



## **CARIM EAST – CONSORTIUM FOR APPLIED RESEARCH ON INTERNATIONAL MIGRATION**

Co-financed by the European Union

### ***Legal Aspects of the Integration of Migrants in the Republic of Moldova***

**Tatiana Ciumas**

CARIM-East Research Report 2013/37



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**CARIM-East**  
**Creating an Observatory of Migration East of Europe**

**Research Report**  
**CARIM-East RR 2013/37**

**Legal Aspects of the Integration of Migrants  
in the Republic of Moldova**

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## **CARIM-East – Creating an Observatory East of Europe**

This project which is co-financed by the European Union is the first migration observatory focused on the Eastern Neighbourhood of the European Union and covers all countries of the Eastern Partnership initiative (Belarus, Ukraine, the Republic of Moldova, Georgia, Armenia and Azerbaijan) and Russian Federation.

The project's two main themes are:

- (1) migration from the region to the European Union (EU) focusing in particular on countries of emigration and transit on the EU's eastern border; and
- (2) intraregional migration in the post-Soviet space.

The project started on 1 April 2011 as a joint initiative of the European University Institute (EUI), Florence, Italy (the lead institution), and the Centre of Migration Research (CMR) at the University of Warsaw, Poland (the partner institution).

CARIM researchers undertake comprehensive and policy-oriented analyses of very diverse aspects of human mobility and related labour market developments east of the EU and discuss their likely impacts on the fast evolving socio-economic fabric of the six Eastern Partners and Russia, as well as that of the European Union.

In particular, CARIM-East:

- builds a broad network of national experts from the region representing all principal disciplines focused on human migration, labour mobility and national development issues (e.g. demography, law, economics, sociology, political science).
- develops a comprehensive database to monitor migration stocks and flows in the region, relevant legislative developments and national policy initiatives;
- undertakes, jointly with researchers from the region, systematic and *ad hoc* studies of emerging migration issues at regional and national levels.
- provides opportunities for scholars from the region to participate in workshops organized by the EUI and CMR, including academic exchange opportunities for PhD candidates;
- provides forums for national and international experts to interact with policymakers and other stakeholders in the countries concerned.

Results of the above activities are made available for public consultation through the website of the project: <http://www.carim-east.eu/>

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## 1. Introduction

Integration is a new concept and even a new activity for Moldova. Formally Moldovan legislation contains no restriction on the rights and opportunities of foreigners, legally residing on the territory, except their political rights. At the same time for many years there was no viable mechanism for implementing their rights, and the presence of foreigners mainly limited to identifying their status, documentation and statistics.

At the same time the emigration of Moldovan citizens abroad has been analyzed in the last years with the accent on remittances, statistical data and selection of destination countries. The protection of these persons' rights and their reintegration was not seen as a priority by the state. This though has not been sufficiently analyzed and thus there is no real experience with good results regarding this process.

All this was determined by several factors:

- The absence of a national strategy on integration/reintegration in those years;
- Other priority areas which concentrated more on the improvement of socio-economic conditions in the country (an example would be the National Program for Poverty Alleviation<sup>1</sup>);
- Social/economic reasons (including Transnistrian conflict);
- The absence of a single body which would be responsible for this area or which would coordinate the process. In a newly independent Moldova different authorities managed migration, under headings like: documentation; fighting against illegal migration etc.

At present the state's activities and achievements are determined, in great part, by the EU vector<sup>2</sup> and thus the situation in the Republic of Moldova has recently changed a great deal. One of the state's objectives is that of creating protection measures and implementing standards. These will allow foreigners to access the rights provided by the legislation in force, including the Constitution of the Republic of Moldova, and also to create conditions for the reintegration of own nationals in order to reduce the burden on destination countries. It will also mean the protection of persons that could no longer stay abroad, due for example to the financial crisis.

## 2. Legal and Institutional Framework regarding the Integration of Foreigners

### 2.1 Legal Framework

#### 2.1.1 General overview of the existing legal framework up to 2012

The general rule established by the Constitution of the Republic of Moldova<sup>3</sup> in Article 19 (Legal status of aliens and stateless persons) para. (1) is that "Foreign citizens and stateless persons have same rights and duties as the citizens of the Republic of Moldova, with exceptions established by the law".

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<sup>1</sup> Approved through a Government Decision on 14 June 2000 and abolished in 2005

<sup>2</sup> The Republic of Moldova signed the Moldova-EU Action Plan on 22 February 2005 in Brussels within the frameworks of its European Neighborhood Policy (ENP). The Moldova-EU Action Plan is a document which includes the strategic objectives and specific actions for achieving these objectives in specific domains including migration. Based on this document Moldova adopted a National Action Plan for its implementation and the European vector became a must when implementing policies for all public authorities.

<sup>3</sup> of 29 July 1994, published in Monitorul Oficial no. 1 of 18 August 1994

The Law on the legal status of foreign citizens and stateless persons of 10.11.1994<sup>4</sup> Article 5 sets out that:

1. “Foreign citizens and stateless persons enjoy the same rights, freedoms and duties as citizens of the Republic of Moldova, except ones established by law.
2. Foreign citizens and stateless persons enjoy rights and freedoms without prejudice to the state interests, to the legitimate rights and interests of persons of the Republic of Moldova and of other persons.
3. Foreign citizens and stateless persons are equal before the law and public authorities without distinction of any kind such as sex, race, nationality, ethnic origin, language, religion, views, political membership, property or social origin.”

The Law enumerates the specific rights of foreigners, including: the right to reside (Art. 6); to work (Art. 7); for medical care (Art. 8); social protection (Art. 9); property (Arts. 10-11); education (Art. 12); association (Art. 13); and freedom of expression (Art. 14); marriage (Art. 15); freedom of movement (Art. 16); and participation in the court system (Art. 17).

Restrictions for foreigners can be found in provisions regarding political rights (Art. 19) and military service (Art. 20).

### **2.1.2 Law on the integration of foreigners in the Republic of Moldova**

The Law on the integration of foreigners in the Republic of Moldova<sup>5</sup> was elaborated in order to implement: first, the National Strategy on Migration and Asylum, the National Action Plan for its implementation; and, second, the National Programs for the implementation of visa liberalization regime (phase 1 and 2). The law was adopted 27 December 2011 but entered into force 1 July 2012 a period of time being granted for the authorities to prepare them for implementation.

The Law introduces, for the first time the definition of the integration being defined as the process of active participation of foreigners who have obtained a form of protection or a right to reside in the Republic of Moldova in the economic, social and cultural life of Moldavian society, by which means they are empowered to contribute and realize their full potential as members of this society, realize their rights and fulfill their obligations without discrimination or social exclusion for their own benefit and the benefit of the state (Article 3).

The Law establishes the categories of foreigners who have access to integration activities namely:

- Foreigners holding temporary residence permit for family reunification/labour purposes/studies/humanitarian and religious activities
- Foreigners holding a permanent resident permit
- Persons to whom the stateless status was granted in the Republic of Moldova based on the procedure introduced in 2012 after Moldova acceded to both the 1954 and 1961 Conventions on statelessness
- Beneficiaries of one of the following forms of protection: refugee status, humanitarian protection and political asylum. These forms of protection are granted, and their status is regulated based on the provisions of the Law on asylum in the Republic of Moldova<sup>6</sup> (Article 2 para. (1) of the Law on integration).

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<sup>4</sup> Published in Monitorul Oficial Nr. 20 of 29 December 1994

<sup>5</sup> Of 27 December 2011, published in Monitorul Oficial no. 48 of 13 March 2012, entered into force on 1 July 2012.

<sup>6</sup> Law no. 270 of 18 December 2008 published in Monitorul Oficial no. 53-54 of 13 March 2009.

At the same time the following foreigners are excluded from integration activities provided for by the new Law:

- foreigners holding temporary residence permit for long-term medical treatment, balneo-therapeutic or recovery treatment, or for other purposes, which do not grant the right of permanent residence in the Republic of Moldova;
- foreigners benefiting from temporary protection. It should be noted that Moldova has never granted this form of protection;
- persons, who under the legislation in force, have the right to acquire or to regain Moldovan citizenship;
- other categories of foreigners, for whom a special legal status was granted under national legislation or international regulations. An example would be representatives of diplomatic missions.

The Law divides the provisions which regulate the integration of beneficiaries of a form of protection and other categories of foreigners and sets the main responsibilities of all involved actors in the integration process. The Law emphasizes the possibility of involving other institutions/organizations in the implementation of integration activities. Also the law established the general rule to be applied in cases regarding foreigners' access to education, medical services, social protection/security and the labour market.

