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Return, Readmission and Reintegration: The legal framework in the Republic of Moldova

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1. Readmission agreements

On 10 October 2007 in Brussels the Agreement between the European Community and the Republic of Moldova on the readmission of persons residing without authorization was signed. This agreement, then, entered into force on the 1 January 2008¹. The objective of the Agreement was to strengthen cooperation in order to combat illegal immigration more effectively. The Agreement establishes obligations for both the Republic of Moldova and the European Community regarding the readmission procedure for own nationals, third-country nationals and stateless persons, transit, escort procedure and responsible authorities.

On 28 August 2008 the Republic of Moldova officially initiated negotiations for signing implementation protocols based on the Government Decision no. 1002². Under Article 19 of the 2007 Agreement, Moldova signed implementation protocols with: the Czech Republic on 29 November 2011 (in force since 17 January 2012)³; Estonia on 1 December 2009 (in force since 10 May 2010); Lithuania on 29 September (in force since 6 December 2011); Poland on 11 October 2012; Romania on 25 March 2010; Hungary on 19 February 2010; Slovakia on 13 May 2010; Germany on 21 September 2010; Austria on 25 September 2010; Latvia on 1 October 2010; Bulgaria on 16 November 2011; Malta on 24 January 2011 (in force since 4 April 2011); and the Benelux on 28 January 2013.

The agreements signed with Italy and Norway, respectively, on 3rd July 2002 and 31st May 2005 are in force. According to the Joint Declaration concerning Norway, the Republic of Moldova is to bring into conformity the aforementioned agreement with the terms of the Agreement signed in 2007 with the EC. As to the Agreement signed with Italy it is important to mention Article 12 which delegates competences to the ministries of internal affairs of Moldova and Italy. These must elaborate the list of authorized border crossing points for readmission or transit and the list of airports for the purpose of transit for foreigners to their country of destination. As regards the readmission procedure, according to Article 20 of the 2007 Agreement with the EC the provisions of that treaty shall take precedence over the provisions of any other agreement on readmission if the provisions are incompatible with those set down in said treaty.

Moldova also signed the Agreement and implementation protocol with: Switzerland⁴ on 19 May 2010, following the joint declaration under the Agreement of 2007; and with Denmark on 20 March 2011 (in force since 1 September 2011).

The Republic of Moldova signed Readmission Agreements with: Macedonia on 31 October 2008 (in force since 10 September 2009); with Serbia on 5 May 2001; Montenegro on 17 May 2012; and Bosnia and Herzegovina on 17 May 2012. The general content of these agreements is the same as the content of the above mentioned agreement with the European Community.

¹ Council Decision 2007/826/EC, 8 November 2007, on the conclusion of the Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas (OJ L 334 of 19 December 2007, p. 168)

² Government Decision for the initiation of negotiations over the draft intergovernmental Protocol regarding the implementation of the Agreement between the European Community and the Republic of Moldova on the readmission of persons residing without authorization, signed at Brussels, 10 October 2007, published in Monitorul Oficial no. 167-168, 5 September 2008

³ Protocol between the Government of the Republic of Moldova and the Government of the Czech Republic on implementation of the Agreement between the European Community and the Republic of Moldova on the readmission of persons residing without authorization

⁴ Agreement between the Republic of Moldova and Swiss Federal Council on readmission of persons residing without authorization

Moldova signed a readmission agreement with Ukraine on 11 March 1997 on the take over and return of persons at the Moldavian-Ukrainian border, concentrating on ensuring state security while safeguarding the state borders (Article 1). In June 2012 negotiations were initiated for signing a new readmission agreement.

On 1 November 2012 Moldova signed a readmission agreement with Turkey in order to strengthen cooperation over irregular migration. The Agreement also established rapid and effective procedures for the identification and safe and orderly return and admission of persons provided for by the Agreement (preamble).

At present Moldova is negotiating agreements and implementing protocols with other countries, including Albania and the Russian Federation.

2. Return from Moldova

Terms used in national legislation

Law no. 200 on the Regime of Foreigners in the Republic of Moldova of 16 July 2010⁵ partially transposed European legislation here, as mentioned in the preamble of the Law.⁶ This included the Directive 2008/115/CE of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

Article 3 defines several terms that are important to define in this context:

Illegal stay: the presence of a foreigner on the territory of the Republic of Moldova, who fails to meet or no longer meets the terms of entry, stay or residence in the Republic of Moldova.

