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The Systematic Composition of Asylum-related Legislation in the Republic of Moldova

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Introduction

The legislation of the Republic of Moldova in the refugee and asylum field comprises relevant constitutional provisions, international treaties, specific laws and implementing by-laws.

Art. 19(2) of the Constitution of the Republic of Moldova of 1994¹ states that

“The right to asylum shall be granted and denied by rule of law in compliance with those international treaties the Republic of Moldova is a party to”.

Before discussing different aspects of the Law on Asylum, it should be noted that Moldova acceded to the 1951 Convention relating to the status of refugees and the 1967 Protocol in 2001.² However, it formulated reservations, concerning the Transnistrian region, the most favorable treatment clauses, as well as Arts. 13³, 17(2)⁴, 21⁵, 24⁶ and 26⁷ of the Convention.⁸

1. Main characteristics of the Law on Asylum

The central legislative act within the Moldavian asylum system is Law No. 270 on *Asylum in the Republic of Moldova* of 18.12.2008.⁹ Apart from determining the legal status of asylum seekers and beneficiaries of any form of protection, the Law establishes four types of protection granted in Moldova, namely:

- a. refugee status in accordance with the 1951 Convention;
- b. humanitarian protection of 1 year duration;
- c. temporary protection granted by a Government Decision at the proposal of the Ministry of Internal Affairs, being of 1 year duration, with the possibility of extension up to a maximum of two years;
- d. political asylum.

The granting of political asylum falls in accordance with Art. 88 of the Constitution and Art. 27 of the Law No. 270 within the competence of the President. These rules are further specified by the *Regulation regarding granting of the political asylum by the President of the Republic of Moldova*¹⁰ which determines conditions, rules and grounds for granting political asylum to foreigners as well as their rights and duties (the same as for refugees). Applications for political asylum are examined by the Commission for Citizenship Problems and the Granting of Political Asylum under the President of Moldova, with the participation of other competent authorities. The period of examination shall not exceed 90 days. If the application for political asylum is rejected, the person can submit an application for refugee status according to the Law on Asylum.

¹ Published in Monitorul Oficial No. 1 of 18.08.1994, in force since 27.08.1994.

² The Law No. 677 of 23.11.2001 (Monitorul Oficial No. 150 of 11.12.2001), in force after its promulgation on 04.12.2001.

³ Movable and Immovable Property.

⁴ Wage-earning employment.

⁵ Housing.

⁶ Labour Legislation and Social Security.

⁷ Freedom of Movement.

⁸ Law No. 677, Art. 1.

⁹ Published in Monitorul Oficial No. 53-54 of 13.03.2009, entered into force on the 13.03.2009.

¹⁰ Approved by Presidential Decree No. 1506-III (Monitorul Oficial No. 223 of 07.11.2003).

Other matters in the Law on Asylum includes the regulation of procedures for granting, cessation and cancellation of the afore-mentioned types of protection. To this end, the Law determines three modes of asylum procedures:

- a. ordinary procedure;
- b. accelerated procedure, and
- c. procedure in the case of persons with special needs, unaccompanied minors, victims of torture or violence and persons with psychological disorders.

According to Art. 4 of Law No. 270, the Refugee Directorate of the Bureau of Migration and Asylum, a subdivision of the Ministry of Internal Affairs, is responsible for managing and solving the problems of asylum-seekers, refugees and beneficiaries of humanitarian or temporary protection.

It should be pointed out that Law No. 270 deals mainly with refugee status and humanitarian protection, paying less attention to temporary protection, which, in any case, has not yet been applied.

2. Judicial review

According to Law No. 270, the decisions of the Refugee Directorate on applications for asylum may be appealed in an administrative procedure without complying with the requirement of a preliminary procedure. The procedural part of the examination is regulated by two main documents:

- *Civil Procedural Code No. 225 of 30.05.2003*¹¹, which establishes the way the case is examined in the Court, the rights and obligation of the parts, and the legal requirements for each stage of the procedure;
- *Law No. 793 of 10.02.2000 on administrative courts*¹² which defines the object of the actions brought to the administrative courts, the acts exempted from judicial control, the jurisdictional competences of the administrative courts as well as the relevant procedures.

The decisions of the Refugees Directorate provided for in Art. 60 of Law No. 270 can be appealed at the Court of Appeal within 30 days of the decision being given. The decisions of this Court are appealed at the Supreme Court of Justice.

3. Documentation

3.1. Asylum Seekers

According to the Law No. 270, the foreigners who apply for asylum at a state border control point or with the police authorities shall be issued a temporary certificate the validity of which shall not exceed 48 hours. The temporary certificate shall serve as a temporary identity document which permits the holder to travel to the Refugee Directorate. A sample of this document was approved by *Order No. 2 of the Ministry of Internal Affairs of 14.01.2010*.¹³

Based on Arts. 5 and 53 of Law No. 270, the Refugees Directorate registers asylum applications and personal files. Law No. 270 determines in Art. 32 that pending the determination of an asylum application, the Refugee Directorate shall issue an asylum-seeker with a temporary identity document, confirming his/her status, but not necessarily his/her true identity. The temporary identity document is

¹¹ Published in Monitorul Oficial No. 111-115 of 12.06.2003.