## **2.2 Institutional Framework**

According to Article 7(1) of the Law on the integration of foreigners “the Ministry of Internal Affairs through its responsible structure – the competent authority for foreigners – coordinates the process of integration of foreigners on the territory of the Republic of Moldova”. Thus the Bureau of Migration and Asylum is the main actor. At the same time, in the process of providing/organizing integration activities other ministries are involved too, namely:

- Ministry of Labour, Social Protection and Family covering the aspects relating to employment, social security and protection, assistance in special cases;
- Ministry of Culture organizing socio-cultural adaptation sessions;
- Ministry of Education organizing language training courses and insuring access to education of all levels to all foreigners;
- Ministry of Health insuring access to medical services and access to the national compulsory health insurance system.

Although the Law on integration sets in Chapter V the main duties of these authorities, the implementation of the integration activities does not exclude the participation and involvement of other relevant authorities and institutions.

## **3. Integration process**

### **3.1 Integration of beneficiaries of a form of protection<sup>7</sup>**

According to Article 5 para. (1) of Law no. 274 beneficiaries have access to the following activities:

- Socio-cultural adaptation sessions;
- State language training courses;

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<sup>7</sup> Namely recognized refugees, beneficiaries of humanitarian protection or political asylum.

- Information and counseling on how to access labour market, medical services and social protection measures;
- Guidance and professional training services to facilitate economic integration in conjunction with the capabilities and needs of the labour market in the Republic of Moldova;
- Integration programs. According to Article 3 of the Law on integration this program represents a set of measures and activities necessary for facilitating the social integration of these persons, conducted through the cooperation of the public authorities at central and local level and through the non-governmental sector.

A general rule applied to beneficiaries is that all services are offered free of charge given the vulnerability of the same.

### **3.1.1 Socio-cultural adaptation sessions**

The socio-cultural adaptation sessions involve the acquisition by foreigners of a minimum of general knowledge about society, culture, economy and the history of the Republic of Moldova, necessary for social coexistence. The sessions are organized based on the methodology drafted by the Ministry of Culture in consultation with the Ministry of Education and the Bureau of Migration and Asylum. These sessions are mandatory for these beneficiaries. They are free of charge; they are organized within 30 days after protection is obtained (Article 9(2)); and they end with a certificate of attendance. At the beginning these sessions will be organized regionally in the North (Balti city), in the South (Cahul city), and in Chisinau (Center).

The Integration Unit of the Bureau of Migration and Asylum conducts periodical questionnaires with beneficiaries to assess integration and their needs. Thus it was established that most beneficiaries have good general knowledge about Moldova, and its culture and traditions. The relevant persons got the necessary information during the asylum procedure. They were involved in different cultural activities, including trips. Through the country, and they interacted with Moldovan citizens, previously resided on the territory based on their resident permit (studies, work, family reunification etc.) or they married or cohabited with a Moldova citizen. Nevertheless it was considered mandatory for all beneficiaries to pass through these sessions as they are the first step to beneficial integration. Also most were concentrated in the capital (Chisinau) at this time and this created a problem of adaptation in other areas, for example, being forced to leave the capital for economic reasons in most cases: high rents, possibility to initiate a business based on the offered grant etc. The major goal of the authorities was not to create separate communities but, rather, to promote inclusion and the involvement of local communities and authorities in the accommodation of new comers. This resulted in the point 24 of the National Strategy on Migration and Asylum domain (2011-2020)<sup>8</sup>.

1 July 2012 to 01 March 2013 30 persons attended the socio-cultural adaptation sessions.

### **3.1.2 State language training courses**

State language training courses are organized based on a methodology drafted by the Ministry of Education in consultations with the Bureau of Migration and Asylum. These courses are free of charge and are planned in four main state universities: 2 in Chisinau (capital); one in the North (Balti, the “northern capital”); and one in the south of the country (Cahul). At the end of the course participants will be evaluated and issued a participation certificate. This certificate cannot constitute grounds for enrolling in the education system, evaluation of linguistic competences with a view to obtaining Moldovan citizenship (Article 10 para. (3)). In cases of citizenship there is Regulation regarding

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<sup>8</sup> Approved through the Government Decision no. 655 of 8 September 2011, published in Monitorul Oficial no. 152-155 of 16 September 2011

evaluating knowledge of the Constitution of the Republic of Moldova's provisions and state language<sup>9</sup>. The Regulation establishes the organization and conduct of examinations to assess the degree of knowledge of the Moldovan Constitution and the state language by persons seeking to acquire citizenship of the Republic of Moldova (Point 1). According to the Regulation the state language exam is free of charge and is a multiple-choice test, which contains 3 parts: 1) reading test (text reading and understanding), 2) oral test (everyday conversation on a topic), 3) written test (writing text on a daily theme). The multiple-choice test for the state language exam is developed and approved by the Ministry of Education, and the result of the test will be evaluated based on the criteria of the Ministry of Education by a special Commission with the qualification being admitted or rejected.

Questionnaires with beneficiaries of forms of protection flagged up several factors that influence those persons interested in attending the courses:

- Country of origin. This element plays a major role. Most asylum seekers coming from CIS countries know Russian and have no problems when interacting, especially based on the Law on the functioning of the spoken languages on Moldovan territory<sup>10</sup>. At the same time there are beneficiaries who have lived in Moldova for more than 20 years and who refuse to speak state language, though they claim 60-70% understanding: for example, people from Armenia, Syria, the Russian Federation, Uzbekistan etc.

There are cases when state language is hard to learn especially for person originating from Afghanistan, Bangladesh, India, Eritrea, Iraq, etc. who prefer Russian. Likewise, Romanian is easier for people from Zimbabwe, Somalia, Jordan and Palestine. This might be a question of the proximity of known and learnt languages or it might be a question of desire.. If before coming to Moldova the person travelled through the Russian Federation and Ukraine, even working there for a while, it is likely the person knows some Russian. In that case it is difficult to convince them to learn Romanian, as, at the moment, legislation does not impose this type of obligation: for example, in the case of migrants who want to get a permanent resident permit (Article 45 para. (1) let. e) of the Law no. 200<sup>11</sup>). Of 82 persons who answered questions 50% knew Romanian and 81% Russian, whereas 7% didn't know Romanian or Russian<sup>12</sup>.

An increased interest in studying the state language is typical of asylum seekers and beneficiaries of a form of protection from Syria. Because of the war people are aware of the fact that they have to start a new life and integrate and they are very open in this regard.

- Age. As a rule children and adults up to 35 years old accept more easily the idea of learning a new language. Sometimes children succeed in learning languages more easily and they help parents when communicating with different authorities and organizations.
- Benefits. For many years courses were organized by NGOs. People were encouraged to attend by getting scholarships, bus tickets etc. Unfortunately this created dependence and the outcome of participation was not always positive.
- Citizenship. In time beneficiaries of a form of protection became more aware of the advantages of Moldovan citizenship. This is especially relevant in mixed marriages, or cases of beneficiaries of humanitarian protection. These cases are examined annually according to the Law on asylum.

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<sup>9</sup> Approved through Government Decision no. 1279 of 19.11.2001, published in Monitorul Oficial no. 141-143 of 22.11.2001

<sup>10</sup> Law no. 3465 of 01.09.1989, published in Vestile no. 9 of 01.10.1989

<sup>11</sup> Law on the regime of foreigners in the Republic of Moldova which provides that one of the conditions for a foreigner holder of a temporary resident permit to request permanent resident permit is to have satisfactory knowledge of the official language

<sup>12</sup> The questionnaire was conducted in 2012. In 2011 questionnaires were conducted with 49 beneficiaries of a form of protection and it was established that 76% knew Romanian, and that 90% knew Russian. The questionnaires were conducted with different beneficiaries.

### 3.1.3 Counseling and training

These services are provided by the branch offices of the National Employment Agencies. Article 12 para. (2) of the law on integration describes all the steps that must be undertaken by the agencies. The person can address themselves to the branch office, to an Information Center or they can search via the Internet for employment opportunities. Professional training is provided free of charge for these persons and they are intended to facilitate integration. It is important to mention that according to article 12 para. (4) of the Law on integration, persons included in integration programs cannot unreasonably refuse the proposed job. Legislation imposes certain obligations for beneficiaries of integration programs, including all necessary efforts in carrying out all stages of the integration program according to the signed integration commitment. Failure to comply with the obligations imposed by the Law could lead to the withdrawal of one or more measures in the individual integration plan, including withdrawal of the right to accommodation and refundable support (Article 26 para. (2)).

Employment of beneficiaries and organization of training for them, should be seen by the state as an investment in terms of emigration and the existence of vacant places.

The survey conducted in 2012 revealed that of 82 persons, 64 persons have a specialty, 20 of whom received a profession in Moldova, and that 18 persons were unqualified. At the same time 20% had their own businesses.