Return: a foreigner's return by voluntary or forced execution of the decision on return: to the country of origin, to a transit country in compliance with readmission agreements or to a third country to which the foreigner voluntarily decides to return and in which the latter shall be admitted.

Removal: execution of the decision on a foreigner's return, namely, the physical transportation of the latter outside the territory of the Republic of Moldova.

At the same time other relevant provisions can be identified in the legislation of the Republic of Moldova. Thus the Contravention Code of the Republic of Moldova⁷ defines, in Art. 40(1), expulsion (Expulzarea (Ro) and Выдворение (RU)) as forced removal of foreign citizens or stateless persons who violated residence rules from the Republic of Moldova. Expulsion is aimed at removing a state of danger and to prevent such persons committing socially dangerous acts. According to the Law on the regime of foreigners the right of residence of the foreigner ceases from the moment the expulsion measure has been given⁸. Although the present Code does not define "a state of danger", it enumerates administrative offences where expulsion could be applied as an additional measure.⁹ It also set out relative offences relating to the activity of the foreigner on the territory of Moldova: for example, admission of a minor to work places, endangering his/her life and health; or attracting minor to works which present danger to his/her life and health (Article 58); violation of the border regime rules and

⁵ Published in Monitorul Oficial no. 179-181 of 24.09.2010, in force since 24.12.2010.

⁶ <http://www.carim-east.eu/2760/law-on-the-regime-for-aliens-in-the-republic-of-moldova/>

⁷ Of 24.10.2008, published in Monitorul Oficial no. 3-6 of 16.01.2009, in force since 31.05.2009

⁸ Article 62 para. (2).

⁹ According to Article 40 para. (2) this measure is applied when committed the types of offences set in Articles 58, 67 para. (4)- (5), art.76, 80, 81, 83, 84, 87, 323, 324, 326, 328, 330-333, 339, 348.

rules of crossing state border (Article 331); violation of the staying rules in the Republic of Moldova (Article 333), etc. If the expulsion accompanies administrative detention, it will be conducted only after the execution of the administrative arrest.

The Penal Code of the Republic of Moldova¹⁰ refers to expulsion as a measure aiming at the elimination or prevention of criminal deeds. In accordance with Article 105 para. (1) expulsion is a measure applied when a foreign citizens or a stateless person has been convicted of committing certain crimes. It is of the competence of the court to apply this measure at the request of the Bureau of Migration and Asylum. But the right to respect for private life is to be taken into consideration when deciding upon expulsion (para. 3). If expulsion accompanies imprisonment, the enforcement of the expulsion takes place after sentences have been served. According to Article 63 para (1¹) of the Law on the regime of foreigners stateless persons legally staying on the territory of the Republic of Moldova cannot be expelled, save in cases of national security or public order. It should be mentioned that the Republic of Moldova ratified the Convention related to the status of stateless persons in 1954 with reserves as regards expulsion, applying national legislation to the expulsion of stateless persons.

According to Article 4 para. (2) of the Law on the regime of foreigners, “During their stay or residence in the Republic of Moldova foreigners must observe the legislation of the Republic of Moldova and be subject to control of the competent authorities according to law”. Foreigners are obliged to leave the territory of the country upon expiration of the period of residence; otherwise they will be removed from the territory if their stay becomes illegal. At the same time, the sanctions imposed by the legislation in force are sometimes related to national security, public order and public health.

According to Article 51 of the Law on the regime of foreigners in the Republic of Moldova and Point 4 of the Regulation on return, expulsion and readmission procedures of foreigners from the territory of the Republic of Moldova¹¹, the return measure will be applied to foreigners:

- who entered illegally to the territory of the Republic of Moldova;
- whose stay became illegal;
- whose visa/residence right was cancelled or revoked;
- who were denied the extension of a temporary residence right;
- whose permanent residence right has ceased;
- whose application for recognition of stateless status was rejected, the procedure ceased or the stateless status was cancelled;
- who are former asylum seekers or whose refugee status or humanitarian protection was cancelled.

Return procedure

According to Point 5 of the aforementioned Regulation the burden of examining all the circumstances of the case, including expenses for removal, evaluation of the foreigner’s state of health, application of readmission or bilateral agreements etc. is given over to the officer in charge before the return

¹⁰ Of 18.04.2002, published in Monitorul Oficial no. 72-74 of 14.04.2009.

