

Temporary Protected Status for the Nationals of the Third Countries and Stateless Persons: A Notion to be Promoted in Fighting Xenophobia

On the memory of the Sturma's Romanian Jews sunk in the Black Sea

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Abstract. The Temporary Protected Status (TPS) is one of the key-notion in the ultra-contemporary debates related with the migrants and refugees' issues. It is the politico-judicial notion of human solidarity and democratic support in cases of political disasters. It is the practical alternative to the xenophobic ideas and attitudes enrooted in the forgetfulness of the tragedies of mankind and solutions commonly agreed to prevent or fight them. It is also the obvious results of the public confusions. The present paper is an attempt to draw the attention to its political meanings and dimensions, as well as, to remember a collective tragedy, the Sturma, as a case for which an active mechanism as TPS could have been the political savior mechanism. It is a call for the public support in immediately saving the people in risks of political persecutions or executions.

Keywords: *Temporary Protection Status, Asylum procedures, Sturma case*

Introductive considerations

There are four main reasons to insist on the TPS, meanings and role (i) the limited covering in the Romanian media; (ii) the political complexity of the mechanism itself which made them hardly to be used; (iii) the TPS actuality in the context of raising xenophobia in the world, Europe included; (iv) the human tragedies are too rarely reminded.

To them a conjectural factor added, in the spring 2018, (v) a study on the TPS use in the US under Trump administration.

(i) Because of the technical meaning of the TPS the single channel to familiarize the public with it is the media.

Or, the Romanian media eluded the notion of the Temporary Protected Status (TPS) of a third country national or the stateless persons, as a status complementary to these of refugee or subsidiary protection. Nevertheless, under

the pressures of the events - episodes of the "migrants' crisis" - the political and legal meaning of TPS (not the term) is evoked in the Romanian media in regrettable confusions. Unfortunately, in the Romanian media, even in the political talk shows, the TPS is blurred or even diluted in the notions as refugees or migrants.

As it results from the media mentions, the TPS is limitedly associated with the term *asylee* – recommended used in the UNHCR Handbooks, common in the EU political documents. The term *asylee* seems to be also avoided, in favor of that of *migrant*. The term *migrant* - suggested as being a reflection of the categories as the illegal migrants and terrorists - is used to develop xenophobic attitudes. So Romania, developed migrant-phobia, in the absence of its very subjects: the migrants.

Why such a disinterest for accurately communicate the TPS and mobilize the public support to assist the persons in major risk of political oppressions?

(ii) For us, the lack of the accurate communication contents on TPS in Romania is caused not only to the limited-information of those who should cover it. The complexity of the topic is also a factor. Indeed – the TPS is a mechanism of protection of the individuals aside the Refugees status and Subsidiary protection, which intersect them but also has its own peculiarity. It applies exceptionally in the case of massive influx of migrants. In Romania, in the absence of the "official" List of the citizens countries whose qualify for it, it is difficult to make it understandable for the public and do it in one single action, or the institutions unfamiliar for the public. That is why any new discussion on TPS could help it to cross the line and influencing the public sphere to become sensitive and develop solidary with the victims of the political persecutions.

(iii) The TPS, in spite of its technicalities, is a needed notion. It should be delivered to the public as a normative standard, with a long history in Europe which transformed in an European brand, and as a practical instruments, just because we see a raising xenophobia in the world, Europe included. The public manifestations – forums, graffities, demonstrations, electoral behaviors –; the xenophobic anti-migrants parties' electoral success; elements of the governmental political positioning against TPS are extremely worrying. They are threatening to European way, to the peaceful and democratic climate here.

(iv) The lack of TPS in the international agreements in the last centuries is rarely associated with the humanitarian disasters. Or, the *Sturma's* case proves it. During the WWII, 1942 a ship with refugees after a nightmare of four months, sank into the Aegean Sea. The refugees were the Romanian Jews citizens to whom for

long time the free world refused the human solidarity. In today Romania, there are too few reports or comments that continue to inform the public on what happened, on the tragical consequences of the refuse the sanctuary for the desperate people fleeing the wars. We did not identify any parallel on what happened in 1942 with what happened in the "migration crisis" at the EU borders and in the case of the Aquarius' refuse, in 2018 .

(v)The conjectural reasons to bring into attention the TPS is a study proposed on the US new approaches on TPS. The July 2018 study , Temporary Protected Status and Immigration to the US , emphasizes the role of the Presidents' executive actions in regulating the inflows of new international immigrants and the status of those already in the US and, after detailed economic analyses, comes to a special recommendation: to allow the access of the immigrants to the US labor market on a temporary base (1 year, renewable). The status required is similar with the humanitarian instrument, Temporary Protected Status [TPS].

