

NATIONS UNIES

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POUR LES REFUGIES

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UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES
*Regional Office
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VERENIGDE NATIES

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VOOR DE VLUCHTELINGEN

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Background Note on the Protection of Asylum Seekers and Refugees in Romania

1. Asylum Legislation

Romania acceded to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol on 7 August 1991. The first Refugee Law adopted by the Romanian Government entered into force in May 1996. On 2 November 2000 new refugee legislation was enforced through a Government ordinance (Ordinance 102/2000), which was subsequently adopted by Parliament in the form of Law 323/2001, which included some modifications to Ordinance 102/2000. This new Refugee Law entered into force on 27 June 2001 and was subsequently complemented by implementing guidelines (Methodology) through Government Decree 622/2001. It provides useful guidelines for the implementation of the eligibility procedure in first instance.

Romania's new refugee legislation has brought significant improvements to the refugee status determination procedure and is, to a large extent, in line with international refugee law standards. The fact that legislative changes were promoted in the context of the Phare Horizontal Programme on Asylum is reflected by the incorporation of parts of the EU acquis. The introduction of accelerated procedures, the concept of safe country of origin and the safe third country principle could be mentioned in this regard. A welcome addition to the new legislation is the provision in the spirit of art. 31 of the 1951 Geneva Convention explicitly exempting asylum-seekers from penal sanctions for illegal entry or irregular stay on the territory of Romania. Other innovative aspects relate to the creation of a subsidiary form of protection (humanitarian status), for persons who are found to be at risk of facing the death penalty; torture or inhuman or degrading treatment, thereby incorporating relevant provisions of the 1950 European Convention on Human Rights. Furthermore, there are other valuable changes to be noted, such as the fact that the temporal limitation of the validity of refugee status, as well as the ten-day deadline within which to submit an application were eliminated.

As regards temporary protection, it is regretted that the Refugee Law fails to specify that "temporary humanitarian protection" is intended to operate as a practical device in the event of a mass influx of displaced persons, rather than to be accorded as a separate status for individuals fleeing from a situation of armed conflict. It is however welcomed that the Methodology has complemented the Refugee Law in line with the EU Directive. There are other shortcomings relating to the refugee definition. UNHCR considers that various provisions, such as articles 23 (m) and 27 (f) of the Refugee Law, which allowing for "cessation", "withdrawal" and "cancellation" of forms of protection due to reasons related to public, interest, national security or public order, still exceed the scope of the cessation clauses of the 1951 Convention.

On 27 January 2003 the Emergency Ordinance (194/2002) regulating the aliens regime entered into force. This new alien's law establishes the rights and obligations of aliens as well as specific measures for the control of immigration. UNHCR welcomes the fact that the new Law introduces a legal basis for the detention regime for irregular aliens and includes several provisions related to stateless persons. UNHCR has however voiced concern about the absence of specific safeguards regarding asylum-seekers and refugees in many provisions regulating the entry and stay of aliens in Romania. This may adversely affect the rights of the persons in need of protection by preventing them from reaching Romanian territory and obtaining access to the refugee status determination procedures. As regards visa policies, it is regretted that there is no differentiation between persons in need of international protection and third country nationals. UNHCR is concerned about the effect of the visa regime that would in particular be applied to nationals from countries with a high migration potential, as provided for by Article 36 of the aliens law, since this list is likely to include major refugee-producing countries. UNHCR is also concerned about the very narrow family definition including only spouses and minor unmarried children and the lack of explicit safeguards against return of separated children denied refugee status recognition, whenever adequate protection in the country of origin is not guaranteed.

2. Provisions Related to Integration of Persons in Need of International Protection

A major legislative development was the adoption of Government Decision nr. 1191 on refugee integration, issued on 27 November 2001, published in the National Journal of 18 December 2001. Provisions include access of recognised refugees to Romanian language learning, vocational training, employment, social welfare and medical insurance, as well as accommodation for a maximum of one year, in Government reception/accommodation centres. When this Government Decision was adopted, and in the absence of all the necessary resources and expertise to actually implement the respective provisions, the responsible authority, the National Refugee Office, requested UNHCR and its NGO partners to assist with the preparation and planning process, as well as to continue to fill the gaps until the authorities are prepared to take over. This piece of legislation constitutes an important step forward in the Government assuming responsibilities for integration of refugees in the Romanian society. Actual Implementation of several key provisions such as access of refugees to Romanian language learning and access to vocational training in the absence of documents to certify previous studies is however yet to be seen.

