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# *The Systematic Composition of Migration-related Legislation in the Republic of Moldova*

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## 1. Main characteristics of the Law on the Regime for Foreigners

*Law No. 200 on the Regime for Foreigners in the Republic of Moldova* of 16.07.2010<sup>1</sup>, which partially transposed the European *acquis*, following Moldova's EU integration vector, can be considered as a main pillar of the national legal framework for migration. According to Art. 1:

“This law regulates foreigners' entry into, stay on and departure from the territory of the Republic of Moldova, granting and prolongation of the residence right, repatriation and documentation thereof; it specifies enforcement measures in case of violation of the residence regime and special immigration registration measures”.

The Law states that the competent authority for foreigners is the Bureau for Migration and Asylum of the Ministry of Internal Affairs, performing duties related to the regime of foreigners in the Republic of Moldova, as well as to the management of the registration of foreigners who have been granted residence in the Republic of Moldova.<sup>2</sup>

The Law sets out the general framework, while specific rules and procedures accompanying all the areas covered by it are additionally regulated through governmental decisions and other relevant acts, as will be set out below.

## 2. Visas

Law No. 200 states in Art. 26 that it falls within the competence of the Parliament to abolish unilaterally the visa regime. The visa regime can also be abolished by means of international treaties, under the conditions and for the periods of stay set out therein. The relevant legal act in this respect is *Law No. 151 of 08.06.2006*<sup>3</sup> regarding abolition of the visa regime for citizens of the EU Member States, the United States of America, Canada, the Swiss Confederation, the Kingdom of Norway, Island, the Principality of Andorra, the State of Israel, the Principality of Liechtenstein, the Principality of Monaco, the Holy See and Japan. This Law was adopted with a view to strengthening cooperation with these countries.

Law No. 200 determines further in Art. 27 that the Ministry of Foreign Affairs and European Integration together with the Ministry of Internal Affairs and other competent authorities of the Republic of Moldova shall adopt a list of states whose citizens will receive visas on the basis of invitation, approved by a Government decision. To implement this provision, the Government adopted *Decision No. 331 of 05.05.2011*<sup>4</sup>, regarding issuance of invitations to foreigners, which approved the Regulation on the procedure for issuing invitations to foreigners and the list provided for by the Law (115 states). The Regulation establishes the procedure for issuing invitations by the competent authority for foreigners (at present, the Bureau of Migration and Asylum of the Ministry of Internal Affairs) the form, content and the elements of security.<sup>5</sup>

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<sup>1</sup> Monitorul Oficial No. 179-181 of 24.09.2010, entered into force on the 24.12.2010.

<sup>2</sup> Article 3.

<sup>3</sup> Monitorul Oficial No. 102-105 of 07.07.2006. According to the Law starting from 1.1.2007 the visa regime was abolished for citizens of the EU Member States, Canada, the Swiss Confederation, the Kingdom of Norway, Island and Japan, and starting from 1.6.2010 - for the rest of the countries.

<sup>4</sup> Published in Monitorul Oficial No. 78-81 of 13.05.2011.

<sup>5</sup> The taxes for the preparation and issuance of invitations are paid according to *Law No. 1216-XII of 03.12.1992 on the state tax* (Monitorul Oficial No. 53-55 of 02.04.2004) and *Government Decision No. 508 of 11.05.2006* (Monitorul Oficial No. 75-78 of 19.05.2006) regarding the approbation of the list of paid services and their amounts, as well as the Regulation on the formation and use of special means of the Ministry of Interior subdivisions.

When applying for visa a foreign national must present evidence of means of support for staying in and departing from the Republic of Moldova. According to Art. 23 para. (3) of the Law nr. 200:

“Means of support shall be assessed according to the duration and purpose of stay and according to the average accommodation and food prices in the Republic of Moldova multiplied by the number of days of stay.”

The minimum means of support for foreigners in the Republic of Moldova was approved by *Government Decision No. 332 of 05.05.2011*,<sup>6</sup> which determines that when applying for an entry visa, the visitor shall have at least 30 €/per day for the entire period, and not less than 300 € overall.

### 3. Labour migration

*Law No. 180 on labor migration of 10.07.2008*<sup>7</sup>, which is the central normative act in this area, regulates the performance of temporary labour activities by immigrant workers, the conditions for the granting, renewal and revocation of the right to work and subsequent residence (temporary) permits, as well as the conditions for the temporary employment of the citizens of the Republic of Moldova abroad.