Before the study presentation a brief review on the TPS will clarify the specific role of the instrument in the humanitarian protection and the need to be preserved as such.

On Temporary Protected Status in the EU and Romania

The Temporary Protected Status is a special type of protection granted collectively, in case of mass migration. It is granted under the international agreements, to the displaced persons with origins in the countries hit by humanitarian crisis caused by natural disasters, wars, civil wars, political persecutions against the groups of opponents, terror and similar.

On brief, the TPS is a special protection mechanism, exceptionally activated in cases of mass migrations caused by facts above the individuals' control.

It is decided collectively, but activated by the highest political official. (In the US it is activated by the President of the US. In the EU, for now, it should be activated, according with the logic of institutions functioning, the Head of States or of the Executives, accordingly with the existing type of the political regimes, presidential, semi-presidential or parliamentary. When the law specifically, provides, there are specific institution entrusted to take such a decision.)

Politico-judicially, the TPS is an international term - largely supported by the the UNHCR – transposed in the national laws on immigration active in the states

which signed 1951 Geneva Convention on Refugees and the fallowed agreements. It was the Recommendation E of the Final Act of the 1951 United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons , which “...expresses the hope that the Convention relating to the Status of Refugees will have value as an example exceeding its contractual scope and that all nations will be guided by it in granting so far as possible to persons in their territory as refugees and who would not be covered by the terms of Convention”.

It becomes more concrete in judicial terms with humanitarian crisis occurred in the last half of the XX century .

In the European Union the TPS is provided under the provisions of the Council Directive 2001/55 EC. According with the Directive, art. 2., (a) ‘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;”

The decision to activate such an exceptional measure is taken by the Council and it is “adopted by a qualified majority on a proposal from the Commission,” (art. 5). It becomes binding for the signing member states (No UK, Ireland, and partly Denmark).

According with the art. 5 (4) of the Directive, “the Council Decision shall be based on:

(a) an examination of the situation and the scale of the movements of displaced persons;

(b) an assessment of the advisability of establishing temporary protection, taking into account the potential for emergency aid and action on the ground or the inadequacy of such measures;

(c) information received from the Member States, the Commission, UNHCR and other relevant international organizations.”

The term “temporary” means here a protection for the beneficiaries of 1 year, plus 6 and other 6 months (2 years) or maximum 3 years (art. 2. (4).).

The syntagma “mass influx” means arrival in the Community of a large number of displaced persons, who come from a specific country or geographical

area, whether their arrival in the Community was spontaneous or aided, for example through an evacuation programme” (art.2).

The TPS does not replace, the accords on the refugees’ status and it comes in addition to the asylum procedures. It intervenes when the EASO is overpassed by the mass influx of displaced persons.

The TPS provides rights for the temporary protected persons, rights comparable with those of the refugees: access to work, housing, education, of an interpret in Courts and so one. It also provides the persons with such a status with the right to apply for asylum.

The end of the Status comes when the period of granting expires or when the Council decides, on the motivated reasons.

The voluntary return is the procedure of ending the protection. “1. The Member States shall take the measures necessary to make possible the voluntary return of persons enjoying temporary protection or whose temporary protection has ended. The Member States shall ensure that the provisions governing voluntary return of persons enjoying temporary protection facilitate their return with respect for human dignity.” (art. 21.1.)

The Directive 2001/55 EC was long time ago adopted and transposed in the national legislations. In the Romania’s legislation it was overtaken in the Law 122/2006, The asylum law. It is entirely compliant with the Directive. The general principles – solidarity and respect for human dignity and rights are limitedly emphasized in the Romanian law, but the practical provisions are all and details incorporated here. What it is of much aid in the Law 122/ 2006, is the contextualizing of the TPS. At the art. 2, the law rules that Romania state protects the foreigners under: the refugee’ status, subsidiary protection, temporary protection status and temporary humanitarian protection status.

The EU enacted the current form of TPS, in the context of Yugoslavian wars and applied its provisions to the ex-Yugoslavian displaced persons. Romania was a receiving country for them. The difficulties appeared when, in 2015 the mass influx of Syrian and Afghans displaced by the wars arrived in Europe mixed with the “economic migrants” from Near, Far East and Africa. Then, the Europeans faced multiple problems, largely known as the sharing burdens among the EU Members States under the “quotas” mechanisms. De facto – the well-established European society with historical traditions in offering sanctuary – got difficulties to accept the TPS!

