



CARIM EAST – CONSORTIUM FOR APPLIED RESEARCH ON INTERNATIONAL MIGRATION

Co-financed by the European Union

Access of Refugees, Asylum Seekers and IDPs to Socio-Economic Rights in the Republic of Moldova

Tatiana Ciumas

CARIM-East Explanatory Note 13/145

Legal module

November, 2013



© 2013. All rights reserved.
No part of this paper may be distributed, quoted
or reproduced in any form without permission from
the CARIM East Project.



1. Asylum Seekers

The Law on asylum in the Republic of Moldova¹ establishes the legal and institutional framework for the functioning of the national asylum system. The Law partially transposed the European *acquis* on asylum including rights granted to asylum seekers.

Pending the determination of asylum claims, the asylum seeker receives a temporary asylum seeker identity document, which confirms his or her status as an asylum seeker and serves as a proof of legal stay on the territory. It is not though proof of identity. The document must be renewed monthly.

1.1 Right to work

An asylum seeker in Moldova enjoys the right to work, on request, if for objective reasons the person lacks the necessary means of subsistence (article 28 let. 1)). This right is granted temporarily. Although the Law on asylum refers to objective reasons, these are not detailed further in the Law and thus theoretically the person cannot be restricted from employment. In order to be employed the asylum seeker requests from the Bureau of Migration and Asylum a personal number and in the temporary identity document “the right to work” is indicated. An asylum seeker can address to the National Employment Agency and its territorial branches in order to find a job.

1.2 Housing

According to Article 28 let. m) of the Law on asylum, asylum seekers have the right to dwell in an accommodation center for the period of procedure. In the case of persons with special needs they benefit too from the adjustment of accommodation and assistance conditions in the center. Accommodation in the Center, which is administrated by the Bureau of Migration and Asylum, is regulated by the new Regulation of the Accommodation Center,² in force since 4 January 2013. The Center offers reception and temporary accommodation and the minimum accommodation conditions in the Centre, within the limits of available funds. This includes: a bed, bed linen and kitchen essentials, which correspond to sanitary and hygiene conditions. According to Regulation, asylum seekers and their family members can stay in the centre, with the exception of citizens of the Republic of Moldova and persons who have filed a new asylum application. In the case of persons who filed a new application for asylum the Regulation accepts an exception when new circumstances have arisen or political, military, legal and social transformations occurred in the country of origin, which would endanger the life or safety of the asylum seekers (Point 9 para (2) of the Regulation). Thus under these provisions asylum seekers are included whose claims are being examined in the accelerated procedure and foreigners who have requested access to asylum procedure and who, during the waiting period, have no right to be accommodated.

When there are some assumptions that a newly-arrived asylum seeker in the Centre has a socially-conditioned disease with a major impact on public health, he/she shall be accommodated, after being examined by a specialist. The asylum seeker will be accommodated in a separate place for a period of 10 days to ensure the safety of persons at the Centre and the staff of the Centre (Point 27). If no diseases are detected, upon the expiry of that period the person shall be transferred to a common space. If any diseases are detected, the competent institutions shall be contacted. In this context the

¹Adopted on 18 December 2008, published in Monitorul Oficial no. 53-54 of 13 March 2009

²Approved through the Government Decision no. 1023 of 28 December 2012, published in Monitorul Oficial no. 1-5 of 4 January 2013. The regulation of the Accommodation Centre regulates the operation and internal order of the Accommodation Centre, the rights and duties of the accommodated persons, the relations between the accommodated persons and its staff, as well as other rights and duties of the employees of the Centre (Point 1).

Regulation does not specify what actions the competent institutions should take and who is responsible for the accommodation of the asylum seeker during the procedure.

This rule of 10 days shall not be applied in case of persons who are:

- sick with active TB;
- have contagious infectious illnesses;
- have mental illnesses accompanied by aggravation when accommodated, which is dangerous for all those living and working in the Centre;
- consume or are addicted to drug or narcotic or psychotropic substances;
- alcohol abusers;
- may endanger the life and health of persons accommodated at the Centre (Point 11).

Although the Regulation sets this restriction, the legislation in force contains no other explanations regarding the procedure to be applied if such cases are identified. The question of who is responsible for the evaluation of each case is not answered either.