As regards social welfare, several laws provide for improved refugee integration. The Law on guaranteed minimum income provides in Article 2.b that refugees are eligible for guaranteed minimum income under the same condition as Romanian nationals. Furthermore, Law no. 116/2002, which guarantees basic rights such as the right to work, to health and education, is also applicable to refugees. Refugee children and asylum-seeker children have the right of access to State child allowance. Regarding social health insurance, the conditions under which refugees are entitled to medical assistance improved significantly at the end of 2002, when Government adopted Emergency Ordinance 150/2002. This new law allows refugees to benefit from health insurance from the date he or she is recognised as a refugee under the same conditions as nationals. It is seen as another important step towards refugee integration. Moreover, Law 76/2002 on unemployment insurance and active employment measures entered into force in May 2002. According to its Article 16 d, recognized refugees and persons granted humanitarian protection are explicitly entitled to benefit from assistance under this law, which includes the right to unemployment insurance under the same conditions as nationals, free vocational training and job search assistance.

The Romanian authorities largely remedied the omission in the Refugee Law of a specific provision entitling refugees to family reunification, by adopting a ministerial order in March 2002 establishing a new procedure for family reunification. UNHCR however remains concerned that this order (1) only applies to persons recognized as 1951 Convention refugees and not to persons granted subsidiary forms of protection; (2) does not provide for any coverage of travel costs for persons in need and (3) applies a very narrow family definition including only (legally married) spouses and minor unmarried children.

UNHCR is also concerned about the existence of certain protection gaps, especially regarding the protection regime applicable to persons who have been granted humanitarian protection. The category of persons that can be granted “conditioned humanitarian protection” does not explicitly include persons who are in need of international protection as a result of a situation of generalized violence and/or massive human rights violations in their countries of origin. Moreover, the persons who are granted humanitarian status in Romania are explicitly excluded from certain entitlements provided for under the Refugee Law (and which are available to 1951 Convention refugees), such as accommodation in a centre administered by the National Refugee Office, application for a reimbursable loan and access to integration programmes. As a result their integration perspectives are considerably reduced. It should however be mentioned that this category of persons may derive certain basic socio-economic rights under other laws. In addition, an integration law covering both Convention refugees and persons with humanitarian protection is part of the ongoing EU Twinning programme. It is hoped that this law will help to reduce or even eliminate the existing discrimination between Convention refugees and persons granted asylum on humanitarian grounds.

3. Institutional Framework

The National Refugee Office, a structure subordinated to the State Secretary of the Ministry of Interior, is the first asylum instance. According to the Refugee Law the National Refugee Office is “the central authority responsible for the implementation of Romanian policy concerning refugees.” Decisions on asylum claims at the first instance are directly taken by an eligibility officer of the Refugee Office, following a full personal interview with the asylum-seeker.

The first appeal instance is the local court of first instance (*Judecatorie*), the competence of which is determined either according to the location in which the applicant resides or according to the area in which the premises of the National Refugee Office are located. It is to be noted that the first instance courts reviews the case entirely as regards the facts and the law. The second appeal instance is the Tribunal (county court). It should be pointed out that in the context of accelerated procedures there only exists the possibility of one appeal before the court of first instance.

UNHCR-funded programmes in Romania include: a) direct assistance to refugees and asylum-seekers in areas where Government support is insufficient (i.e. health care, cultural orientation, education, employment, legal assistance and empowerment); including assistance to address the special needs of refugee women and children; b) capacity-building activities, particularly advice and guidance on asylum policy and practice, training of asylum magistrates and lawyers, access of decision-makers to country of origin information (COI) services, COI workshops, coordination meetings, training of a variety of practitioners in government structures and NGOs; c) advocacy, awareness and public information activities.

A very significant achievement in Romania are the regular consultations and co-operation relationships between the National Refugee Office and the refugee-assisting NGOs. Despite the good relationship between the National Refugee Office and refugee-assisting NGOs, there is however no tradition and apparently only scarce funding available for NGOs from Government sources. Non-UNHCR funding sources for NGO assistance are extremely limited.