### 3.1.4 Integration program

Beneficiaries of a form of protection have the possibility, besides participation in individual integration activities, of participating in integration programs. The program would represent in practice all the measures undertaken by all actors including information/counseling, different types of allowances or accommodation in specialized institutions. Beneficiaries are included in integration programs based on individual applications and according to an integration commitment concluded between the applicant and competent authority for foreigners (Article 22 para. (1)).

The commitment comprises:

- identification data of the parties;
- the rights and obligations of each party;
- the period of implementation of the action plan and its extension conditions;
- situations in which the measures provided for in the individual plan are changed or discontinued. (Article 22 para. (4)).

The application can be submitted only once within 30 days after obtaining the form of protection. Maybe the authorities should examine the possibility of giving a longer period of time to beneficiaries to assess the potentials of an integration program.

After the Law on integration was adopted the state offered attendance to beneficiaries who obtained a form of protection in Moldova before the entry into force of the Law. These had not benefited from integration programs and they were given 30 days from the date of entry into force to submit an application. This ensured access to all beneficiaries registered at the Bureau of Migration and Asylum (the competent authority for foreigners). No applications were submitted in this respect. Most beneficiaries of a form of protection registered at the competent authority for foreigners up to 1 July already benefited from different types of activities referring to integration via NGOs or UNHCR including material benefits, in-kind goods, business grants, language courses/civic education.

The beneficiary submits the application for inclusion in an integration program at the Bureau of Migration and Asylum at the unit responsible for integration. Following the application, an interview will be conducted an evaluation form being filled in for integration necessities. The evaluation form

helps to determine the type of assistance or activities necessary for the social integration of the beneficiary. Individual needs are presented by the Bureau to the relevant authorities with which, within 30 days, they shall develop the individual integration plan, including the objectives set for the beneficiary, deadlines of achievement, activities necessary to achieve the objectives, responsible institutions and/or organizations that shall be communicated to the beneficiary and the implementation of which shall be monitored by the competent authority for foreigners (Article 23 para. (1)). The Bureau can address these question both to central or local public authorities. But they can also involve civil society.

The general duration of the individual integration plan is up to 6 months. But this can be extended for up to 6 months.

The novelty introduced by the Law on integration is that beneficiaries of integration programs, having no means of survival, may be accommodated in spaces managed by the Bureau of Migration and Asylum (Article 25 para. (1)). On 28 December 2012 the Government approved three Government Decision which regulate the accommodation issue, namely:

- Government Decision no. 1002<sup>13</sup> which granted the right to the Bureau of Migration and Asylum to rent housing to foreigners benefiting from integration programs and foreigners who obtained a form of protection in the Republic of Moldova. Thus, a beneficiary who passed through an integration program and who lived in the Accommodation Center run by the Bureau will be able to continue his/her stay based on a special fee.
- Government Decision no. 1023<sup>14</sup> on approving the Regulation of the Accommodation Center. According to point 8 of the Regulation, the following groups are entitled to stay in the Center: asylum seekers and their family members who seek asylum and beneficiaries of a form of protection and their family members who have the same status under conditions specified in Chapter III. Thus point 34 allows beneficiaries of integration programs to stay in the centre. Point 35 allows renting for persons who benefited from integration programs, within the limits of available rooms. The last provision was introduced in the Regulation in order to protect state authorities in case of the mass influx of asylum seekers. According to Article 28 of the Law on asylum, asylum seekers have the right to stay in accommodation centers.
- Government Decision no. 1024<sup>15</sup> on approving the Regulation on the procedure and conditions for renting housing for foreigners benefiting from integration programs and foreigners who obtained a form of protection in the Republic of Moldova. The present Regulation was approved based on the provisions of Article 25 para. (5)-(6) of the Law on integration and refers to the future activities of the Bureau of Migration and Asylum.

The Law on integration highlights a number of special cases: namely unaccompanied minors, single parents with children, families with three or more children under care, persons with disabilities and people who have reached retirement age. They have the possibility of being included in integration program and in the parallel benefits of services of specialized institutions with relevant responsibilities (Article 28 para. (4)). These institutions are subordinated to the Ministry of Labour, Social Protection and Family, Ministry of Education or public local authorities and the Law on integration allows the Bureau of Migration and Asylum to address cases to the fore mentioned authorities in order to transfer special case to one of these institutions (Article 25 para. (3)). Since 1 July no case was registered.

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<sup>13</sup> Published in Monitorul Oficial no. 1-5 of 4 January 2013

<sup>14</sup> Published in Monitorul Oficial no. 1-5 of 4 January 2013

<sup>15</sup> Published in Monitorul Oficial no. 6-9 of 11 January 2013

The integration activities for beneficiaries of a form of protection are free of charge. The competent authority for foreigners annually presents to the authorities involved in implementing the integration programs, the estimated number of foreigners, potential beneficiaries, to be included in the budget expenses of the respective public authorities (Article 30 para. (1) let. d)).

### **3.2 Integration of other categories of foreigners**

According to Article 15 para. (1) of the Law on integration, foreigners holding temporary residence permit for: family reunification; for humanitarian and religious activities; foreigners holding a permanent residence permit; and persons to whom stateless status was recognized in the Republic of Moldova<sup>16</sup> have access to the following activities:

- Socio-cultural adaptation sessions;
- State language training courses;
- Information and counseling on how to access the labour market, medical services and social protection measures.

Foreigners holding temporary residence permits for work purpose or for studies have access only to the following activities:

- Socio-cultural adaptation sessions;
- State language training courses.

Exclusion from employment counseling is the consequence of the legislation in force as students do not have the right to work according to Article 5 para. (4) of the Law on labour migration. As for labour workers, this activity is already included in the purpose for which the residence permit was granted. These foreigners benefit from measures of integration, language and health measures according to the individual employment contract concluded with the employer, as the employer is responsible for the integration of migrant worker Article 18 para. (5). This is a new provision for the legislation of the Republic of Moldova. It is intended to motivate the employer to invest in the integration of employees and to maintain the qualified and prepared personnel. In order to make this provision work in practice further legal adjustments are necessary especially with regard to the clauses of the individual work contract and the obligations of the employer regarding integration.

#### **3.2.1 Socio-cultural adaptation sessions**

Unlike the beneficiaries of a form of protection, the Law on the integration of foreigners does not set a concrete period of time for requesting these sessions by the relevant categories of foreigners. A foreigner can request the activity during the validity of their residence right. It was decided that these sessions will be offered free of charge as they are an indispensable element in integration. Thus the state wants to show its openness and interest in promoting national values and creating an inclusive society. The Law states, however, that the foreigner may benefit only once from the free courses: for repeated sessions they will have to pay a fee (Article 16 para. (4)). The fee will be established by the Ministry of Culture through a Government Decision. One foreigner, holder of a resident permit for family reunification, attended the session in 2013.

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<sup>16</sup> The fore-mentioned statuses are acquired based on the provisions of the Law on the regime of foreigners in the Republic of Moldova. The foreigner submits an application to the One Stop Shop directly or via regional branch offices which are administrated by the Bureau of Migration and Asylum. After the examination of the file the Bureau issues a decision and the person is granted corresponding documents: temporary/permanent resident permit or stateless identity card. After acquiring this status the person can apply for integration activities provided for by the Law on integration of foreigners in the Republic of Moldova.

### **3.2.2 State language training courses**

Knowledge of the state language is seen as a precondition for the economic, social and cultural integration of foreigners and one of the conditions for receiving the permanent resident permit (Article 17 para. (1) of the Law on integration). These courses are organized for a fee and offer and the foreigner can choose between state and private structures when deciding on studies. The experience of other states, like, for example, Romania, show that this activity needs time to be implemented. When searching for quality and guarantees in the education process, for example, an employer would be more interested in address himself to state authorities to prepare his/her employees and prolonge their right to work.

At the moment the only persons that look for these courses are holders of residence permits for family reunification especially from Syria: 2 applications were made at the end of 2012.

An important problem is the fee and the materials offered to the foreigner as the state must present adequate competition.

At the end of the course a commission will assess state language knowledge, being issued a certificate of participation. According to Article 17 para. (5) foreigners who have reached retirement age (57 for women and 62 for men) and categories of people who cannot perform the assessment of certain physical or mental disabilities are exempt.

The fore-mentioned certificate cannot constitute: grounds for enrolling in the education system; evaluation of linguistic competences with a view to obtaining citizenship of Moldova; nor can it count for the establishment of level of knowledge of state language by foreigners applying for permanent residence in the Republic of Moldova (Article 10 para. (3)).

