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The Legal Framework for Circular Migration in Moldova

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1. International legal framework

1.1 Circular migration between MD and EU Members States

One of the main goals of the Joint Declaration on Mobility Partnerships between the European Union and the Republic of Moldova, signed 5 May 2008, was the facilitation of legal migration including circular and temporary migration, in particular for development purposes. In this regard circular migration schemes are viewed as a way to strengthen the capacity of Moldova to manage labor migration and to counteract illegal emigration. This kind of scheme will allow nationals to leave the country for a specific period of time and not to break off contacts with their country of origin.

A good example in this regard is the Agreement on Labor Migration and an Implementation Protocol thereof with the Government of Italy signed 5 July 2011¹ which provided for:

- development of circular migration schemes for Moldavian workers,
- joint technical assistance projects,
- implementation of common initiatives for Moldavian citizens staying in Italy,
- organization of vocational training and Italian language courses, offered by Italian institutions in the Republic of Moldova.

It is important to mention that Article 12 of the Agreement gives the same rights, protection and social security to migrants as to nationals. The present Agreement has an Implementing Protocol which defines the operational mechanisms especially relating to: technical assistance, training programs, circular migration schemes and seasonal work for citizens of the Republic of Moldova with a view to raising their qualifications and the reintegration of Moldovans who want to return². Candidates from the Republic of Moldova who participate in training programmes can be included in a preferential list and will be able to obtain a preferential status when entering Italy with a view to perform labor activities in the domain of their training program³.

Under Agreement and Protocol both countries are willing to promote activities for the voluntary return of Moldovan citizens and the promotion of circular migration programmes for some categories of workers. Chapter III of the Protocol refers to “Circular migration” being regulated separately, the return in Paragraph 1 and seasonal work in Paragraph II. Thus according to Article 7 of the Protocol Italy will undertake measures for facilitating the return of Moldovan citizens through promoting circular migration programmes for certain categories of workers established by both parties. The Protocol establishes the period of time for seasonal work at a maximum of 9 months with a resident permit which cannot be renewed. It allows Moldovan citizens to work with several employers⁴. If the seasonal worker returns to his/her country of origin within the established terms after the expiry of the work permit, he/she will be given priority when applying for repeated entrance to Italy the year afterwards (Article 9). Thus the Agreement will allow both:

- the selection and maintenance of trained professionals in a specific domain, and
- continuity and maintenance of stable jobs for Moldovan nationals and Italian employers depending on qualifications and skills.

¹ Agreement was approved by Government Decision No. 620 of 18.08.2011 (Monitorul Oficial; No. 139-145 of 26.08.2011).

² Article 1 of the Protocol.

³ Article 5 of the Protocol.

⁴ Article 8 of the Protocol.

Both the Agreement and the Protocol refer to the importance of informing the general public in Moldova and Italy about the provisions of the treaties. The implementation of this Agreement might serve as an example when negotiating with other EU countries. It will decrease illegal migration for the purposes of work and it will avoid the negative social impacts of migration including destroyed families and the need to permanently leave the country of origin. Fulfilling the provisions of the Agreement and its Protocol Moldova would become a trusted partner when negotiating labor migration agreements.

10 October 2010 the Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas was signed in Brussels. The purpose of the document was to facilitate the issuance of visas to the citizens of the Republic of Moldova for an intended stay of no more than 90 days *per* period of 180 days. This Agreement refers more to temporary migration and the benefits of a person who acquires the visa, being motivated by a specific goal, like for example an official visit, participation in a conference etc. Labor migrants are not included in the present Agreement.

Agreements on Social Security

The Republic of Moldova signed agreements in the social security/assistance domain and arrangements for their implementation with Austria, 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.

Taking into consideration that these agreements were signed with the main countries of destination (labor migration) they will have a positive impact on Moldovan migrants upon their future retirement.