¹² Published in Monitorul Oficial No. 57-58 of 18.05.2000, in force since 18.08.2000.

¹³ Published in Monitorul Oficial No. 27-28 of 19.02.2010.

valid for 30 days, and may then be extended for a subsequent thirty day term until the final decision on the application is made.

3.2 Refugees and beneficiaries of humanitarian protection

According to Art. 1 of *Law No. 269 of 09.11.1994 on exit and entry in the Republic of Moldova*¹⁴, refugees and beneficiaries of humanitarian protection can exit and enter the territory of the Republic of Moldova with travel documents issued by the competent authorities, i.e. the Ministry of Internal Affairs (Arts. 36-37 of the Law No. 270). These documents together with the identity cards of refugees and the beneficiaries of humanitarian protection form part of national passport system established by *Law No. 273, of 09.11.1994*¹⁵, the provisions of which are specified by the Regulation on issuing and handing over the identity documents of the National Passport System approved by *Government Decision No. 376 of 06.06.1995*.¹⁶

According to Law No. 270, every refugee and beneficiary of humanitarian protection shall be issued with an identity card. The Refugee ID card is valid for five years whereas beneficiaries of humanitarian protection receive an ID card for one year. Refugees and beneficiaries of humanitarian protection may receive, upon request, travel documents, save in cases where there is a threat to national security or public order in the Republic of Moldova. The travel document for refugees is issued for a period of two years, while the same document for the beneficiaries of humanitarian protection is valid for only one year. Identity documents for refugees and beneficiaries of humanitarian protection are issued by the Ministry of Internal Affairs based on the decision of the Head of the Refugee Directorate.¹⁷

Samples of the identity and travel documents for refugees as well as for the authorities responsible for the printing (i.e. Ministry of Information Technology and Communication, p. 3) and issuance of these documents (i.e. Ministry of Internal Affairs, p. 2) are determined by *the Government Decision No. 626 of 28.06.2005 on identity documents for refugees*,¹⁸ whilst the same issues regarding the beneficiaries of humanitarian protection are regulated by *Government Decision No. 562 of 06.05.2008 on identity documents for the beneficiaries of humanitarian protection*.¹⁹

4. Rights and obligations

According to Art. 33 of Law No. 270, refugees and beneficiaries of humanitarian protection have the same rights and obligations as foreign citizens and stateless persons, as well as some particular rights relating to social protection, access to the system of compulsory medical insurance, freedom of movement, information and documentation, employment, access to all types of education and freedom of religion. In this regard, it should be noted that the rights of foreigners are defined in *the Law No. 275 of 10.11.1994 on the legal status of foreign citizens and stateless persons*²⁰ which states that they enjoy the same rights as the citizens of the Republic of Moldova, with some exceptions mainly concerning political rights.

¹⁴ Published in Monitorul Oficial No. 6 of 26.01.1995.

¹⁵ Law No. 273 on identity documents of the National Passport System published in Monitorul Oficial No. 9 of 09.02.1995.

¹⁶ Decision on the additional measures of the implementation of the National Passport System. Published in Monitorul Oficial No. 47 of 24.08.1995. Concerning IDs and travel documents of refugees and beneficiaries of humanitarian protection see Chapter VII.

¹⁷ Arts. 36-37 of the Law nr. 270.

¹⁸ Published in Monitorul Oficial No. 95-97 of 15.07.2005.

¹⁹ Published in Monitorul Oficial No. 86-87 of 16.05.2008.

²⁰ Published in Monitorul Oficial No. 20 of 29.12.1994.

Art. 33 of Law No. 270 states further that in the absence of necessary means of subsistence, a beneficiary of refugee status or humanitarian protection has the right to financial aid, the procedure and amount of which are set by the Government annually. The period of granting such assistance is 6 months and is subject to the following conditions: a) submission of an application; b) signing of a commitment to reimburse what has been received; and c) availability of state funds. Examination procedures relating to the application for financial aid, as well as the assignment of the Bureau of Migration and Asylum of the Ministry of Interior as a competent authority responsible for these applications, are provided for in *Regulation regarding the way of granting financial aid to refugees and beneficiaries of humanitarian protection*,²¹ approved by Government Decision No. 1140.

Conclusion

The asylum system of the Republic of Moldova is quite well regulated by the present legal framework. When elaborating the new Law on Asylum, Moldova partially transposed the European *acquis* and followed the provisions of the 1951 Convention and its Protocol. Furthermore, it implemented the best practices gained in the years after acceding to the Convention in 2001. The Law is coherent and explains all the stages of the asylum system in Moldova.

Nevertheless, there is currently no legislative act in place to regulate integration, including its institutional aspects. And this is the gap which should be filled in the context of finding a durable solution for refugees and beneficiaries of humanitarian protection.

²¹ Published in Monitorul Oficial No. 254-256 of 24.12.2010.