The question of citizenship has already been raised in the context of beneficiaries of a form of protection. In the case of foreigners who want to receive a permanent resident permit, since 2011, the provisions of the Regulation on the evaluation of linguistic competence and establishment of the knowledge level of the state language by foreigners has been applied.<sup>17</sup> The Regulation establishes the evaluation rules, as well as regulating the organization and conduct of assessment exams (Point 1). The exams are mandatory and for participation the foreigner must pay a state fee. The evaluation exam consists of four stages: a listening test; written and text comprehension test; written test (essay); and oral expression test (interview). The foreigner will get points for all four tests; the total score is 100 points. The alien applicant must obtain at least 50 points out of 100 to be given a certificate confirming knowledge of the state language.

### **3.2.3 Information and counseling on how to access the labour market, medical services and social protection measures**

Information on how to access the labour market is provided by the branch offices of the National Employment Agency. After the Law on integration entered into force this service has been fully provided for and is particularly popular among holders of resident permits for family reunification.

The Law obliged the Ministry of Education to develop the mechanisms for recognition or equivalence of the professional skills and qualifications of foreigners obtained in the country of origin (Article 18 para. (4)).

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<sup>17</sup> Approved through Government Decision no. 524 of 11.07.2011 published in Monitorul Oficial no. 114-116 of 15.07.2011

### 3.3 Access to different rights

#### 3.3.1 Access to medical services

The Constitution of the Republic of Moldova proclaims in Article 36 the Right of health care and states that the State shall provide a minimum level of health care, which is free of charge.

According to the Law on the legal status of foreign citizens and stateless persons “Foreign citizens and stateless persons have the right to rest and to health care on the common grounds as citizens of the Republic of Moldova” (Article 8 para. 1). At the same time access to the compulsory health insurance system enjoyed by citizens of Moldova is conditioned and is open only to foreigners who:

- reside in Moldovan territory and are employed with an individual employment contract; or
- have domicile in the Republic of Moldova. (para. 2)

The same rule is inserted in the Law no. 411 on health care of 28.03.1995<sup>18</sup> (Article 26), Law no. 1585 on mandatory medical insurance of 27.02.1998<sup>19</sup> (Article 4 para. (6)) and the Law on the integration of foreigners. The problem that arises is that this provision restricts access for foreigners who do not meet the above mentioned criteria. Take, for example, the students or family members who accompany foreigners staying on the territory based on temporary/permanent resident permits.

The amount of medical assistance granted within the compulsory health insurance system is provided for by the Unique Program on compulsory health insurance drafted by the Ministry of Health and approved by the Government (Article 2 of the Law on compulsory health insurance<sup>20</sup>). The Unique Program, approved in 2007<sup>21</sup>, contains the list of diseases and situations that require medical assistance. It also determines the amount of assistance granted to the insured persons by medical institutions contracted by the National Health Insurance Company and its territorial agencies in accordance with the law (Point 1 of the Government Decision). According to Point 6 the following medical assistance/services are allowed:

- a) pre-hospital emergency;
- b) primary;
- c) specialized outpatient, including dental;
- d) hospital;
- e) advanced medical services; and
- f) medical care at home.

On 1.11.2011 a Regulation regarding the order of the medical examination of migrants<sup>22</sup> through an Order of the Ministry of Health was approved. Thus the Commission for the medical examination of migrants under the Ministry of Health became an important actor in granting or renewing temporary resident residence rights for the purpose of studies, labour, investments etc. or permanent resident right, obliging foreigners to address a single entity and pay the established fees. The Commission can conduct the medical examination or confirm the medical certificate presented by the migrant from the country of origin, but the migrant cannot address themselves to any other doctors in Moldova for similar certificates. These provisions do not apply for foreigners employed within foreign assistance

<sup>18</sup> Published in Monitorul Oficial no. 34 of 22.06.1995

<sup>19</sup> Published in Monitorul Oficial no. 38-39 of 30.04.1998

<sup>20</sup> Law no. 1585 of 27 February 1998, published in Monitorul Oficial no. 38-39 of 30 April 1998.

<sup>21</sup> Government Decision 1387 for the approval of the Unique Program of compulsory health insurance of 10 December 2007, published in Monitorul Oficial no. 198-202 of 21 December 2007.

<sup>22</sup> Published in Monitorul Oficial no. 206-215 of 02.12.2011

projects and their family members. These have to present a copy of proof of medical insurance in order to receive the right to stay.<sup>23</sup>

As for beneficiaries of forms of protection these are also given access to medical services within the compulsory health insurance system in the same conditions established by the law for citizens of the Republic of Moldova: see Article 13 para. (1) of the Law on integration of foreigners and Article 33 para. (1) let. i of the Law on asylum in the Republic of Moldova. It is important to mention that according to the legislation in force these persons will pay the mandatory medical insurance premium from the date in which they are granted a form of protection, and thus the person will not be subjected to any sanctions, as the general rule is that medical insurance must be bought at the beginning of the year.

In the case of beneficiaries of a form of protection, who are included in an integration program, the state acts as an insurer and this period could last from 6 months up to 1 year until the integration program ends. This provision is considered to be an advantage for the beneficiary and an additional stimulus for participating in integration programs.

The Government will act as an insurer for certain categories of persons<sup>24</sup> if all three of the following conditions are fulfilled by these persons:

- they are unemployed;
- they have their domicile (permanent residence) in the Republic of Moldova;
- they are registered with the competent institutions of the Republic of Moldova, as for example the National Employment Agency in the case of unemployed persons, education institutions etc. these provisions do not apply to persons who obliged by law to insure themselves on an individual basis. The cost of the compulsory health insurance for 2012 was 2982 MDL and in 2013 will stand at 3318 MDL.

In case of beneficiaries of a form of protection their identity card indicates permanent residence (domicile) and temporary residence. The provisions of the Law on compulsory health insurance states that a domicile is needed in order to benefit from state insurance. However, the National Medical Insurance Company will not, practically speaking, refuse cases of beneficiaries with temporary residence, given the vulnerability of this category of persons. .

In 2012 the Ministry of Health with the Ministry of Internal Affairs elaborated a draft law for adjustment the existing legal framework of the law on integration with regard to access to medical services. The draft was approved by the Government in December 2012 and will be examined in the Parliament. The draft goes further with the provisions of the law on integration and provides for that:

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<sup>23</sup> Government Decision no. 128 of 24.02.2012 “on facilitation of granting the right to stay and issuance of identity documents to foreigners employed within foreign assistance projects”, published in Monitorul Oficial no. 42-45 of 02.03.2012

<sup>24</sup> Article 4 para. (4) of the Law no. 1585 on compulsory health insurance of 27.02.1998. These are:

- a) preschool children;
- b) pupils from primary, secondary education, high school, general education;
- c) pupils from secondary vocational education;
- d) pupils in tertiary education (colleges) with daily education;
- e) students in higher university education with daily education;
- f) residents of the compulsory post university education and PhD students with daily education;
- g) children not enrolled in school until the age 18;
- h) disabled;
- i) pregnant women, parturients and confinement;
- j) retired;
- k) unemployed receiving unemployment benefits;
- l) persons who take care of a disabled child of I severity or childhood bedridden in I degree;
- m) mothers with four or more children;
- n) persons from disadvantaged families receiving social assistance under the Law no. 133-XVI of 13 June 2008 on social assistance.

foreign citizens and stateless persons provided for in Article 2 para. (1) let. a)-f) of the Law on integration, employed based on an individual work contracts, foreign citizens and stateless persons with permanent residence rights in the Republic of Moldova, as well as refugees and beneficiaries of humanitarian protection have the same rights and duties in terms of compulsory health insurance as Moldovan nationals, in accordance with the legislation in force, if international treaties do not provide otherwise. Foreign citizens and stateless persons to whom the temporary residence right for family reunification, studies, humanitarian or religious activities was granted on the territory of the Republic of Moldova are obliged to insure themselves individually. They must pay a compulsory health insurance fee similar to the Moldovan citizens who pay compulsory health a fixed amount of insurance fee; at least if international treaties do not state otherwise.

### 3.3.2 Access to social protection

The Law on integration sets out in Article 14 and Article 20 that the categories of foreigners provided for in Article 2 para (1) let. a)-g) have access to the public system of social insurance. They also access to social assistance in the same conditions established by the law as citizens of the Republic of Moldova. This provision represents a major step for the country.

The Republic of Moldova signed agreements in the social security/assistance domain and arrangements for their implementation with Austria, Belgium, Bulgaria, the Czech Republic, Estonia, Luxembourg, Portugal and Romania. These agreements are based on the principles of:

- proportionality meaning that each contracting party will pay the pension for the period of contribution on their territory;
- export of benefits, meaning the right of the migrant worker to obtain benefits from the country where the activity was performed back in the country of domicile.

The Law on the legal status of foreign citizens and stateless persons 10.11.1994<sup>25</sup> established, in Article 9, that foreign citizens and stateless persons with domicile in the Republic of Moldova have the right to receive in accordance with the legislation in force: benefits, pensions and other types of social security. Thus the Law limited the right only to foreigners with domicile in Moldova (permanent residence).