1.2 Circular migration between MD and other post-Soviet states

Agreements signed at the CIS level do not contain express definitions relating to circular migration. 15 April 1994 the Republic of Moldova signed, together with other CIS states, an Agreement on cooperation in the field of labor migration and social protection for migrant workers. This was a major step in the mid-1990s, and it created the basis for later bilateral agreements on labor migration issues. The Agreement states that labor activity is based on a contract presented to the employee prior to his/her departure (Article 6). The Agreement also provides for a situation where the labor migrant is obliged to return to his country of origin and when the labor contract cannot be transmitted from one employer to another (Article 6). The Agreement provides for a social protection for labor migrants, excluding pensions (Article 10), it also puts down the recognition of qualifications (Article 4) and forbids double taxation (Article 7).

Based on this agreement, Moldova signed bilateral agreements with four countries: Ukraine⁵, Azerbaijan⁶, the Russian Federation⁷ and Belarus⁸ which regulate labor activity and the social protection of citizens working abroad. Agreements signed with Belarus, the Russian Federation and Ukraine contain virtually the same provisions on: labor activity which is based on a contract and a work permit; potential restrictions regarding the employment of workers due to some changes in the

⁵ 13.12.1993.

⁶ 21.04.2005.

⁷ 27.05.1993.

⁸ 05.05.1994.

situation of the national labor market; assurance of basic social rights and recognition of diplomas and a wide interpretation of assistance in cases of damages or even death of the worker. Additionally, the Agreement signed with Belarus contains a specific provision referring to the avoidance of discrimination in Article 2.⁹

At present a new agreement is under negotiation with the Russian Federation.

The Agreement signed with Azerbaijan in 2005 and ratified 15 December 2005¹⁰ is a more progressive one. The agreement defines “working-migrant”, “family member”, “employer”, “detached worker”, and “intern” (Article 1). The working migrant is defined by four elements: he or she is permanently residing on the territory of one of the Parties; is staying legally on the territory; is performing a paid labor activity on the territory of another Party; and he or she is not a citizen of this state and is not permanently residing here. Article 5 obliges the Parties to respect and assure rights protection of working-migrants and their family members, and warns against any discrimination based on sex, age, race, language, ethnical or social origin, religious or political opinion, nationality, property and civil status, or, indeed, any other element (Article 5). Article 7 regulates the content of the contract which is more detailed than the previous ones including: information on employee/employer, type of work, work conditions, salary, working and resting times, living conditions, transportation costs, medical insurance, conflict solving, validity of the individual employment contract and conditions of its dissolution (Article 7). According to Article 7 the employer is obliged to hire only working-migrants with a work permit granted in accordance with the legislation in force for each country respectively. The Agreement sets out the rights and duties of the employee and employer. For example, Article 10 grants the right for the working-migrant to use the services provided by medical, cultural, sports and other institutions. Article 12 obliges the employer to assure that the working-migrant and his/her family members have good living conditions which correspond to sanitary requirements; unless otherwise stated in the individual employment contract.

These agreements can be considered as facilitating circular migration as they provide for the temporary employment of migrants on the territory of the signatory party. At the same time, this is unorganized employment, but it is spontaneous circular migration.

According to Article 14(3) of Law 200 foreigners shall be allowed to stay in the Republic of Moldova uninterruptedly or multiple times for no more than 90 days within 6 months after the date of their first entrance into the country based on international treaties or regulatory documents unilaterally canceling the visa regime. Moldova signed Agreements with Ukraine 18 May 2001, with the Russian Federation 30 November 2000 and an additional Protocol 7 March 2006, with Azerbaijan 26 October 2004 and with Belarus 24 December 2004, which allows an entrance without visa for citizens of Contracting States.

Although Moldova concluded agreements on labor migration with these four countries, Moldovan citizens also travel to other CIS countries based on the 90 days entrance regime: e.g. Armenia, Kazakhstan, Kirghizstan, Tajikistan and Uzbekistan, these countries are not main destinations of Moldovan citizens.

Agreements on Social Security

The Republic of Moldova signed and ratified agreements on social security/assistance with the Russian Federation¹¹, Ukraine¹², Belarus¹³, Azerbaijan¹⁴, and Uzbekistan¹⁵. These agreements are

⁹“In accordance with international treaties on human rights Parties are obliged to respect and assure the rights of all workers, employed based on a contract, and members of their families, without discrimination based on sex, race, language and political view, ethical or social origin, nationality, age, property, civil status or any other element.”

¹⁰ Law no. 326 of 15.12.2005, published in Monitorul Oficial no. 1-4 of 06.01.2006.