¹¹ Approved through Government Decision no. 492 of 07.07.2011, published in Monitorul Oficial no. 114-116 of 15.07.2011. The Regulation establishes the return, expulsion, and readmission procedures from the territory of the Republic of Moldova, in accordance with the rights and freedoms guaranteed by the Constitution of the Republic of Moldova and other laws, as well as by the international treaties to which the Republic of Moldova is a party, with the exceptions established by the legislation in force (Point 1).

procedure is initiated.¹² According to Point 14 of the Regulation when removing someone from the territory of the country the officer¹³ in charge will examine each case separately. He will be particularly attentive to the physical and medical condition of the foreigner, technical reasons, lack of transportation and any difficulty in identifying the person. In this case removal can be postponed until the circumstances that prevent this are removed. The Regulation does not expressly provide for how long the officer in charge can postpone removal, but the last remedy is to take the person to the court and place him/her under public custody. According to Article 3 of the Law on the regime of foreigners, public custody is a measure which limits freedom of movement.

After examining return cases, the Bureau of Migration and Asylum (which is the competent authority for foreigners) issues a return decision. This is an administrative act which determines a foreigner's stay as illegal and obliges him/her to leave the territory of the Republic of Moldova within a settled period of time (Arts. 3, 52 of the Law on the regime of foreigners).

Point 11 of the Regulation sets the timeframes for voluntary departure as follows:

- Maximum 5 calendar days for foreigners whose visa was cancelled, entered illegally to the Republic of Moldova or whose stay became illegal;
- 30 calendar days for foreigners to whom the prolongation of the residence right was rejected or where this right was cancelled or revoked;
- 3 months for foreigners who must close an investment (enterprise);
- 15 calendar days for former asylum seekers.

These terms are calculated from the date the foreigner was informed about the return decision.

The return decision is issued in the state language and in a language of international circulation understood by foreigner, or translated via an authorized translator, and offered to the foreigner under signature. If it is not possible to give the decision under signature, it will be delivered to the relevant address and posted at the authority's address (including on the website): Point 19 of the Regulation and Article 53 of the Law on the regime of foreigners. Thus the authority ensures that the foreigner has access to the information and fair treatment: the process of removal can thus be judged as being transparent.

¹² According to Point 5 of the Regulation, before the return procedure is initiated, the officer in charge or the case must take into consideration the following points:

- 1) correct application of the national legislation;
- 2) if the foreigner accepts or not removal and expresses his/her intention to litigate the return measure;
- 3) If the foreigner has or not financial means necessary for removal;
- 4) the question of whom will support the expenses for removal of the foreigner: the natural person or legal person who invited the foreigner;
- 5) who will support the expenses for the removal of foreigner: employer, natural person or legal person, including the situation when the foreigner was hired illegally or where their resident permit is no longer valid;
- 6) there is the risk of avoidance;
- 7) if detention is necessary in the process of preparing return or in the process of removal, if the application of less coercive measures is enough;
- 8) there are no obstacles for the removal of foreigners;
- 9) there are no vulnerable persons;
- 10) the state of health of the foreigner allows removal;
- 11) are there or not sufficient elements for the readmission of the foreigner by a third country within readmission agreements or other bilateral agreements.

¹³ Here is meant the officer in charge working at the bureau of migration and asylum within the specialized division in charge for fighting against illegal migration.

The term of voluntary departure may be prolonged by the Bureau of Migration and Asylum if there are circumstances relating to family or social aspects (Point 12 of the Regulation). It is not prolonged if there is the risk of absconding or if the foreigner presents a threat for public order and national security (Point 13). The Regulation does not state the relevant actions to be considered under point 13, leading to a subjective interpretation by the officer in charge.

At the same time it is not impossible that a former asylum seeker will apply for asylum again on the last day of the period set in the return decision. In this case the Bureau of Migration and Asylum will examine the case under the provision of the Law on asylum in the Republic of Moldova. During the period of time when granting access to asylum procedure is being examined the foreigner has the right to stay on the territory of the Republic of Moldova: Article 79 para. (2) of the Law on asylum. If the asylum application is rejected by a final decision then the return decision will be executed.

The Law on the regime of foreigners grants the right to appeal the return decision in the court within 5 working days after the decision has been communicated. It is important to mention that the right to appeal does not have a suspensive effect on the return decision execution. The burden of proving, before the court, the need to suspend the execution is put on the claimant (Article 54).