At the same time Law no. 270 on asylum in the Republic of Moldova sets out in Article 33 para. (1) e) the right of refugees and beneficiaries of humanitarian protection to social security, pursuant to the provisions of the law. Unfortunately in practice this provision was not efficiently implemented as the special legislation regulating the social protection system was not adjusted. Take beneficiaries of a form of protection who reach retirement age in Moldova and who have not the necessary number of working years on the territory and who cannot prove the working period on the territory of another country. They are not given access to the social security/protection system, and they are not entitled to receive pensions or other types of allowances.

Due to the Law on integration, which created the implementation mechanism of basic rights, foreigners got access to social security system in the same way as citizens of Moldova even if they have not contributed to the social fund.

Article 6 of the Law on integration gives an exhaustive list of special cases among beneficiaries of a form of protection, namely:

- Unaccompanied children
- Single parents with children
- Families with three or more children under care

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<sup>25</sup> Law no. 275 published in Monitorul Oficial no. 20 of 29 December 1994.

- Persons with disabilities
- People who have reached retirement age.

In the Law on integration it was decided to use the notion “special cases” instead of “vulnerable ”: this as indicated in the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted<sup>26</sup>. The number of categories mentioned in Article 20 para. (3) of the Directive was decreased, as the state is not ready institutionally and financially to assume new responsibilities. The persons included in the category of special cases will benefit from equal and fair access to assistance as nationals of the Republic of Moldova in conditions established by the legislation in force.

### 3.3.3 Access to education

Education in the Republic of Moldova is a national priority (Article 3 of the Law on education<sup>27</sup>).

All categories of foreigners provided for by the Law on integration are enrolled in preschool, primary and secondary general education under the conditions established by the law for the citizens of the Republic of Moldova. The education process is organized in public and in private institutions.

Secondary general education is mandatory and lasts nine years: up to 16 years of age a child is obliged to go to school (Article 9 of the Law on education). In the case of minors who are beneficiaries of a form of protection the state offers a school year for initiation in the state language with a view to integration in the education system. During this year the minors take part in teaching activities free of charge with theoretical and practical aspects, organized by the educational institution. After an evaluation at the year’s end the minor is enrolled in the education system. This provision is new for the Republic of Moldova and was taken over from Romanian legislation<sup>28</sup>.

Foreigners provided for in article 2 para. (1) let. (a-f) of the Law on integration have access to secondary, middle level education and higher education according to the conditions established by the legislation in force. Organization of the education process, admission conditions and responsibilities of the education institutions are established in the Regulation regarding teaching students in educational institutions from the Republic of Moldova<sup>29</sup>. According to the Regulation foreigners are enrolled in higher education after they graduate their pre-university preparation courses where they study the state language and receive some knowledge regarding their future profession (Point 9). The length of these courses is 8 months. If the candidate knows the language they will have to pass a test without being obliged to pass the preparation courses. According to the Law on integration foreigners who want to study the state language as an integration activity, and receive the certificate evaluating their knowledge, cannot submit the certificate for enrollment in the education system.

Beneficiaries of a form of protection are enrolled in the higher education system in the same way as other foreigners, following the provisions of Article 22 of the 1951 Convention relating to the status of refugees; this provision is transposed in Article 33 of the Law on asylum (the rights of beneficiaries of a form of protection). 43%, according to questionnaires conducted in 2012, have higher education and 54 % middle studies.

Starting with 1 January 2013 institutions of higher education have university autonomy status (Article 49 of the Law on education). University autonomy is the right of academic communities: to

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<sup>26</sup> *Official Journal L 304*, 30/09/2004 P. 0012 - 0023

<sup>27</sup> Law no. 547 of 21 July 1995, published in Monitorul Oficial no. 62-63 of 9 November 1995

<sup>28</sup> Article 10 para. (1) of Government Ordinance no. 44 of 29 January 2004 on social integration

<sup>29</sup> Approved through the Government Decision no. 746 of 21 June 2003, published in Monitorul Oficial no. 138-140 of 8 July 2003

organize and manage themselves (in terms of management, structuring and functioning); to exercise their academic freedoms without any ideological, political or religious interference; and to assume a set of competences and duties in accordance with national policies and strategies of the development of higher and post graduate education (Article 49<sup>1</sup>).

As for languages, the Republic of Moldova grants the right to choose the language of education based on the provisions of the Law on the languages spoken on the territory of the country<sup>30</sup>

The state guarantees the right to conduct the education process in Romanian or Russian, and necessary conditions are created for citizens of other nationalities to follow courses in their native languages. In institutions of secondary professional, middle level and higher education courses are organized in Romanian, and Russian at particularities needed for Moldova.

The legislation of the Republic of Moldova grants the right to the recognition, equivalence and authentication of diplomas and qualifications. The procedure is conducted based on a Regulation approved by the Ministry of Education, which is based on the provisions of the Hague Convention of 1961, the Lisbon Convention of 11 April 1997, Common Charter of 9 June 2004 and the recommendations of the Council of Europe, European Commission and UNESCO. The Regulation grants access to natural persons, educational institutions, employers and international organizations to request the services. It sets out the right of the Ministry of Education to decide upon each case.

### 3.3.4 Citizenship

Acquisition of citizenship is considered the final step in the process of integration of a foreigner.

Law no. 1024 on the citizenship of the Republic of Moldova of 2.06.2000 establishes the legal framework relating to Moldovan citizenship<sup>31</sup>. According to Article 10 of the Law the citizenship of the Republic of Moldova shall be acquired by:

- i. **birth** if the child is:
  - a) born to parents, both or one of whom is a citizen of the Republic of Moldova, upon his/her birth.
  - b) born in the territory of the Republic of Moldova, whose parents are stateless persons.
  - c) born in the territory of the Republic of Moldova, whose parents possess the citizenship of another state, or one of them is stateless and the other one is a foreign citizen. (Article 11)
- ii. **adoption:** A stateless child shall automatically acquire the citizenship of the Republic of Moldova through adoption if the adoptive parent(s) is/are citizen(s) of the Republic of Moldova. If the child is a foreign citizen, adopted by spouses, both or one of whom is a citizen of the Republic of Moldova, the child can become a citizen of the Republic of Moldova if he/she renounces the citizenship of the foreign state, except in cases provided by international agreements to which the Republic of Moldova is a party. (Article 13)
- iii. **naturalization.** In order to obtain citizenship a person must fulfill several conditions:
  - to reside lawfully and habitually for at least 10 years<sup>32</sup> or to be married to a citizen of the Republic of Moldova for at least three years. The Law also sets the period of 3 years of

<sup>30</sup> Law no. 3465 of 1 September 1989, published in Vestile no. 9 of 1 October 1989

<sup>31</sup> Published in Monitorul Oficial no. 98 of 10.08.2000

<sup>32</sup> This term corresponds to the provisions of Article 6 of the European Convention on Nationality which Moldova ratified on 30 November 1999 and came into force on 1 March 2000. Moldova made declarations and reservations to the Convention's provisions. Thus, according to the declarations contained in the instrument of ratification:

-concerning Article 7, paragraph 1, lit. (g), the Republic of Moldova reserves its right to recognize the right to keep the nationality of the Republic of Moldova for a child who has the nationality of the Republic of Moldova, was adopted abroad and who acquired foreign nationality as a consequence of his or her adoption.

lawful and habitual residence in case the person lives with parents or children; 5 years for person that are living on the territory of Moldova before reaching the age of 18; 8 years for refugees and stateless persons

- to know and to observe the provisions of the Constitution; and
  - to know the national language, sufficiently well to integrate into social life. Article 18 of the Law on citizenship determines the level of knowledge of the state language, as for the procedural aspect the Regulation regarding the evaluation of the Constitution of the Republic of Moldova's provisions and state language<sup>33</sup> is applied; and
  - to have a lawful means of subsistence. The Regulation regarding the procedure for the acquisition and loss of citizenship of the Republic of Moldova<sup>34</sup> sets in Point 5 let. f) what is to be considered a lawful means of subsistence, namely income obtained from business or private activity, pension, scholarship, alimony, unemployment benefits and children's allowance, material support from family members, financial savings and deposits. In the case of unemployed persons the types of means are indicated by the authority of the public local administration with a certificate. In other cases the certificate is presented by the work place or place of study; and
  - to lose or renounce the citizenship of another state, if possessed, except in cases when the loss or the renunciation is not possible or cannot reasonably be requested. (Article 17).
- iv. on the basis of **international agreements**, to which the Republic of Moldova is a party.(Article 10 para. (2)).