¹¹ Signed on 10.02.1995, in force since 04.12.1995.

based on the principle of territoriality when establishing social benefits and they grant the same rights as for the citizens. Based on these agreements citizens of the Republic of Moldova and citizens of the mentioned states, as well as their family members, will receive pensions according to the legislation where they are permanently residing. It is important that these agreements also regulate the period when these states were part of the Soviet Union.

Moldova signed agreements with Belarus¹⁶ and Ukraine¹⁷ regulating the transfer and mutual payment of pensions. These provide that, in the case of the migration of a pensioner whose pension was established based on provisions absent in the legislation of the host country, the state which established the pension will continue to pay said pension until the right for pension in the host country is activated. Based on this provision in 2011 Moldova transferred payments in two cases.

1.3 Circular migration between MD and non-CIS(GE)/EU states

At the moment Moldova is negotiating an Agreement on labour migration with Israel.

2. National legal framework:

2.1 State policy

The policy promoted by the Republic of Moldova is reflected in the main national strategies, plans and programs which cover different strategic domain for the country. One of the main priorities of the National Strategy on Migration and Asylum (2011-2020)¹⁸ is the efficient management of controlled migration. This involves a complex and meshed approach of emigration problems including the reintegration of migrants returned home and the immigration of foreigners, as well as mechanisms for efficient social integration of third-country nationals legally residing on the territory of the Republic of Moldova (Point 21). In order to accomplish this goal the Government set several objectives:

- Objective I. Promotion of a circular migration model maximizing the positive effects of migration for the person, host society and Moldovan community in its entirety.
- Objective II. Countering irregular emigration for the purpose of work by streamlining the promoted measures at the pre emigration, emigration and post emigration stages, and effective control measures of the activity of mediation agencies providing employment abroad.
- Objective III. Counteracting and reducing brain drain, emigration of young people, women, providing safeguards for children without parental care after parent's departure for work abroad under national programs for these categories of people.
- Objective IV. Maximize the positive effects of circular migration through the transfer of knowledge and new skills upon the return of migrants, diversification of possibilities and the facilitation of investment conditions for remittances in own businesses from the real sector of

(Contd.) _____

¹² Signed on 29.08.1995, in force since 19.11.1996.

¹³ Signed on 12.09.1995, in force since 15.11.1996.

¹⁴ Signed on 27.11.1997, in force since 08.01.1999.

¹⁵ Signed on 30.03.1995, in force since 28.11.1995.

¹⁶ Signed and entered into force on 22.08.2001.

¹⁷ Signed and entered into force on 23.10.1998.

¹⁸ Approved through Government Decision no. 655 of 08.09.2011 (published in Monitorul Oficial no. 152-155 of 16.09.2011) The National Strategy on Migration and Asylum (2011-2020) is the national document intended to ensure regulation of the movement and mobility of citizens, in order to contribute to the prosperity of the country's population, its social and economic development and the rights and social security of migrants.

the economy, stimulation of foundation of joint enterprises with the participation of migrants and support of patrons/employers from the host countries etc.

- Objective V. Capacity building of diplomatic missions abroad and consular posts in order to provide professional services to ensure social and economic rights for migrant workers, ensuring an effective dialogue with the community and the Moldovan Diaspora in the host country, while providing information and other assistance upon the return/repatriation of migrants in the country etc.
- Objective VI. Strengthen ties with diaspora and promotion of “social remittances” transfers- democracy, economy, culture, gender relations, organizational and community practices, contributing to the overall development process in the country.

26 December 2011 the Action Plan for the implementation of the Strategy for the period 2011-2015 was approved¹⁹. The plan sets specific objectives for each domain and necessary actions for their implementation, responsibilities being established for each public authority. As an example Objective 8 of the Plan sets promotion of circular migration model by:

- studying the best practices and capacity building of the responsible authorities in identifying the optimal model of circular migration;
- exploring possibilities for launching circular/seasonal migration initiatives and voluntary return with the main countries of destination;
- developing projects with a view to transfer knowledge and new skills upon the return of emigrants into the country;
- institutional capacity building with a view to elaborate, negotiate and accomplish circular migration programs and the reintegration of work migrants.