The Law on the regime of foreigners in the Republic of Moldova granted the right to establish prohibitions of entry (Entry ban) on the Bureau of Migration and Asylum and the Department of Border Police. This competence was maintained by the border police even after the reform and transfer of the Border Guards Service to the Ministry of Internal Affairs starting with 1 July 2012. The Law on foreigners distinguishes the situations when these prohibitions are applied, namely:

- cases when the foreigners are returned are under the competence of the Bureau, and
- cases when foreigners who left the Republic of Moldova after the date when his/her residence became illegal and the person is not returned are under the competence of the Border Police Department (Article 9 para. (1)).

The general rule set in the Law on foreigners is that prohibition of entrance cannot be applied to foreigners who have common minor children or children unable to work with persons who domicile on the territory of the Republic of Moldova. At the same time these foreigners will not be excluded if they have committed crimes with intention, serious crimes, especially serious crimes or extremely serious crimes on the territory of the republic of Moldova.

The law allows the authorities to apply the prohibition too in cases when:

- International organizations to which the Republic of Moldova belongs or public authorities dealing with fighting against terrorism let it be known that a foreigner finances, prepares, supports in any manner or commits acts of terrorism;
- There are indicators that the foreigners is a member of transnational organized criminal groups or that he/she supports the activity of these groups in any manner;
- There is evidence proving that he/she has committed or has taken part in committing crimes against peace and humanity, war crimes or crimes against humanity provided in the international treaties the Republic of Moldova is a party to;
- He/she presented false data when filling in documents for entry into the Republic of Moldova (Article 8 para. (1) let. b)-e)).

The Legislation also establishes prohibitions on entry for a period of up to 5 years and 10 years in cases where public order or national security are affected, the terms being in line with the EU Return Directive. It should be mentioned that in the case of foreigners who illegally resided in the country or performed illegal labour activity and who requested voluntary return, the period of prohibition shall be reduced by half.

Assisted voluntarily return

Foreigners present on the territory of the Republic of Moldova who do not have the necessary financial means may appeal to the Bureau of Migration and Asylum for assistance in their return to the country of origin: article 61 para. (1) of the Law on the regime of foreigners. Alternatively, they can address themselves directly to national/international organizations (point 44 of the Regulation), as in case of International Organization for Migration. The only condition is that foreigners can apply for this assistance only once and on an individual basis: Point 45 of the Regulation.

Removal

The Law on the regime of foreigners examines two aspects: namely removal under the escort; and removal based on readmission agreements. Removal under escort is performed by special personnel from the Bureau of Migration and Asylum and means escorting the foreigner to the crossing point of the state border or to the country of origin/transit/destination (Point 22 of the Regulation). This type of removal is conducted in case of foreigners:

- who did not leave the territory of the Republic of Moldova voluntarily upon the expiration of the return decision. Not all foreigners have this time for voluntary departure. For example, persons declared *persona non grata* are excluded from this possibility;
- who illegally crossed the state border;
- who have been declared *persona non grata*¹⁴;
- against whom the expulsion measure was disposed;
- who have physical or mental disabilities;
- who present a threat for public health.

If all the formalities are in place (documentation, available sufficient financial means (including travel costs)) removal is conducted in 24 hours. If the formalities are not in place the person will be taken under public custody and placed in the Center for Temporary Placement of Foreigners, where he can stay from 30 days up to 6 months depending on the court decision.

Any removal based on readmission agreements is conducted by the Bureau of Migration and Asylum following the agreements' provisions and implementing protocols. The authority examines both readmission and transit requests. Thus the Republic of Moldova may allow that the territory to be transited by a foreigner subjected to readmission procedure involves a third country. However, Moldova does so on the condition that the foreigner is escorted and that guarantees are provided that he/she can continue the journey and can enter the destination country: Point 32 of the Regulation and Article 59(2) of the Law on the regime of foreigners. At the same time, Moldova can request other states to transit airports in order to conduct removal under escort, though there are no readmission agreements. According to the Law, the competent authorities will take all necessary measures, though the law does not set out what kind of measures in the legislation may lead the foreigners back to the country if during the removal by air:

- transit authorization was refused or revoked;
- the foreigner entered the territory of the requested state during the transit;
- the removal of the foreigner to another transit country or to the destination country or to a connection flight was not performed;

¹⁴ A foreigner who committed, commits or who is justifiably believed to intend to commit any actions that may pose danger to national security or public order can be declared a *persona non grata* by the Bureau of Migration and Asylum for a period from 5 to 15 years with the possibility of extension. . On the date the person is declared *persona non grata* right of residence ceases.

