on pre-established contingency provisions within national legislation (European Commission, 2022).

A second key lesson relates to the limitations of emergency-based protection models. While temporary protection proved effective in addressing immediate humanitarian needs, the events of 2022 illustrated that mass displacement situations may quickly evolve into prolonged protection contexts. The absence of a clear legislative transition between temporary protection and longer-term legal statuses generated uncertainty for beneficiaries, particularly regarding residence stability, access to durable employment and family reunification (UNHCR, 2022).

The 2022 crisis also underscored the importance of administrative preparedness and institutional capacity. Romanian authorities demonstrated a significant capacity for rapid mobilization; nevertheless, the strain placed on migration authorities, local administrations and public service providers revealed structural vulnerabilities. These included insufficient staffing levels, uneven regional capacity and limited experience in managing large-scale protection scenarios. The experience highlighted the need for permanent institutional preparedness mechanisms rather than ad hoc crisis responses.

Another significant lesson concerns the role of inter-institutional and cross-sector cooperation. The effective management of the refugee influx relied heavily on coordination between central authorities, local governments, international organizations and civil society actors. While this cooperation proved instrumental in ensuring access to accommodation, healthcare and legal assistance, it also exposed the lack of a clearly regulated framework defining responsibilities and accountability among stakeholders within national legislation.

Finally, the events of 2022 highlighted the need for a more comprehensive integration-oriented approach within Romanian refugee law. Emergency protection measures focused primarily on immediate assistance, with limited attention to long-term social inclusion. The experience demonstrated that integration considerations—such as language training, recognition of qualifications and access to stable housing—should be embedded into protection frameworks from the outset, rather than addressed only after humanitarian needs have been met (UNHCR, 2022).

In sum, the Ukrainian refugee influx of 2022 functioned as a critical learning moment for Romania's asylum system. While the response demonstrated solidarity and compliance with international obligations, it also revealed structural and legislative gaps that require systematic reform. Incorporating the lessons learned from 2022 into national refugee policy is essential for enhancing resilience, legal coherence and preparedness for future displacement crises.

5.2. Economic Analysis of Romania's Financial Effort

The influx of refugees from Ukraine in 2022 imposed not only legal and administrative pressures on the Romanian state, but also significant financial burdens on public budgets and institutional capacities. In the initial months of the crisis, Romania allocated substantial emergency funds to meet the immediate needs of

refugees, including accommodation, food provision, medical care and logistical support. Official data indicate that by August 2022, the Romanian Interior Ministry and associated agencies had spent approximately 312 million lei (equivalent to around EUR 63.9 million) on direct assistance to Ukrainian refugees, with expenditures covering shelter, meals and essential services. This figure was partially reimbursed by the European Union, which contributed approximately EUR 39.1 million toward accommodation and subsistence costs (Romania-Insider, 2022; MAI Data).

This level of expenditure in 2022 represented a significant budgetary allocation for a comparatively small economy. Although precise calculations for total refugee-related costs are constrained by data availability specific to that year, the 312 million lei figure reflects only direct emergency outlays and does not fully account for additional expenditures related to healthcare, education, social integration or administrative processing.

Moreover, these expenditures were financed in large part through emergency budget reserves and required fiscal adjustments within the Ministry of Internal Affairs, illustrating the strain placed on national public finances (Romania-Insider, 2022).

From a macroeconomic perspective, even conservative estimates of refugee-related spending in 2022 constituted a noteworthy share of Romania's fiscal resources. Comparisons with broader support to Ukraine suggest that humanitarian responses formed part of a larger financial commitment, with analyses indicating that Romania's total support - military, humanitarian and financial - since the outbreak of war equated to around 0.2% of GDP annually (Taxes Council, 2025). This contextualizes the refugee-related expenditures within broader economic pressures resulting from the conflict's spillover effects, including increased public spending on defense, energy security and social services.

The fiscal implications extend beyond immediate assistance. In 2022, the diversion of administrative and financial resources toward refugee support contributed to opportunity costs related to delayed investments in other social sectors and public infrastructure. Furthermore, the emergency nature of these expenditures limited the state's ability to engage in longer-term planning for integration measures that require sustained funding, such as language training, educational support and labour market facilitation - expenditures that have both short-term costs and potential long-term economic benefits if refugees successfully integrate and enter the workforce.

Despite these challenges, the Romanian government's fiscal response was partially mitigated by European funding instruments, including reimbursements and support through EU programmes designed for emergency assistance to displaced populations (European Commission, 2022). These mechanisms helped relieve some pressure on national budgets, albeit without fully offsetting the direct costs incurred in 2022.