2.2 Freedom of movement for MD citizens

The Republic of Moldova’s Constitution, 29 July 1994, states in Article 18 that citizens enjoy the protection of their State both at home and abroad²⁰. Article 27 of the Constitution states that every citizen of the Republic of Moldova 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.

The legislation in force does not establish any timeframes for citizens to leave the country. The only precondition is the possession of proper documentation. According to Art. 1 of the Law on exit and entry to the Republic of Moldova, citizens of the Republic of Moldova have the right to exit and enter the Republic of Moldova based on their passports, and stateless persons, refugees and beneficiaries of humanitarian protection can do the same based on their travel documents. From 15 May 2012 citizens of the Republic of Moldova, regardless of their domicile or residence, have the right to enter the Republic of Moldova based on a travel authorization issued by the diplomatic missions or consular posts of the Republic of Moldova: this is true also for stateless persons and foreign citizens with permanent resident rights in the Republic of Moldova who are abroad and who have no valid travel documents for returning to the Republic of Moldova²¹. At the same time Art. 8 of the law sets out the conditions when issuance or prolongation of a new passport or travel document is refused, mainly referring to national security, public order or possession of some debts towards the state.

The new Law on the border of the Republic of Moldova of 11 April 2011²², which partially transposed the European *acquis* in this domain, entered into force 1 July 2012. Article 15 states that

¹⁹ Government Decision no. 1009 of 26.12.2011, published in Monitorul Oficial no. 1-6 of 06.01.2012.

²⁰ Published in Monitorul Oficial No. 1, art No.: 1, 18 August 1994.

²¹ Article 1¹ Law on exit and entry in the Republic of Moldova.

²² Published in Monitorul Oficial no. 76-80 of 20.04.2012.

authorization for crossing the state border consists of the recognition of lawfulness regarding crossing the state border, and the grounds for authorization represents valid travel documents provided for by the legislation in force. Art. 22 regulates the situation where a person has no documents for crossing the state border, even if he/she declares themselves to be a citizen of the Republic of Moldova.

Though legislation proclaims freedom of movement the Law on labor migration of 10 July 2008²³ sets restrictions for the emigrations of citizens abroad in Article 23 referring to:

- a court decision in a criminal case;
- a court decision regarding debts towards the state or natural/legal persons;
- presentation of a confirmation document regarding evidence of minors who remain in the country, issued by the competent body for child protection from the domicile region/district of parents;
- other cases provided for by the law.

2.3 Citizenship

If an individual receives citizenship of the Republic of Moldova, the Constitution and the Law on citizenship of the Republic of Moldova states that plurality of citizenship is allowed.²⁴ As for citizens of the Republic of Moldova who possess the citizenship of another state, in relations with the Republic of Moldova they are recognized only as its citizens except for specific cases provided for by legislation.²⁵

The Law on the regime for foreigners sets more favorable conditions for some categories of persons. Thus, according to Article 43(1) of the Law on the regime for foreigners, temporary residence rights may be granted or extended to foreigners who are entitled to acquire the citizenship of the Republic of Moldova through recognition or re-acquisition. Moreover, a permanent residence right shall be granted to foreigners who are entitled to restore their Moldovan citizenship through recognition and who meet the following requirements:

- They possess a living space;
- They speak the official language to a satisfactory level;
- They have had no criminal record in the last 3 years.²⁶

The language element is very important and without sufficient knowledge, the person will be able to apply only for a temporary resident permit.

At the same time, Law no. 200 grants the repatriation right to individuals born in the Republic of Moldova who, for certain reasons, did not receive the citizenship of the Republic of Moldova. It also grants citizenship to their descendants regardless of their place of residence. These persons are entitled to confirmation of repatriation from the competent authorities for foreigners and based on this confirmation they can receive permanent residence permits on the territory of the Republic of Moldova or an ID card for stateless persons (Article 87).

2.4 Regularity of back-and-forth movement of foreign citizens

Holders of temporary/permanent resident rights cannot be subject to any restrictions regarding their freedom of movement during the validity of their permit. According to Art. 6(5) of the Law on the

²³Published in Monitorul Oficial no. 162-164 of 29.08.2008, in force since 01.01.2009.