Referring to residence, following the provisions of this Law, Art.17, and Law no. 200 on the regime of foreigners, only holders of permanent resident permits can apply for citizenship of the Republic of Moldova. This means foreigners present in the country for family reunification, humanitarian or religious activities, for purposes in which the foreigner's activity is not contrary to legislation of the Republic of Moldova or his/her presence in the Republic of Moldova is necessary in the public interest or in the interest of national security. At the same time according to Article 45 para. (6) of the Law on the regime of foreign students and workers are not entitled to receive permanent resident rights. During this study this was discussed with investors who consider that this restriction is a barrier against the integration of foreigners, future investments and the acquisition of Moldovan citizenship. The state must attract investors, immigrant workers and create favorable conditions for their continuous presence. Even at the EU level, for example in Portugal, migrant workers have the right to permanent resident rights<sup>35</sup>.

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-concerning Article 22, lit. (b), the Republic of Moldova declares that in the Republic of Moldova the age referred in Article 22, lit. (b) is considered to be the completion of the age of 27.

Regarding Reservations contained in the instrument of ratification the following points were made:

- concerning the application of Article 6, paragraph 4, lit. (g), the Republic of Moldova declares that it would be able to apply the article only after the adoption of the proper legal framework for the definition of the refugees' statute in the Republic of Moldova, but no later than one year after the entry into force of the Convention for the Republic of Moldova.
- concerning Article 22, lit. (a), the Republic of Moldova reserves the right to recognize that a person who has his habitual residence on the territory of the Republic of Moldova and has been exempted from his military obligations in relation to one State Party is not deemed as having fulfilled his military obligations in relation to the Republic of Moldova.

<sup>33</sup> Approved through Government Decision no. 1279 of 19.11.2001, published in Monitorul Oficial no. 141-143 of 22.11.2001

<sup>34</sup> Approved through the Government Decision no. 197 of 12 March 2001, published in Monitorul Oficial no 31-34 of 22 March 2001

<sup>35</sup> After five years of uninterrupted legal residence in Portugal as a temporary worker (with the exclusion of seasonal workers), a foreign resident may obtain a long-term (or permanent) residence permit under the following conditions:

At the moment the authorities of the Republic of Moldova examine the possibility to modify legislation with a special focus on investors.

The provision “lawful and habitual residence” from the Law on citizenship creates confusion at the practical level and is differently interpreted by state authorities and lawyers when examining the cases of beneficiaries of a form of protection who want to acquire Moldovan citizenship. Article 1 of the Law on citizenship defines “lawful and habitual residence as permanent residence legalized in the Republic of Moldova”. Law no. 677 of 23.11.2001 on the accession of the Republic of Moldova to the Convention relating to the Status of Refugees, as well as the Protocol relating to the Status of Refugees<sup>36</sup> states: that “residence” shall be understood as permanent and lawful domicile for the purposes of the Convention. According to Article 30 of the Civil Code of the Republic of Moldova<sup>37</sup> under the term domicile of a natural person the place where he/she has its constant or main residence (para. 1) should be understood. At the same time the residence of a natural person is the place where he/she has his/her temporary or secondary residence (para. 2).

When applying for asylum in Moldova the cases are being examined based on the provisions inserted in Law no. 270 on asylum in the Republic the Moldova, and during the procedure the asylum seeker receives an identity document which proves that he/she can stay legally in the country (Article 32) being registered at the Bureau of Migration and Asylum. After being granted a form of protection the person receives identity documents. In these domicile/residence is indicated by the Ministry of Information Technologies and Communications.

According to Article 88 of the Constitution, the President of the Republic of Moldova is empowered to solve all issues relating to citizenship. The Ministry of Information Technologies and Communications (hereinafter - MITC) according to Article 28 let a) of the Law on citizenship is entitled to receive from persons who reside lawfully and habitually in the territory of the Republic of Moldova, under provisions of this Law, applications for citizenship. In cases where all the conditions laid down by the legislation in force are met, the ministry and its bodies shall issue a reasoned opinion and submit them to the President of the Republic of Moldova. The President will then make a decision, in part, on the basis of recommendations from the Ministry of the Interior and those of the Information and Security Service.

Because of different interpretations some cases of beneficiaries of a form of protection got into court as they were refused by the fore-mentioned Ministry. There are several issues raised by Article 17 of the Law on citizenship, namely:

- Does the term of 8 years of habitual residence include the period of staying as an asylum seeker? The opinion of the MITC is that it does not. Conversely the lawyers representing the cases in the court include this period in the 8 years. There are cases in practice when the person had been registered under the UNHCR mandate since 1998. That was the year when an UNHCR office was opened in Moldova and the organization was in charge of refugee status determination until the Law on the status of refugees of 25 July 2002 entered into force on 1 January 2003. At that point the state became responsible for the asylum procedure.
- Can a person, who had several residences over the eight years, changing yearly their place of residence, apply for citizenship?

(Contd.) \_\_\_\_\_

- 1) having stable and regular resources for his/her own livelihood and his/her family members without help from the solidarity subsystem ;
- 2) holding health insurance ;
- 3) having lodgings; and
- 4) being proficient in basic Portuguese. (Rights of migrant workers in Europe, published by the UN Human Rights Office of the High Commissioner, pag. 56)

<sup>36</sup> Published in Monitorul Oficial no. 150 of 11.12.2001

<sup>37</sup> of 06.06.2002, published in Monitorul Oficial no. 82-86 of 22.06.2002

- Can a beneficiary of humanitarian protection apply for citizenship? This is a pertinent question as in the Law on citizenship only refugees are mentioned. According to Article 33 of the Law on asylum, refugees and beneficiaries of humanitarian protection have the same rights and duties, but since there is only one category mentioned in the Law it allows space for interpretation.
- Concordance of the legislation in force, namely a single approach when regulating the acquisition of the citizenship of the Republic of Moldova.

Since 2009 beneficiaries of a form of protection started an intense process of submitting applications for citizenship, sustaining the necessary exams on knowledge of state language and the Constitution. As some applications were rejected cases went to court and were successfully won by the refugees or beneficiaries of humanitarian protection. Around 14 refugees and humanitarian protection beneficiaries have received citizenship based on the courts' judgments since 2009.

The last big achievement in this context is the judgment of the Constitutional Court of the Republic of Moldova of 30.10.2012. The case originated in the complaint lodged with the Constitutional Court on June 28, 2012 by the Supreme Court of Justice on declaring unconstitutional Article 28 letter a) of the Law on Citizenship of the Republic of Moldova raised in file no. 3-4413/11 which is pending in the Court of Appeal. The latter concerns the refusal of the Ministry of Information and Communications Technology to submit to the President of the Republic of Moldova the application for acquiring citizenship of a Mr. ASLI Mohammed Hadi Mihiddin. Though this application for acquiring citizenship was addressed to the President of the country, the applicant received a response from the S.E. CRIS "Registru" and MTIC, without that being sent to the presidential institution. On October 31, 2011, the applicant sued MITC and S.E. CRIS "Register". He asked the Court of Appeal in Chişinău to recognize these illegal acts and to compel the organizations in question to forward his citizenship application to the Commission on Citizenship and Political Asylum. In this way he would receive an answer to his request from the President of the Republic of Moldova. According to the Supreme Court of Justice, Article 28 letter a) of the Law on Citizenship, which stipulates the competences of the Ministry of Information and Communications Technology with regard to the procedures for acquiring citizenship, shall be applied for settlement of the main lawsuit. In this context, the author alleged, in particular, that legal rules be applied for the settlement of the lawsuit, rules which contradict the provisions of Article 88 letter c) of the Constitution. There it is stated that the President of the Republic of Moldova is the one who solves the citizenship issues of the Republic Moldova and who grants political asylum.

The Constitutional Court accepted *the exception of unconstitutionality* raised by the Supreme Court of Justice and declared *unconstitutional* the phrase "In case of meeting all the conditions laid down by the legislation in force, the ministry and its bodies shall issue a reasoned opinion" contained in Article 28 letter a) of the Law on Citizenship."<sup>38</sup>

The Court effectively clarified to what extent the authority in charge of receiving documents for acquiring citizenship can present its opinion on the case and can interfere in the competence of the specialized Commission under the President.

#### 4. Main Challenges in the Integration Process

Integration is a new concept inserted *de jure* in the legislation of the Republic of Moldova only in 2011. However, it is a phenomenon present *de facto* in the society under different rights granted to foreigners by the legislation in force starting with Article 19 of the Constitution of the Republic of Moldova.

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<sup>38</sup> <http://www.constcourt.md/libview.php?l=en&id=386&idc=7>

When the Ministry of Internal Affairs initiated the drafting of the Law on integration it also found that it had other responsibilities. At the same time the burden of informing and explaining to other public state authorities the necessity of giving foreigners access to some benefits/options available only for citizens was given to the Ministry. Although all state authorities could be involved in integration, at different stages, the Law on integration refers to certain activities performed by specific ministries: the Ministry of Labour, Social Protection and Family; the Ministry of Culture Ministry of Education and the Ministry of Health. These provide basic primary necessities for a person: employment, social security and protection, cultural adaptation, language courses, medical care etc..