Foreign citizens and stateless persons can immigrate to the Republic of Moldova for working purposes within the limits of the quota set by the Government on an annual basis, at the proposal of the Ministry of Labor, Social Protection and Family and by taking into account the necessities of the national economy. According to *Government Decision No. 74 of 04.02.2011*<sup>8</sup>, the quota for 2011 is – 1300 persons.

It should also be mentioned that Art. 334 of the *Contravention Code of the Republic of Moldova* of 24.10.2008 stipulates sanctions for violations of rules for employing foreign citizens and stateless persons.

In order to create the conditions for the return of Moldavian citizens the Government, by adopting *the Decision No. 1133 of 09.10.2008*, approved *the Action Plan on stimulating the return of Moldavian migrants working abroad*<sup>9</sup>, with a view, first, to creating opportunities in Moldova, second, to strengthening the relations with Diaspora through diplomatic missions, third, to offering information and services and, fourth, to preventing permanent emigration.

As regards labour migration agreements, reference should be made to those concluded with the Community of Independent States. Moreover, the Government of Moldova signed on 05.07.2011 an *Agreement on labor migration and an Implementation Protocol thereof with the Government of Italy*,<sup>10</sup> which replaced a previous one signed in 2003. With this agreement the Italian Government undertakes to favor the citizens of the Republic of Moldova by granting a special entry quota specifying that a quarter of this quota will be managed by the relevant Moldavian Ministry. Furthermore, the agreement provides for, among other things:

- development of circular migration schemes for Moldavian workers,
- joint projects of technical assistance,
- implementation of common initiatives for Moldavian citizens in Italy,

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<sup>6</sup> Monitorul Oficial No. 78-81 of 13.05.2011.

<sup>7</sup> Monitorul Oficial No. 162-164 of 29.08.2008, in force since 01.01.2009.

<sup>8</sup> Government Decision No. 74 of 04.02.2011 on setting the immigration quota for the purpose of work in the Republic of Moldova for 2011 (Monitorul Oficial No. 25-27 of 11.02.2011).

<sup>9</sup> Monitorul Oficial No. 187-188 of 17.10.2008.

<sup>10</sup> This Agreement was approved by Government Decision No. 620 of 18.08.2011 (Monitorul Oficial; No. 139-145 of 26.08.2011)

- organization of vocational training and Italian language courses, offered by Italian institutions in the Republic of Moldova.

#### 4. Permanent residence

The general conditions related to the right of permanent residence are established in chapters V-VI of Law No. 200. Apart from the possession of necessary funds for self-maintenance, as specified in Government Decision No. 332 of 05.05.2011, an important condition for granting the afore-mentioned right is that a given foreigner has satisfactory knowledge of the official language. The Government, in fact, by *Decision No. 524 of 11.07.2011*,<sup>11</sup> approved *the Regulation on the evaluation of linguistic competence and establishment of the knowledge level of the state language by foreigners that request permanent residence right in the Republic of Moldova* which, among other things, approves a sample of the certificate that testifies knowledge of the state language, and establishes the relevant competences of the Ministry of Education and the Examination Commission for the evaluation of knowledge of the Constitution and the state language.<sup>12</sup>

#### 5. Rights and obligations of foreigners

*Art. 19 of the Constitution of the Republic of Moldova of 29.07.1994*<sup>13</sup> provides that foreign citizens and stateless persons have the same rights and duties as the citizens of the Republic of Moldova, with exceptions established by the law.

According to Art. 4 of the Law No. 200:

“foreigners who stay in the Republic of Moldova on legal grounds enjoy the same rights and freedoms as the citizens of the Republic of Moldova, guaranteed by the Constitution of the Republic of Moldova and other laws, as well as rights provided by the international treaties the Republic of Moldova is a party to, with exceptions established by the legislation in force”.

Art. 5 of *Law No. 275, of 10.11.1994 on the legal status of foreign citizens and stateless persons*<sup>14</sup> contains a similar passage stating that foreigners have the same rights as the citizens of the Republic of Moldova, with some exceptions for the most part relating to political rights. Apart from this, the Law enumerates specific rights of foreigners, including rights to social protection, education, freedom of movement, participation in the court, etc.

#### 6. Documentation

According to Art. 72 of the Law No. 200, applications for the issue of identity documents for foreigners shall be submitted to the One Stop Shop within the competent authority for foreigners, i.e. the Bureau of Migration and Asylum. *The One Stop Shop* was implemented through *Government Decision No. 1187 of 22.12.2010*<sup>15</sup>, and was created in order to improve and simplify the documentation mechanism related to foreigners who immigrate to the Republic of Moldova, thus establishing a single procedure for the reception of applications.

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<sup>11</sup> Monitorul Oficial No. 114-116 of 15.07.2011.