The application for accommodation in the Centre submitted by asylum seekers are examined within 24 hours, followed by the issuance of a decision by the Asylum and Integration Directorate within the Bureau of Migration and Asylum, the unit responsible for the administration and management of the Accommodation Centre.

The asylum seeker has the right to stay in the Centre during the entire asylum procedure, meaning in the case of rejected asylum application during the administrative procedure and court examination. It should be remembered that the examination in the court consists of three levels: the territorial court, the Court of Appeal and the Supreme Court of Justice. The accommodation period could, as such, last up to 2 years as, in Moldova. There is no specialized court for asylum cases, and accommodation can be prolonged in the case of repeated asylum applications.

The accommodated persons leave the Centre based on the decision issued by the Bureau of Migration and Asylum. In the case of asylum seekers with a final decision on asylum claims they are obliged to leave the Centre within 15 days the moment the decision enters into force. In the case of foreigners whose asylum applications have been rejected in the accelerated procedure, they must leave the Centre on the same day they are informed of the decision. With regard to the person who must leave the premises the administration of the Centre issues a warning made in a language spoken by the person or which it can reasonably be presumed that he/she speaks. This is recorded in writing and signed, and if the person refuses to sign, the administration shall note this fact.

There is only one Accommodation Centre in Moldova, with a capacity of 200 places, which is an open type centre. The Regulation of the Centre sets the rights and duties of the accommodated persons. This includes the right to benefit from the activities carried out by representatives of the United Nations High Commissioner for Refugees in the Republic of Moldova and other institutions and organizations with which cooperation agreements in the field are signed. There is also the right to receive visitors in the Centre.

1.3 Education

Children of asylum seekers and minor asylum seekers have access to the Moldavian educational system in the same conditions as citizens (Article 28 let. p, Article 29 para. (1) Law on Asylum). Their access to the educational system has to be ensured within three months following the date of request, though in the case of the need for a preparatory course this term can be extended to 1 year (Article 29 para. (2)). This provision has never been applied in Moldova as children were integrated in the national system. If needed some additional courses were provided through NGOs. It should be noted

that the length of compulsory education is 9 years and mandatory attendance of school ends when the pupil gets to 16 (Article 9 of the Law on education³).

Regarding higher education, the temporary identity document issued to asylum seekers does not allow enrolment in national institutions, as the person has a temporary status in the country. In practice certain institutions have allowed the enrollment of asylum seekers, for paid places, based on their national passport and their identity document, stating legal presence in the territory.

1.4 Family life

The law on civil status acts⁴ states that the foreign citizens that reside or who are staying temporarily in the Republic of Moldova can request registration of civil status acts in the same way as the citizens of the Republic of Moldova (Article 10 para. 1). Stateless persons with domicile in the Republic of Moldova, asylum seekers and refugees have the same rights and obligations as the registration of civil status acts as the citizens of the Republic of Moldova (para. 2). In the case of children born on Moldavian territory there are no restrictions regarding registration and the issuance of birth certificates. In the case of marriages reference should be made to the aforementioned Law, which, for the conclusion of marriage, requires the same conditions as in the case of nationals. Thus an asylum seeker with a declared identity, having no passport, will not be able to conclude a marriage as the temporary identity document for asylum seekers is not introduced in the national system of identity documents.

Rejected asylum seekers, who conclude a marriage on the territory of the country, have the possibility of legalizing their stay afterwards based on the provisions of Law no. 200 on the regime of foreigners.

1.5 Social protection

The law on asylum states that families with children and unaccompanied minors benefit from all types of social assistance as citizens of the Republic of Moldova. In this context it should be mentioned that asylum seekers who give birth to children on the territory of the Republic of Moldova have the right to receive children's allowance as citizens in the same conditions.

1.6 Clothing and food

The state has no obligation according to the legislation in force to provide asylum seekers with food or clothing during the asylum procedure or, indeed, afterwards when protection is granted. In the open type accommodation center these services are not provided either. Nevertheless the Office of United Nations High Commissioner for Refugees provides assistance jointly with its implementing partners through financial means or in kind goods.