²⁴ Art. 24 of the Law on Citizenship.

²⁵ Art. 24(4) of the Law on Citizenship.

²⁶ Art. 45 of the Law on the Regime for Foreigners.

regime for foreigners in the Republic of Moldova²⁷, “Foreigners who domicile in the Republic of Moldova on legal grounds and temporarily leave its territory are entitled to reenter the country without an exit/entry visa during the whole validity period of their resident permit”. Thus, as in the case of citizens, their return is conditioned by the validity of the document which allows staying for a specific purpose. For example, in the case of beneficiaries of a form of protection in Moldova, they are entitled to enter to the country by presenting the ID which proves their status. The Law on asylum in the Republic of Moldova gives two different situations for refugees and beneficiaries of humanitarian protection. For a recognized refugee, holding an ID valid for five years²⁸ there is no restriction of movement within this period of time. In case of a beneficiary of humanitarian protection his/her situation is limited to ID validity for one year²⁹.

The foreigner shall not be allowed to leave the country if he is part of a criminal case or was convicted based on a final court judgment (Article 12(2) of the Law on the regime for foreigners).

2.5 Stability and flexibility of residence

The Law on the regime for foreigners in the Republic of Moldova³⁰ states in Article 4 that foreigners legally residing in the Republic of Moldova enjoy the same rights and freedoms as citizens, with the exceptions established by the legislation in force.

The general rules set in the Law on the regime for foreigners is that foreigners who stay on the territory of the Republic of Moldova must follow the purpose for which they have been granted the right of entry into and the residence right in the country, as applicable. Likewise, they must leave the territory of the Republic of Moldova upon the expiration of the granted period of residence (Article 4(5)). The validity of a temporary residence permit is limited to the period for which the holder’s right of temporary residence in the Republic of Moldova was granted or extended (Article 74(1)). Holders of temporary residence rights who leave the country upon expiration of their residence permit and who want to return to Moldova, will have to pass through the standard procedure established by the Law for each category of immigrant.

The Law on foreigners provides for the cessation of the permanent residence right in case the foreigner has been absent from the territory of the Republic of Moldova for more than twelve consecutive months (Article 45(7)(c)). In this case the foreigner may submit a new application for receiving the rights of permanent residence in the Republic of Moldova after a legal twelve month temporary stay.

Conclusion

With a view to obtaining the liberalization of the visa regime with the EU the Republic of Moldova is willing to assume new obligations, This willingness goes beyond merely rhetorical points and includes the readiness to take concrete steps in national documents. An example in this respect is the National Strategy on Migration and Asylum which is the basis for future steps for the central public authorities in migration management, and where the promotion of the circular migration is included:

In the Moldovan context circular migration should be seen as a way for:

- development
- stopping illegal emigration trends

²⁷ Law of 16.07.2010, published in Monitorul Oficial no. 179-181 of 24.09.2010, in force since 24.12.2010.

²⁸ Article 36 of the Law no. 270 of 18 December 2008.

²⁹ Article 37 of the Law no. 270 of 18 December 2008.

³⁰ Law of 16.07.2010, published in Monitorul Oficial no. 179-181 of 24.09.2010, in force since 24.12.2010.

- regulating relations between destination countries by seeking out benefits for both parties
- directing remittances by reducing their use in daily consumption and prioritizing their investment
- social protection and security of nationals
- granting a bigger role to the diaspora and its inclusion in the state's activities relating to migration.

At the moment the legislation in force is limited to granting the right to stay for foreigners who enter the country and determines maintenance of this right based on the validity of a resident permit. When re-entering the country and/or re-applying for a residency right the authorities will check if the person fulfills the conditions for granting the respective right rather than the benefit for the country.

For the Republic of Moldova circular migration, even as a concept, is something new and unexplored. Besides the Agreement and Protocol signed with Italy other bilateral agreements have a rather limited content, concentrating more on social aspects. At the same time the implementation of the Italian Agreement, based on circular migration schemes, is a challenge for the authorities. After all, the population who wanted to emigrate from Moldova is already settled out of the country or does not want to return.

For the Republic of Moldova circular migration is a perspective for “keeping” nationals in the country and for avoiding the negative impact of emigration and a way for stimulating nationals to invest in the country.