- airport transit is no longer possible (Point 35 of the Regulation).

The transit operation will not last longer than 24 hours, and only in exceptional cases can be prolonged for up to 48 hours. Point 42 of the Regulation sets all the obligations for the competent authority during the transit operation.

Article 3 of the Readmission Agreement with the European Community of 2007 obliges the Republic of Moldova to readmit third-country nationals. However, it does not set any other provisions regarding the further actions of the state. The Law on asylum in the Republic of Moldova and Law on the regime of foreigners do not contain express provisions in this regard either. In the case of foreigners, be they asylum seekers or holders of forms of protection or a resident permit, their status on the territory of the Republic of Moldova will be analyzed based on the official records. Thus at the level of the Bureau of Migration and Asylum data regarding foreigners the Integrated Information System in the Migration and Asylum domain is included. Legislation does not contain any provisions regarding the cancellation or revocation of the right to stay in the Republic of Moldova based on the fact that the person was readmitted to Moldova. The only provisions which fall under interpretation in this regard are conditions for granting the residence right in the future, if the foreigner violated the rules for crossing the state border. Taking into consideration Moldova's common border with an EU Member State are not excluded cases when foreigners look for possibilities to cross the border. The legislation in force provides for sanctions for violating the state border and regardless of citizens or foreigners, includes those who seek asylum, the cases will be examined regardless of the status of the person¹⁵. The question of status is important when examining the stay of a foreigner on Moldovan territory, but it must take into account the *non-refoulement* principle and, for example, the family unity principle in cases of mixed marriages.

Expulsion

According to Article 174 para. (4) of the Execution Code of the Republic of Moldova¹⁶, internal affairs bodies are responsible for the execution of the decision regarding the expulsion of foreign citizens or stateless persons. In accordance with Article 292 of the Code, the court shall send its decision regarding the expulsion of the foreigner to the internal affairs body in whose jurisdiction the person resides or was detected. If the person subjected to expulsion was condemned to imprisonment, the imprisonment authorities, sends the judgment to ensure enforcement 5 days before the release of the person, to the internal affairs body in whose jurisdiction the person subjected to expulsion was detected or domiciled.

According to Point 54 of the Regulation on removal, the Bureau of Migration and Asylum is responsible for the execution of the expulsion measure for any foreigner who committed an administrative offence or a crime on the territory of the Republic of Moldova and in respect to whom there is a final court judgment. In order to proceed with the expulsion, the authorities will issue a decision informing the foreigner about his/her expulsion in the state language, a language from international circulation or via an authorized translator.

Within 24 hours the expulsion measure will be registered in the Integrated Information System on Migration and Asylum under the competent authority. If the expulsion cannot be conducted due to documentation/financial issues, the authority will request from the court placement of the foreigner under public custody (Point 57 of the Regulation). The Law on the regime of foreigners sets restrictions in Article 63 where expulsion is prohibited, namely:

- if there is justified concern that a foreigner's life may be put at risk or he/she will be subjected to torture, inhuman or degrading treatment there.

¹⁵ Article 332 of the Contravention Code and Article 362 of the Penal Code

¹⁶ of 24 December 2004, published in Monitorul Oficial no. 214-220 of 5 November 2010.

- if the stateless person is legally staying on the territory of the Republic of Moldova, except the case where there are reasons of national security or public order; in this case the court must rule. The decisions of the Bureau of Migration and Asylum can be appealed in court by going through all three stages: territorial court, Court of Appeal, Supreme Court of Justice. After this, there should be a final judgement.
- if the foreigner is suspected, accused or defendant in a criminal case, the prosecutor or court obliged him/her not to leave the country and no permission for leaving the country was given (Article 12 para. (1) let. a)).
- if he/she was convicted based on a final court judgment and if they must execute a detention sentence, criminal sentence in the form of fine or non-reimbursable work for community benefit (Article 12 para. (1) let. b)).

Placement under public custody (detention)

This is a measure for restricting the freedom of movement imposed by the court against:

- the foreigner who could not be returned within the terms provided for by the Law on the regime of foreigners. For example in the case of foreigners who have to be removed under escort within 24 hours and, yet, where said removal is not accomplished the person can be placed under public custody. The same situation applies in the case of former asylum seekers who did not leave the territory within the established period of time for voluntary return and who have no valid travel documents and financial means for leaving the country;
- the foreigner who was declared *persona non grata*;
- the foreigner sentenced to expulsion by a court of justice.