2. Beneficiaries of a form of protection

Some of the rights of beneficiaries of a form of protection in Moldova have already been addressed in the previous study on integration.⁵ Nevertheless some additional issues should be addressed here, namely:

³ Law no. 547 of 21 July 1995, published in Monitorul Oficial no. 62-63 of 9 November 1995

⁴ Law no. 100 of 26 April 2001, published in Monitorul Oficial no. 97-99 of 17 August 2001

⁵ See Titiana Ciumas, Legal Aspects of the Integration of Migrants in the Republic of Moldova Tatiana Ciumas, CARIM-East Research Report 2013/37: http://www.carim-east.eu/media/CARIM-East_RR-2013-37.pdf

2.1 Housing

The aspects relating to housing should be analyzed in the context of reserves formulated by the Republic of Moldova when acceding to the 1951 Convention relating to the Status of Refugees and 1967 Protocol⁶. Thus based on Article 42 para. (1) of the 1951 Convention, the Republic of Moldova interprets the provisions of Article 21 of the Convention as not obliged to grant housing to refugees.

Law on asylum in the Republic of Moldova sets the right for socially vulnerable beneficiaries of a form of protection to be accommodated for a determined period of time in accommodation centers (Article 33 para. (1) let. m)). Simultaneously,, the Law does not enumerate the categories of persons considered to be vulnerable. Until January 2013 the procedure for accommodating asylum seekers and protection beneficiaries in the Centre, administrated by the Bureau of Migration and Asylum, was conducted based on a Regulation approved by the director of the Bureau. The beneficiaries of a form of protection were accommodated based on the decision of a specialized commission created in the Bureau from representatives of different units for a period of 3 months. This period is extendable for an undetermined number of times.

The new Regulation of the Accommodation Centre, which entered into force January 2013, regulates the procedure for accommodation including beneficiaries of a form of protection Thus beneficiaries of a form of protection and their family members who have the same status have the right to stay in the Centre for a determined period of time if

- they are former asylum seekers who were granted protection being accommodated in the Centre; or
- they join integration programs.

The asylum seekers accommodated at the Centre who received a form of protection may submit a new application for extension of stay within 3 days of the decision on granting a form of protection being communicated. The application is examined within the period of up to 15 days followed by a decision to extend the period of accommodation or after a refusal to extend it. According to the Regulation the beneficiary who requested accommodation must sign the declaration concerning the lack of means of subsistence. The declaration has a formal content, as it does not contain specific sanctions in the legislation. -It is intended to make the beneficiary acknowledge the content of application and to make efforts to self-support the individual on the territory including housing. At the same time it allows the authority to refuse accommodation, if during the assessment of the accommodation application it is seen that the applicant has the possibility of supporting themselves.

According to Point 31 of the Regulation the asylum seeker who received a form of protection and requested for an extended accommodation period, which was accepted, is entitled to stay for free in the Centre for 3 months from the date of notification of the decision. This period can be extended by no more than 3 months in the case of pregnant women, single parents, and the elderly.

In order to assess individual needs regarding accommodation, according to the present rules, the beneficiaries of a form of protection who lived outside the Centre during the asylum procedure are not allowed to request 3 months accommodation (Point 36). Exceptions in this case will be made only in case of beneficiaries who enter integration programs. It should be noted that according to the Law on integration the person has only 30 days from the moment the form of protection is granted to submit an application for the integration program.

The new Regulation grants asylum seekers who received a form of protection and who do not want to extend the accommodation period, to stay in the Centre for a period of 30 days. This is so they can find a new place of living and become self-reliant.

⁶Law no. 677 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 of 23 November 2001, published in Monitorul Oficial no. 11 December 2001

The new Regulation of the Accommodation Centre develops the provisions included in Article 25 of the mentioned Law. It does so in the context of Law no. 274 on the integration of foreigners in the Republic of Moldova⁷, namely the implementation of the provisions relating to integration programs offered to beneficiaries of a form of protection. Article 25 grants the right to beneficiaries, who have no means of survival, to stay in the premises for up to 6 months. This can be extended for up to 1 year, until the end of the program implementation.

Up to present all participants in integration programs live outside the Centre.

It is important to mention that failure to comply with the obligation relating to integration program might mean the withdrawal of the accommodation right (Art. 26 para. (2)).

From January 2013 the Bureau of Migration and Asylum has had the right to rent spaces to beneficiaries of integration programs and beneficiaries of a form of protection⁸. This service is in line with Article 25 para. (4) and (5) of the Law on integration of foreigners. In order to regulate the renting in 2013 was approved through a Government Decision the Regulation on the procedure and conditions of renting spaces for foreigners benefiting from integration programs and foreigners who obtained a form of protection in the Republic of Moldova⁹. The Regulation of the Accommodation Centre states that renting service will be available to beneficiaries, but within the limits of available rooms (Point 35).