The public ignorance on what it is about combined with political-partisans manipulations amplified the crisis of managing the phenomena and pushed Europe to xenophobic attitudes and violence enrooted in the xenophobia.

On brief, according with the EU Commission summary, the TPS

” ...is an exceptional measure to provide displaced persons from non-EU countries and unable to return to their country of origin, with immediate and temporary protection. It applies in particular when there is a risk that the standard asylum system is struggling to cope with demand stemming from a mass influx that risks having a negative impact on the processing of claims.”

On Temporary Protected Status in the United States of America

The term TPS is also defined by the US Immigration Act, 1990, (TITLE III - FAMILY UNITY AND TEMPORARY PROTECTED STATUS). The US act defines the TPS in congruence with the UNHCR documents in the field. It is an instrument to provide immediate aid, in case of mass influx of immigrants from countries hit by humanitarian crisis.

In the study, the The Temporary Protected Status evoked above, is seen only as the appropriate mechanism to be used by the US President to regulate the immigrants’ inflows to the US. It analyzed, according with an economic goal, the increasing the economic contributions of the immigrants both in the country of destination and origins. (The TPS term’ content, as it is defined legally, is out of the explicit humanitarian consideration of the authors, except a mention in the page 3 of the provision of the US Act on Immigration of 1990.)

The aim of the article is to get to the conclusion, that more TPS is needed in US, not only for the humanitarian reasons, but also for the economic ones and the President should use it, in economic benefits: remittances increasing and migrants inflows control.

The arguments of the study are deduced from the economic analyses of the remittances’ effects on the immigrants’ inflows.

The universe of research comprises 40 years of the executive actions signed by the US Presidents (Republican and Democrat). The list of the US Presidents that proceed to such actions comprises all the US Presidents in office, after the WWII and it is made available, by the Authors, in the Annex A of the study.

The context in which the article emerged is a dramatic one: “Executive actions by President Trump and current Secretary of Homeland Security Kirstjen Nelson... recently ended TPS protections for more than 400,000 immigrants from El Salvador, Honduras, Haiti, Nicaragua, Sudan, and Nepal.”

The theoretical framework of analyses is the NELM (new economics of labor migration) with its three main axioms:

1) “migration decisions—especially from countries in the global south—are made by the family/household unit and not the individual (e.g., Stark and Levhari 1982; Stark 1984; Katz and Stark 1986; Massey et al. 1998). (Migration is part of a household’s strategy to diversify its labor portfolio, which helps decrease potential risks to its long-term income (Massey 2009). p 4.

2) “remittances help the migrant’s family smooth consumption in the face of domestic (home country) economic volatility ... and provide the household with a way to accumulate savings and overcome deficiencies in local credit markets (Stark 1984); and represent “a mechanism that bolsters economic development in migrant sending countries (Taylor 1999). p.5.

3) “remittances to a country of origin decrease migration out of that country” p.7.

There are some critical points, that we saw in the study. Not all the major terms used in the study are defined as operational. The TPS and Synthetic Control are not treated with a similar attention as those of the NELM are. The concept of NELM is privileged, and no explanation why is visible for the usual reader. The views on migration - specific to the NELM - are extensively presented, and the operational terms deduced are correctly applied. The proves are coherent with the NELM standards. That is why it underlines that TPS could be taken “... as a potential policy lever that executives can pull to decrease flows of immigrants from particular countries in the event of crisis”. p. 19.

The humanitarian aspects do not seem to open a discussion on a policy devoted to support the Presidents’ intervention in migration regulation, based only in the economic analyze.

The content of the TPS status - granted to some special immigrants - through the Presidents acts is reduced to one single dimension: access to the labor market.

Although, the humanitarian core of the concept is not obvious there, the comparisons with the US approaches suggests for EU generally, and Romania

specially, to see the TPS as an asset too.

The mechanism – correlated with the regular asylum procedures – could ensure the needed labor for the economic increase.

The lack of TPS and the immorality of humanity in the Sturma case

Beside the humanity experiences, advise to keep the TPS as a major humanitarian achievement; to preserve it beyond any economic or partisan reason. The terrible disasters suffered by the Jews and Roma people during the WWII Nazi persecutions and the others states limited actions to curve them, taught humanity a lesson. The morality of the civilized world fades in the crisis. That is why, a political and legal mechanism must be invented when it does not exist or carefully preserved when it is already agreed. Only as a legal instrument, granted internationally or supra-nationally, it is activable immediately in the hard times (wars, natural disasters, and pogroms too).