The initial period of custody is 30 days and can be prolonged by the court at the motivated request of the Bureau of Migration and Asylum. However, it cannot exceed 6 months (Article 64(6)). Foreigners placed under public custody based on a court decision are placed in the Center for Temporary Placement of Foreigners, whose activity is regulated by the Law on the regime of foreigners in the Republic of Moldova (Articles 65-66) and the Regulation of the Center for Temporary Placement of Foreigners. This is approved through Government Decision no. 493 of 7 July 2011¹⁷, which partially transposed the Directive 2008/115/CE of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. The Regulation of the Center regulates the functioning, the regime and the internal order of the Centre for Temporary Placement of Foreigners, the rights and duties of the foreigners placed in the Center, relations between foreigners and staff (Point 1). According to Point 7 of the Regulation foreigners taken into public custody shall be placed in the center based on the court decision, until performing the expulsion, readmission or return from the Republic of Moldova. Foreigners are placed in the Center based on Article 40 para. (para. 3) of the Contravention Code of the Republic of Moldova which provides that if the foreigners cannot be expelled immediately, the court may order detention and the person is placed in the Center for Temporary Placement of Foreigners for a period not exceeding 6 months. If after these 6 months the person, who has an expulsion decision, has not been removed from the territory, he/she will be released from the Center. The issue that arises in this context is that the foreigner is not eligible to be granted the tolerated stay under the Law on the regime for foreigners, as this is an expulsion decision. But, at the same time, the person in question might be in a position not to be able to leave the country because of lack of documents.

When the foreigners are placed in the Center they are subjected to:

¹⁷ Published in Monitorul Oficial no. 118-121 of 22 July 2011.

- registration in the register, with subsequent recording in the personal data information subsystem of the Bureau of Migration and Asylum;
- registration of fingerprints and photography;
- body search;
- medical examination (Point 9).

Within 24 hours of a foreigner being placed in the Center the necessary measures are taken in order to inform the embassy or consulate (Point 20). The Law on the regime of foreigners and the Regulation expressly provided for the rights and duties of detained foreigners and have special provisions regarding conditions for placing minors (Chapter VI of the Regulation) and women (Chapter VII of the Regulation).

Foreigners who are in the Center have the right to apply for asylum in the Republic of Moldova and thus their status is regulated during the examination of asylum claims under the Law on asylum in the Republic of Moldova, 18 December 2008. Thus, though there be an expulsion decision, if the person is accepted under the asylum procedure, the decision will suspend proceedings. At the same time, being granted access to the procedure, asylum seekers cannot be detained in the Center and these persons are released based on a court judgment. In practice this situation can be abused by foreigners who are ‘playing for time’ before going to another country or who apply for asylum just to leave the detention center. In Moldova asylum seekers have the right to stay in the Accommodation Center according to Article 28 let. m) of the Law on asylum, which is also administrated by the Bureau of Migration and Asylum.

After 6 months in the Center for Temporary Placement the Bureau of Migration and Asylum is obliged to release any foreigner, even if no solution was found for a return to the country of origin, especially when lacking necessary documents.

At the moment a new situation is provided for by the new legislation in force in the Republic of Moldova, namely tolerance of stay on the territory. Thus, according to Article 67 of the Law on the regime for foreigners, tolerance of stay means the permission to stay in Moldovan territory, granted by the competent authority to those foreigners who have no residence right and who, for objective reasons, cannot leave said territory (Article 67). Foreigners declared *persona non grata* and those subjected to expulsion are not, however, included (Article 68 para. (2)). Given that the tolerance regime is a kind of temporary “pseudo form of protection” it is understandable why foreigners declared *persona non grata* and persons subjected to expulsion are excluded from this regime. At the same time it is the responsibility of the Bureau of migration and asylum to conduct all necessary legal procedures to remove the person from the territory. In both cases the moment a decision is issued the respective note is made in the information system and within 24 hours and the person must be escorted to the border or to the country of transit/destination. However, it is not clear from the Regulation what steps will be undertaken if the procedures is not conducted in due time: for example, what happens if it was not possible to get the necessary travel documents in a timely fashion.

The tolerance regime is granted for a period up to 6 months and may be extended. It is though limited territorially as the competent authority can impose a restriction regarding validity only to the residential area of a foreigner.