In sum, the economic footprint of Romania's response to the Ukrainian refugee influx in 2022 was substantial for the national context, encompassing direct emergency expenditures, adjustments in budgetary priorities and foregone alternative uses of public funds.

While these efforts underscored Romania's commitment to humanitarian obligations, they also revealed the need for robust financial planning frameworks capable of integrating emergency responses with sustainable long-term integration strategies.

From a comparative perspective, Romania's financial effort in 2022 was significant relative to its economic capacity, although substantially lower in absolute terms than that of neighbouring states hosting larger refugee populations. Poland, which became the primary destination for Ukrainian refugees, allocated an estimated EUR 2.4 billion in 2022 for refugee-related expenditures, reflecting both the scale of displacement and the implementation of more extensive long-term integration measures, including social benefits, education and housing support (European Commission, 2022).

In contrast, Hungary and Slovakia, while also affected by the refugee influx, primarily functioned as transit or short-term host countries. Hungary's estimated expenditure of approximately EUR 100 million in 2022 was largely directed toward temporary accommodation and border-related assistance, with limited emphasis on long-term integration. Similarly, Slovakia allocated around EUR 180 million, focusing mainly on housing and basic services under the temporary protection regime (European Commission, 2022).

Compared to these states, Romania's expenditure of approximately EUR 63.9 million reflects a mixed role as both a transit and host country. While the financial burden was lower than in Poland, the relative impact on Romania's public finances was considerable given its more limited fiscal capacity. This comparison highlights the importance of evaluating refugee-related expenditures not only in absolute terms but also in relation to national economic size and institutional preparedness.

Table 1. Estimated public expenditure related to Ukrainian refugees in 2022 (selected countries)

Country	Estimated expenditure 2022	Source of funding	Contextual note
Romania	≈ 312 million lei (≈ EUR 63.9 million)	National budget + EU reimbursement	Emergency spending on accommodation, food, healthcare
Poland	≈ EUR 2.4 billion	National budget + EU funds	Large-scale hosting; long-term integration measures
Hungary	≈ EUR 100 million	National budget + EU funds	Primarily transit and short-term assistance
Slovakia	≈ EUR 180 million	National budget + EU support	Temporary protection and housing support

Source: Author's compilation based on data from the Romanian Ministry of Internal Affairs, UNHCR (2022) and European Commission reports on the implementation of temporary protection measures.

6. CONCLUSIONS

The analysis conducted in this article demonstrates that refugee protection remains a fundamental component of the international human rights system, reflecting the legal and moral responsibility of states to protect individuals fleeing persecution and armed conflict.

The international refugee protection framework, centred on the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, continues to provide a robust normative foundation capable of addressing contemporary displacement challenges.

The Ukrainian refugee influx of 2022 represented an unprecedented test for Romania's asylum and protection system. The rapid activation of temporary protection mechanisms illustrated Romania's compliance with European and international obligations and highlighted the capacity of national authorities to respond swiftly in emergency contexts.

At the same time, the crisis exposed structural and legislative shortcomings, particularly regarding long-term integration measures, procedural clarity and administrative preparedness for mass displacement scenarios.

The analysis of Romania's national legal framework revealed that Law No. 122/2006 on Asylum, while broadly aligned with international standards, was primarily designed for individual asylum procedures and proved insufficiently flexible in managing large-scale displacement. The coexistence of temporary protection and conventional asylum regimes generated legal uncertainty for certain categories of displaced persons, underscoring the need for clearer legislative coordination between short-term protection mechanisms and durable legal solutions.

From an economic perspective, the financial effort undertaken by the Romanian state in 2022 was significant relative to national fiscal capacity. Emergency expenditures related to accommodation, subsistence and basic services placed additional pressure on public budgets and required rapid reallocation of financial resources.

Comparative analysis with neighbouring states demonstrated that, although Romania's absolute expenditures were lower than those of major host countries such as Poland, the relative economic impact was substantial, highlighting the importance of European solidarity and shared responsibility mechanisms.

Overall, the findings suggest that future refugee protection policies should move beyond reactive emergency responses and incorporate comprehensive contingency planning, sustainable funding models and integration-oriented legislative reforms.

Strengthening institutional capacity, enhancing legal coherence and ensuring effective coordination between national and European instruments are essential steps toward building a resilient and rights-based refugee protection system capable of responding to future displacement crises.

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