<sup>12</sup> The Commission for the evaluation knowledge of the Constitution of the Republic of Moldova and the state language was created through Government Decision No. 1279 of 19.11.2001, published in Monitorul Oficial No. 141-143 of 22.11.2001.

<sup>13</sup> Monitorul Oficial No. 1 of 18.08.1994, in force since 27.08.1994.

<sup>14</sup> Monitorul Oficial No. 20 of 29.12.1994.

<sup>15</sup> Monitorul Oficial No. 259-263 of 31.12.2010

All identity documents issued in the Republic of Moldova are included in the National Passport System. The respective *Law No. 273 of 09.11.1994 on identity documents of the National Passport System*<sup>16</sup> enumerates those documents, including also the temporary or permanent resident permits, which form the national passport system.

Regulation on issuing and handing over the identity documents of the National Passport System approved by *Government Decision No. 376 of 06.06.1995 on the additional measures of implementation of the National Passport System*<sup>17</sup> deals in Chapter VI with identity documents issued to foreign citizens and to stateless persons: which documents must be presented, responsible authorities etc. The Regulation also establishes the evidence rules for inhabitants of the Republic of Moldova. In July 2011, a new modification was introduced to these rules regarding foreign citizens and stateless persons who enter Moldova across the part of the Moldavian-Ukrainian border not controlled by Moldavian authorities (the Transnistrian region), introducing the obligation to register within 72 hours from the moment of crossing said border.<sup>18</sup>

## 7. Migration and Asylum Information System

*Government Decision No. 1401 of 13.12.2007* approved the *Concept of the Integrated Automated Migration and Asylum Information System*<sup>19</sup>. The system represents a pooling of automated information systems of state importance that contain data on foreigners, and that allows the keeping of evidence on and control over migrants (except internal migrants), as well as delivering statistical and analytical data.

## 8. Irregular stay

This area is regulated by several legal acts in the Republic of Moldova. So, while the *Contravention Code of the Republic of Moldova*, No. 218 of 24.10.2008<sup>20</sup> provides sanctions for illegal stay on the territory of Moldova in Arts. 332-333,<sup>21</sup> the *Law No. 200 on the regime for foreigners in the Republic of Moldova* of 16.07.2010 establishes in chapter VII the regime for foreigners' removal from Moldavian territory. *Art. 105 of the Penal Code* of 18.04.2002, as well as *Art. 40 of the Contravention Code* are also devoted to the issue of expulsion.

Furthermore, through *Decision No. 492 of 07.07.2011*<sup>22</sup> the Government approved the Regulation on the return, expulsion and readmission procedures for foreigners from the territory of the Republic of Moldova. This Regulation applies to foreigners covered by *Art. 51 of the Law No. 200*<sup>23</sup> and establishes procedures concerning return, deportation under escort, deportation based on readmission agreements, assisted voluntary return, expulsion, and the declaration of *personae non grata*. In addition, the aforementioned Decision determines cases where the removal of a foreigner from the said territory is prohibited.

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<sup>16</sup> Law No. 273 on identity documents of the National Passport System (Monitorul Oficial No. 9 of 09.02.1995)

<sup>17</sup> Monitorul Oficial No. 47 of 24.08.1995

<sup>18</sup> Point 29<sup>1</sup>.

<sup>19</sup> Monitorul Oficial No. 203-206 of 28.12.2007

<sup>20</sup> Monitorul Oficial No. 3-6 of 16.01.2009. In force since 31.05.2009.

<sup>21</sup> Article 332 (Violations of state border rules and of rules for crossing state borders), Article 333 (Violations of rules for staying in the Republic of Moldova).

<sup>22</sup> Monitorul Oficial No. 114-116 of 15.07.2011.

<sup>23</sup> These are foreigners who entered the Republic of Moldova illegally or whose stay on this territory became illegal or whose visa or residence right was cancelled or revoked or who were denied an extension of the temporary residence right or whose temporary residence right has expired, as well as former applicants for asylum.

According to Government Decision No. 492, Point 54:

“the competent authority for foreigners is responsible for carrying out the expulsion measures of the foreigner who committed a contravention or a crime on the territory of the Republic of Moldova if there is a definitive court decision on this case.”

If a foreigner has no identity documents to cross the state border or lacks sufficient financial sources, the competent authority for foreign nationals, i.e. the Bureau of Migration and Asylum, shall ask the court to place him/her under public custody until the expulsion is executed.