Prohibition of entrance into /exit from Moldova

Foreigners who do not fulfill the conditions for entering into/exiting from Moldovan territory will not be authorized to cross the state border of the country. The law on the regime for foreigners in the Republic of Moldova sets the aforementioned conditions and also the conditions when entry into (Article 8) or exit from (Article 12) the country is prohibited.

The border policeman refuses entrance/exit based on specific motives. The foreigner has the right to appeal the decision, but the appeal has no suspensive effect on any refusal decision. Moldovan

legislation expressly provides that the person who is refused will be given the contact data of the Union of Lawyers, which can represent the interests of said person¹⁸. If the foreigner was refused the authorized crossing of the state border, he/she is obliged to leave the crossing point immediately, the information being introduced in both information systems of the Border Police Department and the Bureau of Migration and Asylum. Simultaneously these provisions do not exclude the right to apply for asylum in accordance with the Moldovan Law on asylum. Taking into consideration that asylum applications are examined by the Bureau of Migration and Asylum, a specialized subdivision Asylum and Integration Unit, and that the Border Police Department has no competences in examining the claims, the assessment of a foreigner's claims will be done on the territory. In this way the principles of access to the territory and non-refoulement established in the asylum procedure are respected.

If it is not possible for the foreigner to leave the border crossing point immediately, he/she will be accommodated in a place meant for this purpose but for no longer than 24 hours. If the causes impeding his/her departure are still an issue 24 hours after the accommodation is given, the foreigner shall be handed over to the Bureau of Migration and Asylum for removal from Moldovan territory (Article 8 para. (5) of the Law on the regime of foreigners).

Legal safeguards

The law on the regime of foreigners transposed not only the procedures set out in Directive 2008/115/CE, but also the legal safeguards relating to human rights protection. Thus Article 60 of the Law and Point 20 of the Regulation gives cases where the removal of foreigners from Moldovan territory is forbidden, including cases where minors are involved or where family unity can be affected. Special provisions are also inserted in the Regulation of the Center for the Temporary Placement of Foreigners. Thus according to Point 12 of the Regulation of the Center family members benefit from separate accommodation and children can be accommodated together with foreigners (Point 13). Point 47 states that if the child is accompanied by his/her parents or close relatives, he/she will be placed with them. Children have the right to decide to stay or to not stay with parents. They will not be separated from parents against their will. If it is impossible to keep a family together, children remain with their mother.

Although asylum is examined under the Law on asylum in the Republic of Moldova, the cases relating to asylum requests or requests for access to asylum procedures can also be encountered at the removal stage. Thus the principle of *non-refoulement* provided for in Article 11 of the Law on asylum must be taken into consideration. Also according to Article 28 let. a) of this Law the asylum seekers cannot be returned or expelled until the asylum application is resolved. In the case of refugees and beneficiaries of humanitarian protection return and expulsion can be applied only in cases set by the legislation in force. Thus refugees and the beneficiaries of humanitarian protection, who have had a court judgement of expulsion issued against them, pursuant to the provisions of the Criminal Code, shall be granted a reasonable term to perform the necessary formalities in order to be admitted into another country. This results from the *non-refoulement* principle, which is mandatory under the 1951 Convention relating to the refugee status to which Moldova is a party.

Legal assistance

The Law no. 198 on legal assistance guaranteed by the state, 26 July 2007¹⁹, granted foreign citizens the right to apply for legal assistance and stateless persons in procedures or cases that are under the competence of the public authorities and the courts of the Republic of Moldova. According to Article

¹⁸ Article 24 para. (3) of the Law no. 215 on the state border of the Republic of Moldova, 4 November 2011, published in Monitorul Oficial no. 76-80 of 20 April 2012, entered into force 1 July 2012.

¹⁹ Published in Monitorul Oficial no. 157-160 of 5 July 2007

20 let. c) this assistance will be granted when there is a risk that expulsion is applied within contravention procedures. By this action access to a fair trial is ensured.

3. Return to Moldova and Reintegration²⁰

Based on the readmission agreements signed by the Republic of Moldova, the Ministry of Internal Affairs via the Bureau of Migration and Asylum is in charge of conducting the readmission procedure of their own nationals and third-country nationals, in cases provided for by the agreements and implementing protocols. After the readmission process the competence of the authority stops and the competence of the Ministry of Labour, Social Protection and Family and other institutions like the new created Agency for Diaspora, Inter-ethnic relations Bureau can be performed.