By concept, such a mechanism was designed to be over the political interests and resistant to the political maneuvering. In the short and concrete form, the rationale beyond the TPS is done by a famous formula of the Chaim Weitzmann, in 1936, before the British Peel Commission, quoted in the press: “The world seemed to be divided into two parts: those places where the Jews could not live and those where they could not enter.” (On the behalf of the Roma, nobody registered the tragedy’s words.)

In the memories from the terrible times, the Sturma case tells humanity what means to be out of any protection, out of any human solidarity. Rememorizing the case, it is to say that the Sturma is about 769 Romanian Jews sunk in the Bosphorus strait, February 1942, by a soviet submarine, after a long stay in the strait. The embarked refugee, Romanian Jews – payed around 1000 dollars – to immigrate to Palestine, fleeing from a country controlled by an dictatorial regime, already guilty by two Programs: in Baneasa Forest and Podul Iloaiei’ train with Jews embarked to be deported in Germany.

The refugees headed to Palestine as immigrants for good and waited for the permission to enter there. (The British administration refused it - according with its own regulations to respect a quota of Jewish immigrants of 15. 000 annually.) The Romanian Jews lives were over the quota!

The ship that the Romanian Jews succeed to get – under the organization of the Alyiah-Bucharest, led by Samuel Leibovici, Iacob Leberman, Eugen Maissner, Lipa Haimovici și Emma Guttman - was the Sturma/Struma. It was an old boat (constructed in 1867). In its state at the time of the renting, the ship was totally improper (previously,

it was used to transport cattle on the Danube river). The *Sturma* was also over loaded. Beyond, its capacity three times more people were embarked.

After repeated temptations to depart and several returns for reparations in Romanian ports, finally, the refugees arrived in Bosphorus. Again, with the emergency need for engine reparations. Turkey, a neutral country then, accepted to do the reparations needed, but because of British pressures, Turkish authorities did not permit passengers to get on the shore to buy water and food. (The reparation took two months.) A cablegram send from the board by Marcel to his fiancé (published recently in Romania), told about the human dimensions of the sufferance of people fleeing from the Nazi hell to the hell of the human lack of solidarity. No substantial protests of the democratic countries are noticeable against the inhuman treatments of the passengers. No moral impulses drive the civilizations to firmly intervene in the favor of victims.

When the reparations were done the passengers were not allowed to immigrate to the British Administrated Palestine. More than this, after intense pressures of the British on Turkey, the *Sturma* was pushed out of port, in the international waters. There, a Soviet Submarine torpedoed the refugees. The unique survivor David Stoliar told the story.

The *Sturma's* case calls for the TPS, immediately activable in the benefices of the people fleeing from hell. The others terrible European experiences with people designated to extinction at home and with all the world doors closed before them taught the lesson to design a mechanism of protection: the TPS! We like to belief that the *Sturma's* tragedy directly inspired the initiators of the 1951 Geneva Convention and the TPS. We do belief that the Romanian Jews did not dye for nothing. It is a special instrument of the humanitarian solidarity across the globe, which provides for people distress immediate access in the signatory countries, shelter, access to the labor market and possibility to individually apply for asylum. That is why, we do believe, that it is to be preserved as it was conceive: for the humanitarian case.

Instead of conclusions

The preservation of the TPS as the name and the brand of the international mechanism to be activated only in the humanitarian crisis time, is necessary.

The long debates and deep misunderstanding in the EU countries over the solidarity with the coastal states hit by mass influxes of displaced persons argue the same position. Much efforts in communicating TPS as a exceptional mechanism to

save displaced persons for humanitarian disasters and to prove EU solidarity in doing it, are of incontestable utility.

The difficulties faced in implementation of EU Council Directive 2001/55, in the context of the “migration crisis”, the acceptance of the minimum standards and solidarity quotas, are caused by the people misunderstandings manipulated by the political-partisan interests. The solidarity with the victims as humanitarian standards, faded on the attacks of the political campaigns conducted by politicians – visible in the Brexit case - via some influencers. Fighting the manipulation is curving the xenophobia and mobilized the human solidarity in front of the disasters.

In concrete case, such difficulties were overpassed. It is for us, the TPS that saved the Aquarius passengers, by embarking them in the Mediterranean waters and, again, by, disembarked them at the Valencia harbor.

The Temporary Protection Status, as an instrument to protect the displaced persons during the major humanitarian disasters; to avoid tragedies caused by politics and humanitarially unassisted individuals - as the Sturma passengers were, is to be largely taught, known and supported.

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