According to Art. 40 of the Penal Code and Art. 65 of the Law No. 200, foreigners placed under public custody shall be placed into the Temporary Placement Center for Foreigners which is a specialized organization managed by the competent authority for foreigners, i.e. the Bureau of Migration and Asylum. The relevant provision of the Law is further specified by the following by-laws:

- *The Regulation of the Temporary Placement Center for Foreigners approved by Government Decision No. 493 of 07.07.2011*<sup>24</sup> It should be mentioned too that the Regulation partially transposed the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally resident third-country nationals.
- *The Government Decision No. 332 of 23.04.2009 approving the minimum daily ration for food and norms for hygiene products for the persons that stay in the Temporary Placement Center for Foreigners.*<sup>25</sup> The Decision takes into account the categories of persons placed in the Center when establishing their ration: minors, sick people, invalids, pregnant women, women who breastfeed and foreigners under escort.

## 9. Readmission

The Republic of Moldova and the European Community signed the *Agreement on the readmission of persons residing without authorization* on 10.10.2007<sup>26</sup> with a view to strengthening cooperation in combating illegal immigration more effectively. The provisions of the Agreement are included in the signed Agreements/Protocols and provide for readmission obligations drawn up in a reciprocal way comprising own or third country nationals as well as stateless persons who have acquired no other nationality. Moldova shall also readmit persons who have been deprived of, or who have renounced the nationality of Moldova since entering the territory of a Member State, unless such persons have at least been promised naturalization by a Member State. Moldova has readmission agreements signed with Austria, the Czech Republic, the Swiss Confederation, Denmark, Estonia, Germany, Hungary, Italy, Latvia, Lithuania, Macedonia, Norway, Poland, Romania, Serbia, Slovakia and its neighbour Ukraine (the agreement with Ukraine was signed in 1997). According to Art. 20 of the EU-Moldova Agreement

“The provisions of this Agreement shall take precedence over the provisions of any bilateral agreement or arrangement on the readmission of persons residing without authorization which have been or may, under Article 19, be concluded between individual Member States and Moldova, in so far as the provisions of the latter are incompatible with those of this Agreement.”

According to Government Decision No. 492 (see above) the Bureau of Migration and Asylum decides on the removal of foreigners from the territory of the country based on the readmission agreements concluded between the Republic of Moldova and other states.

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<sup>24</sup> Monitorul Oficial No. 118-121 of 22.07.2011.

<sup>25</sup> Monitorul Oficial No. 86-88 of 08.05.2009.

<sup>26</sup> Official Journal of the European Union, entered into force on the 01.01.2008.

## Conclusion

Moldova is at the stage of elaborating the new legal framework that covers the migration domain. The main legal act, Law No. 200, has been, since December 2010, in force and, at present, Moldova elaborates the normative acts aimed at specifying and implementing the relevant provisions of the Law. In order to control this process the Government approved 2 Decisions:

- Government Decision No. 792 of 03.09.2010 which approved the Action Plan on migration and asylum domain for the period 2010-2011
- Government Decision No. 122 of 04.03.2011 which approved the National Program for the implementation of the Republic of Moldova-European Union Action Plan on visa liberalization regime<sup>27</sup>.

The most important challenge faced by Moldova at the moment is to see how all these legal acts will be implemented in practice, i.e. how they will be interpreted and understood by authorities responsible for their direct application. Another issue is if European standards transposed into legislation will fill the existing gaps, if the state is willing to commit politically and financially, and if the Law will work in practice. An example here might be the tolerated stay, which is a new notion for Moldova, the introduction of which aims at avoiding abuses of the asylum system or solving, for a short period of time, the situation of stateless persons.

In order to improve the coordination and supervision mechanism of central public authorities vested with duties related to migration management, the Government, by its Decision No. 133 of 23.02.2010, established the Commission for the Coordination of Certain Activities relating to the Migration Process which is a permanent consultative body to the Government, assuring the monitoring of and cooperation between the relevant authorities.

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<sup>27</sup> This Program focuses, in the migration domain, on strengthening the legal framework regarding: migration policy, adoption of measures for the reintegration of Moldavian citizens (voluntarily returned or readmitted based on the Readmission Agreement with EU), including signing readmission agreements with main countries of origin and the identification of detecting illegal migration; the adoption of a National Strategy of Migration Management, for the efficient implementation of the legal framework in the migration policy domain and an Action Plan with specific objectives, terms, results, performance indicators, human resources and sufficient financial sources; The establishment of a monitoring mechanism for migration groups and fluxes by defining the migration profile of the Republic of Moldova, regularly updated on legal and illegal migration; as well as through the establishment of responsible authorities for collecting and analyzing the data regarding migration groups and fluxes.