The main challenge for the Bureau of Migration and Asylum, as a future coordination body of the integration process, was to promote the idea of implementing international/European standards on human rights protection. This included the execution of obligations assumed by Moldova when ratifying treaties in this domain. These were necessary for creating a viable system that will allow foreigners to use their rights granted by the Constitution *de facto*. These actions will not be a threat for nationals with regard to access and services received in the future.

At the same time the main challenge for those authorities involved in the integration process is to create and maintain continuous collaboration when examining cases. Each has a unique approach and each must understand the necessity of an open society for all foreigners that apply for some kind of assistance or activities. At the same time a challenge for the authorities is to create the proper image of the state in order to gain the confidence of foreigners.

Simultaneously the main challenge for foreigners is have active participation in the integration process and to understand that good results could be achieved only through participation of both parties: their own and the state. As for the beneficiaries of a form of protection an important challenge is to start becoming self-reliant in the process of integration based on the initial aid offered by the state. It is important in the process of integration not to rely only on different types of assistance granted by NGOs or other organizations, but to have an active participation. .

## **5. Overview of the situation after the adoption of the new Law on integration**

After the adoption of the law the process of understanding that there is a legal framework which must be implemented began. Here responsibilities were divided between all actors and the results were reported both in front of the Government and the EU.

### **5.1 State authorities**

The state authorities started the process of adjusting the legislation in force to the provisions of the Law on integration. This process of legislative initiatives is a long one. However, the competent authority for foreigners (the Bureau of Migration and Asylum) has the role of explaining to all actors that in practice it is mandatory to apply the new provisions and that each case addressed by a foreigner must be examined based on the new Law. Also certain basic principles are to be followed during the implementation of integration activities: non-discrimination; the best interests of the child; and the equal treatment and evaluation of each case on an individual basis.

### **5.2 Foreigners**

Integration is seen differently by different categories of foreigners. For holders of temporary/permanent resident permits the form of integration promoted by the Republic of Moldova or the idea of requesting integration activities is unknown. Before the Law on integration was adopted in most of the cases the foreigners addressed to the state authorities for documents regarding their stay.

At the same time, after the promotion of the new legislation at the One Stop Shop and via internet there are foreigners who ask for information and the concretization of integration activities. This must be seen as a first step and an initial “victory” for the state.

After 1 July the majority of persons who asked question on integration issues or ways to access their rights, at the Bureau of Migration and Asylum, were holders of resident permits for family reunification, especially from Syria. Due to the war there persons were obliged to leave their country of origin and because in the past they graduated from local universities (especially medical institutions) or because they are married to Moldovan citizens, they have decided to come to the Republic of Moldova. Usually these persons request assistance in studying Romanian (in most cases they speak Russian), employment and getting assistance for their children. Children born in Syria from mixed marriages receive Moldovan documents in the country and have the possibility of accessing all services as nationals. Based on Article 11 on the Law on citizenship of the Republic of Moldova these children acquire citizenship by birth and based on Article 65 para. (2) of the Law on civil status acts<sup>39</sup> their birth certificates are transcribed.

The fact that the legislation in force at present does not allow migrant workers to receive permanent resident permits is a matter that needs to be debated. Migrant workers have to go through, each year, the same procedure for getting the right to stay and the right to work. Naturally, if a person intends to stay in Moldova for a long period of time, this procedure could become frustrating. The same situation goes for an investor who does not qualify under the present provisions of the Law on labour migration and who cannot get a permit for more than one year (Article 8 para. (4) of). If a migrant worker does not have the right to get permanent residence they are also excluded from applying for citizenship, except in cases of mixed marriages.

It should be noted that foreigners have access to services provided by state authorities and that they are not obliged to contact the Bureau of Migration and Asylum in order to get approval. The National Employment Agency, the National Health Insurance Company, the National House of Social Security and social assistants are present throughout the country via regional offices connected with the central office by an information system. Thus the same content of information and updates are available for all persons that ask for certain services.

As for beneficiaries of a form of protection no case was registered after 1 July for applying for integration programs. At the same time persons requested separate activities like Romanian language courses, employment or social/medical assistance. This situation is motivated by several factors:

- Persons do not realize that integration is a set of activities and cannot limit themselves only to employment;
- Participation in an integration program imposes the obligation of participating in all activities based on an integration commitment signed by the applicant and so there is an issue of responsibility. Unfortunately the idea of an integration program is not totally understood by beneficiaries of a form of protection. It is seen as a complicated process. It is possible that the period of 30 days for submission of an application, provided for by the Law on integration is not sufficiently long. Perhaps the term should be extended to 2-3 months.
- Priority should be given to newly-arrived asylum seekers<sup>40</sup> and those who receive a form of protection with families and children;
- Some foreigners see Moldova as a transit country and will try to find ways to move on from there. Experience shows that when people do not succeed in their plans and as they have avoided, legal employment and language courses, they find themselves with an uncertain

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<sup>39</sup> Law no. 100 of 26 April 2001, published in Monitorul Oficial no. 97-99 of 17 August 2001

<sup>40</sup> Although the Law on asylum in the Republic of Moldova sets the period of examination of the asylum claims up to 6 months, in practice the responsible division of the Bureau of Migration and Asylum examines cases over 2-3 months.

future, with no social protection as no contributions and taxes were paid to the state. These people, when asked, always say that they are not integrated but, at the same time, they cannot identify any true obstacle to this process;

- Before the legal framework was adopted different activities referring to integration were conducted under UNHCR projects (Local Integration Program in Belarus, Moldova and Ukraine) or by NGOs (for example NGO “Save the Children” under AENEAS Program). Participating in these activities beneficiaries often received some benefits which cannot be granted by the state (financial assistance, in kind grants etc.). The simple fact though that an individual participated in project activities cannot be automatically classified as integration. Often questions to the individual show that there was no change following the project in question.
- At the same time there are cases when persons staying in the Republic of Moldova for more than 10 years, benefiting from language courses, to the possibilities of starting a business, different types of assistance etc. when being questioned on the level of integration said that he/she was not integrated. The motivation for this answer was the possibility of receiving further assistance. Unfortunately the same motivation was declared by some beneficiaries when asked about their willingness to apply for Moldovan citizenship.
- Thus it is important to establish a balance and to motivate the persons to be able to look after themselves.

The new Law on integration promotes the idea of simultaneous participation: the state and the beneficiary must both work. The state will give the first directions and likewise foreigners will have to contribute to this society. It is important to mention Article 22 para. (8) of the Law which states “Refugees and beneficiaries of humanitarian protection who do not participate in the integration programs shall assume the responsibility for integration on their own”.

## 6. Reintegration of emigrants

According to Article 27 of the Constitution of the Republic of Moldova every citizen is guaranteed the right to choose his or her place of residence anywhere within the national territory, to leave, to emigrate and to return to the country. Nevertheless over time emigration became a serious problem for Moldova, although it is a process present in most countries. For Moldova emigration became a mix of several components: illegal ways of leaving the country; Romanian citizenship; remittances; financial support of the state based mostly on consumption; destroyed families<sup>41</sup>; acquisition of other citizenship, and the creation of Moldovan communities abroad. Although Moldovan legislation refers in legal and normative acts to diaspora or people originated from the Republic of Moldova, there is no definition of the term “diaspora” as in the case in other countries.

In order to strengthen relations between authorities and emigrants, the Coordination Council of persons originated from the Republic of Moldova domiciled abroad was created based on the Decision nr. 228 of 24.02.2005.<sup>42</sup> In 2011 the title of the Council was changed to the Coordination Council of Persons Originated from the Republic of Moldova – the Moldavian diaspora. The Decision set that the Council coordinates relations between public associations of the Moldavian diaspora and

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<sup>41</sup> Moldova is considered to be both a country of emigration and immigration. For years the most frequently discussed subjects analyzed by NGOs and international organizations (for example) in their reports were the impact of remittances and consequences for the state, estimation of the number of emigrants etc. Lately emigration became a “hot” subject for the Government as this process affects the society in general. In this regard state institutions are making assessments through the entire country in order to evaluate the impact of emigration. For example, the Ministry of Education is conducting studies in urban and rural areas in order to identify the problematic families involving in this process also the schools where the emigrant children study.

<sup>42</sup> Published in Monitorul Oficial no. 36-38 of 04.03.2005

administration of the public authorities of the Republic of Moldova in order to protect the rights and interests of the representatives of the Moldavian diaspora in accordance with international human rights standards.