Person requesting rented accommodation are to submit an application to the Bureau of Migration and Asylum in the state language. They must also attach the copy of the identity document and his/her family members (identity document, birth certificate) and certificates confirming the pecuniary income obtained from paid work from: all types of entrepreneurial activity; insurance and social security benefits; income obtained by exploiting the agricultural lands and land plots, including those they own; and other types of income. Persons married to citizens of the Republic of Moldova are excluded, if they own or co-own a residence, or over the last 12 months, if they have an average monthly income per person over the level of the net national monthly average salary.

Based on the submitted documents a special commission¹⁰, created under the Bureau and which examines the case, performs a social inquiry, referring namely to:

- the living conditions of the applicant;
- the number of minors and other persons who are supported by the applicant and who live with him/her;
- the health status of the applicant or some of the members of his/her family;
- the date when the application was filed (Point 12 of the Regulation).

The file is examined over 30 working days followed by a positive or negative decision issued by the Bureau with the possibility of appeal of any refusal in granting a rented space (Point 17); followed by a lease contract in the case of a positive response.

The Regulation has not been implemented in actions as some improvement conditions activities are now conducted in the Accommodation Centre.

⁷Law of 27 December 2001, published in Monitorul Oficial no. 48 of 13 March 2012

⁸GD no. 1002 of 28 December 2012, published in Monitorul Oficial no. 1-5 of 4 January 2013

⁹Government Decision no. 1024 of 28 December 2012, published in Monitorul Oficial no. 6-9 of 11 January 2013

¹⁰The commission was created by order of the Minister of Internal Affairs and the Minister of Labour, Social Protection and Family. The Commission is made up of 8 members (Chairman, Vice Chairman, members and secretary). According to Point 22 of the Regulation the decisions on granting or rejecting rental rights is adopted by the vote of the majority of members of the Commission every month and the result is placed on the official website of the Bureau

2.2 Right to work

According to a reservation formulated to the 1951 Convention, the Government of the Republic of Moldova reserves the right to apply the provisions of Article 24 (labour legislation and social security) of the Convention so that they do not infringe upon the constitutional and domestic legislative provisions regarding the right to labour and social protection.

The national law on asylum states, in Article 33, that a beneficiary of a form of protection has the right to be employed by legal or natural persons, to exercise free professions, to carry out entrepreneurial activities, followed by the right to receive wages and benefit from other material rights including social insurance.

The right to work and the protection of work is also set in Article 7 of the Law on the Legal Status of Foreign Citizens and Stateless Persons in the Republic of Moldova¹¹. The only restriction contained in the Moldavian legislation refers to functions granted only to citizens, for example, public service.

The Law on the integration of foreigners in the Republic of Moldova granted more opportunities and possibilities to beneficiaries as access to trainings, counselling, and more importantly unemployment allowance. It is important to note that from 1 July 2013 registered unemployed persons at the territorial employment agencies receive health insurance free of charge from the state¹².

3. Internally displaced persons

The population of the Republic of Moldova residing on the left bank of Dniestr River has the same rights and duties as nationals residing on the right bank.

In the context of Transnistrian conflict in 1992 the Government created a special Republican Commission for the coordination of actions referring to material provisions for refugees. Under the term “refugee” were considered persons forced to flee their homes from the left bank of Dniester River. It should be mentioned that Moldova joined the 1951 Convention only in 2001 and UNHCR office was opened in Moldova in 1997, thus the confusion referred to terminology. The Commission was in charge of coordinating the actions at the new living place of IDPs; solving problems between arrivers and local authorities; and helping solve issues relating to employment and allowances. Additionally in the context of the conflict and its consequences the Government, through a decision in that period, ordered the local authorities: to prepare temporary accommodation; to provide food and water; and to create conditions for child care, employment and social protection. These decisions were abolished, in 2001, when the Government paid to Chisinau municipality (capital of the country) for offering living conditions to some IDPs families for the period of time 1997-2000.

In 2004 the Government approved an action plan for providing IDPs with living spaces: this was already the correct term with respect to these persons.