The legislation of the Republic of Moldova does not contain any provisions sanctioning citizens/foreigners for staying illegally in their former country of destination. At the same time no information is available on cases when citizens applied for international protection except statistical data: the provision of any other information will be considered an infringement of the 1951 Convention. If a Moldavian citizen applied for asylum in one of the Member States, was rejected and his/her stay became illegal in the destination country the person's return would be conducted under readmission agreements, but no information will be offered to Moldova regarding the asylum claims in the MS, the person being returned as an irregular migrant.

Any foreigner has the right to apply for asylum regardless of their stay before entering Moldova. Indeed, the Constitution of the Republic of Moldova sets in Article 19 para. (3) the constitutional right to seek asylum in Moldova, each application being examined under the provisions of the Law on asylum in the Republic of Moldova 18 of December 2008.

7 July 2011 the International Organization for Migration in Moldova launched the Moldovan component of a regional project: namely, the **Support for the Implementation of EC Readmission Agreements with the Republic of Moldova, the Russian Federation and Ukraine – Facilitation of Assisted Voluntary Return and Reintegration (SIREADA)**. The two-year project was funded by the European Union and co-funded by the Austrian Development Agency with a budget of 467,652 Euro. The main implementing partners were the Bureau of Migration and Asylum (of the Ministry of Interior), the National Employment Agency (under the Ministry of Labour, Social Protection and Family), and the NGO "Institute for Penal Reforms". The Project responds to the EU and Moldova's desire to support the implementation of the bilateral Readmission Agreement by facilitating reintegration of the readmitted/voluntary returned Moldovans. This means enhancing the reception capacities and providing voluntary return assistance to readmitted/ irregular third-country nationals, and by contributing to smooth transition to a sustainable return system in Moldova²¹.

The importance of reintegration is underlined in the National Strategy in the Migration and Asylum Domain (2011-2020).²² This ensures a faster and effective reintegration process, maximizing the possible benefits and minimizing the negative consequences of migration: it is important to create the conditions for the reintegration of migrant workers²³. The main objectives in this regard are the following:

²⁰ The reintegration issue is better analyzed in the explanatory note on integration

²¹ <http://www.iom.md/index.php/en/media-center/press-releases/189-eu-backs-further-readmission-reform-and-support-to-returning-moldovans>

²² Approved through the Government Decision no. 655, 8 September 2011, published in Monitorul Oficial no. 152-155 of 16 September 2011

²³ Chapter IV Point 21 let. b)

- 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;
- a strengthening of the legal framework and an adoption of measures regarding the reintegration of Moldovan citizens: voluntary returned or readmitted based on the Agreement between EU and Moldova

The Action Plan for the years (2011-2015) regarding the implementation of the National Strategy in the Migration and Asylum Domain (2011-2020)²⁴ provides that the state authorities will perform activities to reintegrate citizens:

- Establishment of mechanisms for the recognition of knowledge and professional experience of migrants obtained abroad, through their use on the local labour market upon return;
- Elaboration and development of the evidence mechanism 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 knowledge transfer and new competencies upon 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 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;
- 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.

With a view to solving the current problems of citizens of the Republic of Moldova who are permanently abroad (diaspora) through a Disposal of the Government no. 90 of 26.09.2011²⁵ 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 lacking parental care as a result of migration,
- elaboration of specialized programs for the social and economic integration of returned migrants in the Republic of Moldova,
- evaluation of possibilities regarding the creation of one or several specialized institutions (funds, banks etc.) which would allow the accumulation of funds for diaspora support (budgetary funds, private sector, foreign assistance etc.). These would also channel support from the diaspora to Moldova. At the end of 2012 a Bureau for relations with the diaspora was created.

²⁴ Approved through the Government Decision no. 1009, 26 December 2011 published in Monitorul Oficial no. 1-6 of 6 January 2012

²⁵ Published in Monitorul Oficial no. 160-163 of 30.09.2011

Conclusion

In the context of the Republic of Moldova readmission and return has a rather procedural content, while reintegration is seen as a more socio-economic process. Even at the level of implementation two different central public authorities are involved namely the Ministry of Internal Affairs and the Ministry of Labour, Social Protection and Family. The question that arises in this regard is whether this policy should be revised and whether the competence of the authority in charge for readmission and return should play a more active role in the accommodation of the nationals. In this way they would contribute to limiting the further emigration by the same people.