In 2008 the Government approved the Action Plan to help Moldavian labor migrants return from abroad<sup>43</sup> with a focus on the following activities:

- Granting information regarding opportunities in Moldova;
- Strengthening relations with Moldavian citizens staying abroad through diplomatic missions;
- Providing services for returned migrants;
- Providing access to information services to emigrants;
- Creating conditions for preventing emigration, especially of young people.

Although it was a promising initiative, this Action Plan in practice did not have much success.

Moldova signed the Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas and the Agreement between the European Community and the Republic of Moldova on the readmission of persons residing without authorization; this entered into force on the 1 January 2008. Following these two Agreements an Action Plan was set up at the national level through Government Decisions special Programs for its implementation (phase 1<sup>44</sup> and 2<sup>45</sup>). The Programs set down the main priorities of the state authorities when managing migration and reintegration in the context of the implementation of the relevant agreements along with voluntary return and readmission.

As a continuation of the actions provided for in the Government Decision of 2008, in 2010 the PARE 1+1 Program was launched for attracting remittances in the economy (2010-2012). This was approved through a Government Decision, extended in 2013 until 2015<sup>46</sup>. The purpose of the pilot program was to mobilize the human and financial resources of people going abroad voluntarily to perform labor activities, hereinafter migrant workers enlisted in the sustainable economic development of the country (Point 2).

The target group of the program are migrant workers or first-degree relatives who want to start a business or intend to develop an existing one with full private capital. They must be registered under one of the following legal forms: individual enterprise/ individual entrepreneur; limited liability company; farmer; production cooperative; or entrepreneurial cooperative.

Migrant workers are considered to be citizens of the Republic of Moldova left abroad with the purpose of performing a labour activity. First-degree relatives can be husband/wife, parents/adoptive parents, sons/daughters.

There are 4 eligibility criteria in order to benefit from the program:

- to be citizen of the Republic of Moldova
- to be migrant worker from the Republic of Moldova or first degree relative being beneficiary of remittances
- to have the intention of launching a business in the Republic of Moldova or to develop an existing one

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<sup>43</sup> Approved through Government Decision no. 1133 of 09.10.2008 published in Monitorul Oficial no. 187-188 of 17.10.2008.

<sup>44</sup> Approved through Government Decision no. 122 of 04.03.2011 published in Monitorul Oficial no. 37-38 of 11.03.2011

<sup>45</sup> Approved through Government Decision no. 130 of 24.02.2012 published in Monitorul Oficial no. 42-45 of 02.03.2012

<sup>46</sup> No. 972 of 18 October 2010, published in Monitorul Oficial no. 211-212 of 29 October 2010

- to have access to capital, originating from remittances and to be able to confirm via documents the provenance of financial means.

The program has four components: information and communication; training and entrepreneurial support; business financing (based on the rule 1+1); and monitoring and evaluation. The 1+1 rule of the program means that the applicant will pay 50% of the price of entrepreneurial training. The program gives priority to the creation of work places, export orientation, replacement of imports, implementation of energy efficiency projects, creation and development of businesses in areas and application of modern technologies, know-how transfer and innovations. The program is implemented by the Organization for the Development of Small and Medium Enterprises created through a Government Decision in 2007 under the Ministry of Economy.<sup>47</sup>

The importance of reintegration is underlined in the National Strategy in the Migration and Asylum Domain (2011-2020)<sup>48</sup> which sets that to ensure a faster and more effective reintegration process, maximizing possible benefits and minimizing the negative consequences of migration is important in creating conditions for the reintegration of migrant workers<sup>49</sup>. The main objectives in this regard are the following:

- the facilitation of the migrant workers' return and their economic, social etc. reintegration;
- the creation of the referral mechanism regarding returned migrant workers, their basic capacities and necessities;
- the strengthening of the legal framework and adoption of measures regarding reintegration of Moldovan citizens (voluntary returned or readmitted based on the Agreement between the EU and Moldova)

The Action Plan for the years 2011-2015 regarding implementation of the National Strategy in the Migration and Asylum Domain (2011-2020)<sup>50</sup> provides that in order to assure the reintegration of citizens the state authorities will perform activities for:

- Establishment of mechanisms for recognition of knowledge and professional experience of migrants obtained abroad for their use on the local labour market upon return. An example in this regard is the Agreement with Italy on labour migration;
- Elaboration and development of statistics of returned emigrants to the country with a view to facilitating their access to the labour market from Moldova;
- Development of projects with a view to transferring knowledge and new competencies upon the return of emigrants to the country;
- Initiation and accomplishment of joint activities with destination countries for facilitating the return and reintegration of migrant workers on the Moldovan labour market;
- Diversification of the participation models of migrants when supplying the social funds from the country and the insurance of migrant workers' social security;
- Elaboration of reintegration programs of persons from vulnerable categories: minors, single women, persons with disabilities etc.;
- Development of cooperation with international institutions and NGOs with a view to facilitating the voluntary return, readmission and reintegration of Moldovan migrants;

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<sup>47</sup> Government Decision no. 538 of 17 May 2007, published in Monitorul Oficial no. 70-73 of 25 July 2007

<sup>48</sup> Approved through the Government Decision no. 655 of 8 September 2011, published in Monitorul Oficial no. 152-155 of 16 September 2011

<sup>49</sup> Chapter IV Point 21 let. b)

<sup>50</sup> Approved through the Government Decision no. 1009 of 26 December 2011 published in Monitorul Oficial no. 1-6 of 6 January 2012

- Elaboration of programs for stimulating the return of Moldovan migrant workers from abroad and their reintegration;
- Monitoring of the implementation of migrant workers' return programs from abroad and their reintegration.

It is obvious that the state emphasizes in its strategies the reintegration of migrant workers and thus other categories of migrants are being “ignored”; or it is considered that they will never return to the country being established abroad, for example, as students. Due to the financial crisis even migrants who had a stable income and situation were forced to return to Moldova especially from Italy and Spain. It is not excluded that in a couple of years we could face the return of nationals and thus the state must be prepared to offer options and support and to draft a strategy in this regard. In order to assist the Government, the IOM implemented a program which supported persons who have graduated abroad offering them a financial support.

With a view to solving the current problems of citizens of the Republic of Moldova who are permanently staying abroad (diaspora) through a Disposal of the Government no. 90 of 26.09.2011<sup>51</sup> the public authorities received concrete tasks for execution, including:

- entrance of low-cost companies on the market with a view to the liberalization of air passenger traffic,
- acceleration of the process of signing bilateral agreements on social security with main destination countries,
- introduction of state policy measures for the protection of children left without parental care as a result of migration,
- elaboration of specialized programs for the social economic integration of returned migrants in the Republic of Moldova,
- the evaluation of possibilities regarding the creation of one or several specialized institutions (fund, bank etc.) which will allow the accumulation of funds for diaspora support (budgetary funds, private sector, foreign assistance etc.) as well as channeling of the support from diaspora to Moldova.

Also the Government drafted the normative framework for the creation of the Bureau for relations with diaspora. This was an administrative authority directly subordinated to the Government and responsible for the elaboration and promotion of Moldovan policy in the migration domain, as well as ensuring relations between the Republic of Moldova and its citizens living abroad.

The creation of this Agency raises lots of questions especially since it is assumed that it will take over some work in the migration domain. At the same time the creation of this Agency is of great interest for international organizations as it could solve lot of problems relating to emigration: for example, access to rights, training and language learning.

## 7. Conclusions and recommendations

Integration for the Republic of Moldova means the *de facto* creation and implementation of a mechanism which will allow the realization of the rights provided for by the Constitution of the Republic of Moldova. Although there is a legal framework in place there should be a single approach for all relevant authorities when providing integration activities, producing benefits for the state itself and for the foreigners. At the same time the state should promote a single strategy with a special focus on the vulnerability of the beneficiaries of a form of protection, avoiding strict delimitations between

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<sup>51</sup> Published in Monitorul Oficial no. 160-163 of 30.09.2011

this category and other foreigners and promoting an inclusive society by all actors involved in the integration process. Evaluating the present legal framework, some recommendations can be proposed:

- establishment, via an inter-ministerial instrument, of the procedure for implementing the activities provided for by the legislation in force. The instrument shall describe the entire procedure starting from the moment the application is submitted until the process of monitoring and evaluation is conducted.
- examination of the possibility of allowing foreigners who pass the language courses as an integration activity to present the certificate for enrollment in the education system of the country;
- elaboration of a single procedure for evaluation of the level of knowledge of the state language, without any division between persons who apply for citizenship and those who apply for permanent resident permits. The process should be optimized.
- extension of the application period for an integration program. The present term of one month does not allow the person to fully understand the consequences of the process and the benefits. A period of three months will allow individuals to become better aware of the proposal.