Furthermore in 2005 the Law regarding basic provisions of the special legal status of localities from the left bank of Nistru river (Transnistria)¹³ was adopted. The Law refers to the creation in Transnistria, after its demilitarization and democratization, of an autonomous territorial unit with special legal status (Article 3 para. (1). The Law underlines the future structure(Article 3), principles, inter-connection of the bodies, and an assurance of the rights of the Transnistrian population, within the future Law on special legal status of Transnistria (Article 1). The Law establishes the necessity to humanitarian, political, social-economic, legal assistance to the population of Transnistria in order to get over the consequences of the conflict.

¹¹Law no. 275 of 10 November 1994, published in Monitorul Oficial no. 20 of 29 December 1994

¹²Law no. 1585 on compulsory health insurance of 27 February 1998, published in Monitorul Oficial no. 38-39 f 30 April 1998

¹³Adopted on 22 July 2005, published in Monitorul Oficial no. 101-103 of 29 July 2005

In order to implement the provisions of the Law and to ensure that all state authorities will make efforts in order to grant guarantees to the population from Transnistria. Through a Government Decision¹⁴ it was decided that guarantees should refer to property rights, social protection, including wages, pensions, scholarships, social benefits, allowances, bonuses, healthcare and access to other social services. This would apply to all categories of population from Transnistria, at the same level as established in the country's itself.

With a view to promoting and achieving the reintegration goal, in 2011 the Government Commission for country's reintegration¹⁵ was created with the following responsibilities:

- ensuring and coordinating the promotion by all national institutions of the Republic of Moldova of a single policy in the field of the country's reintegration,
- examining proposals drafted by the public authorities, with a view to creating conditions for the reintegration of the Transnistrian region in the economic, informational, political, social and cultural domains of the Republic of Moldova,
- examining, based on the information of public authorities, the evolution of the social-political and economic situation in the communities from the Transnistria region of the Republic of Moldova, including from the security zone.
- coordinating the actions of solving the identified problems and ensures their implementation
- presenting, if need be, to the president of the country and to the Parliament proposals with a view to taking decisions in the process of achieving the reintegration of the country.

At present the Bureau for Reintegration within the State Chancellery is the body responsible for implementation of the reintegration policies of the county, being subordinated to the deputy-prime minister. The main mission of the Bureau is to promote Government policy on territorial, political, economic, and social reintegration of the Republic of Moldova, to conduct consultations and negotiations to resolve the Transnistrian conflict. They develop the legislative framework and grant necessary assistance to the deputy prime minister responsible for the country's reintegration policies (Point 1 of the Bureau's Regulation).

In order to ensure the effective implementation of the Presidential initiative on confidence and security in the Transnistrian conflict settlement and social assistance to the population of left bank communities a government decision was made in 2007. The decision¹⁶ created specialized working groups, which cover major domains, with participation of state institutions including representatives from Transnistrian region.

For ensuring the rights of the Transnistrian population to documentation, the Government Decision of 2005¹⁷ established that persons domiciled in Transnistria, who fulfill the conditions relating to citizenship could confirm citizenship of the Republic of Moldova. They could do so by applying the respective stamp in the Soviet type passport (model of 1974). The passports are valid for an indefinite period if the citizenship of the republic of Moldova and personal number are indicated. Persons registered in Transnistria up to 10 September 2005, receive identity documents from the national passport system free of charge (Point 1) only once. Recognition of 1974 passport by the Moldavian authorities as an identity document of internal use results from the provisions of the new Government Decision of 2013. This approved the Regulation on issuing identity acts and the evidence of the inhabitants of the Republic of Moldova.¹⁸ Additionally the Regulation grants the possibility of changing the passport with an identity document (Point 21 para. (2)).

¹⁴Government Decision no. 814 of 2 August 2005, published in Monitorul Oficial no. 104-106 of 5 August 2005

¹⁵Government Decision no. 132 of 4 March 2011, published in Monitorul Oficial no. 39 of 15 March 2011

¹⁶Government Decision no. 1178 of 31 October 2007, published in Monitorul Oficial no. 175-177 of 9 November 2007

¹⁷Government Decision no. 959 of 9 September 2005, published in Monitorul Oficial no. 123-125 of 16 September 1995

¹⁸Government Decision no. 125 of 18 February 2013, published in Monitorul Oficial 36-40 of 22 February 2013, in force since 7 March 2013