4. Asylum Practice

In 2002, a total of 1,151 asylum applications were registered in Romania, which presented a decline as compared to the number of applications submitted in 2001. The number of arrivals of asylum-seekers in Romania increased slightly in the first 5 months of 2003, with a total of 538 asylum applicants registered in this period. In 2003, the main countries of origin are: Iraq, China, India, Iran and Afghanistan. In 2002, UNHCR had expressed concern at the restrictive eligibility practices of the Romanian authorities (insufficient usage of country of origin information used to analyze asylum claims on the one hand and heavy burden of proof imposed on the asylum-seeker on the other – these practices have however gradually improved in the first semester of 2003), which were also reflected in a very low recognition rate, especially if compared with other (Western) European countries, but also

considering the disproportionately high number of successful appeals at the courts of first instance. In absolute numbers, more applicants were granted asylum during the judicial phase of the procedure than by the National Refugee Office. In 2002 the combined refugee status and humanitarian status recognition rate at the administrative stage of the procedure amounted to merely 4.4%. The high number of successful appeals raised the overall recognition rate to 9.6%. In the first 6 months of 2003 the situation seems to have somewhat improved with a recognition rate of about 6.1% in the decisions taken by the National Refugee Office. Again the recognition rate by the first instance courts was slightly higher, amounting to 8.2% in the first semester of 2003.

These percentages nevertheless may not be entirely accurate, as it appears that a fairly high number of asylum applicants actually disappear (presumably leave Romania) during the RSD procedure and are consequently considered as “rejected” by the Romanian authorities. It is clear that Romania is still largely perceived as a transit country by asylum-seekers on their route to Western European countries. It should also be pointed out that from mid-March up to 30 June 2003, decision-making on Iraqi asylum applications was temporarily suspended in line with UNHCR recommendations.

The monitoring role of UNHCR in Romania continues to be extremely significant in order to ensure that asylum-seekers have access to the refugee status determination procedure and that fundamental asylum principles are safeguarded. It should be positively noted that in 2002 the number of incidents in which safeguards against *refoulement* were not respected declined significantly when compared to the situation in 2001. Last year, UNHCR Romania became aware of only two cases of irregular expulsions of asylum seekers, one incident of an asylum-seeker having been taken to his Embassy, as well as several cases in which access to the asylum procedure had only been granted following UNHCR’s interventions before the authorities. As regards admission of asylum-seekers at border-points, contrary to the situation in 2001, when there were several cases of prolonged detention at the airport, the situation was also much better in 2002, given that asylum-seekers were granted access to the territory almost immediately by the National Refugee Office.

While the asylum practice has overall considerably improved last year, the wide application of exceptions on grounds of national security (by which persons irrespective of their legal status can be declared “undesirable”) still risks to undermine international refugee law principles.

UNHCR has become aware of a few cases of aliens, including refugees and asylum-seekers, who were declared “undesirable” for reasons allegedly related to national security. Such persons often end up in a situation of indefinite detention. UNHCR appreciates the fact that the National Refugee Office no longer automatically invalidates the refugee status of persons declared a danger to national security. It is nevertheless very hard to find a durable solution for persons who were found to be in need of international protection, yet are denied effective enjoyment of their right to asylum for vague reasons. The authorities have firmly refused to disclose the nature of the alleged criminal activities and merely referred to existence of classified information provided by the Romanian Intelligence Service. Therefore, there have practically not been any effective legal remedies available to challenge the lawfulness of these seemingly arbitrary measures. Courts are unable to exert effective control since no substantive information is given related to the undesirability order.

In this regard UNHCR has repeatedly, but so far without any success, appealed to the Romanian authorities to release a recognized refugee who was declared undesirable and has been kept arbitrarily in detention since February 2000. UNHCR is extremely concerned about the well-being of this aged refugee (58 years) whose health condition has seriously deteriorated as a result of the prolonged detention.

The Office furthermore considers that there continues to be a need for closer coordination among different structures under the Ministry of Interior that are directly or indirectly dealing with asylum issues in Romania. Furthermore, it is hoped that with the adoption of the Law on transparency in decision-making by the public administration in January 2003, transparency in policy-making and administrative practice will indeed further increase.

UNHCR in Romania welcomes the fact that the Romanian Government opened negotiations last year under Chapter 24 (Justice and Home Affairs), which along with EU funded projects and capacity-building activities is expected to further address points of concern and contribute to enhancing the asylum system in the country.

5. Points for Further Consideration

- Enhancement of the cooperation between various institutions involved in asylum matters: the discussions surrounding the institutional framework needed for a comprehensive migration policy and the process of formulating a National Migration Strategy for Romania (to be adopted by the Government in early 2004) currently taking place in the framework of the Swedish/Danish Twinning Project (RO/2001/IB/JH/01) aiming at the “Development of the Legislative and Institutional Framework in the Field of Migration” could be very useful
- Implementation of the German/Greek/Romanian Twinning Project (RO/02/IB/JH02) entitled “further strengthening of the border control and improved management of migration” which is planned to commence in August 2003
- Further approximation of refugee legislation and practice with international and European standards, in particular in view of the evolving EU acquis on asylum
- Further enhancement of the quality of decision-making at all instances (including improvement of access to and usage of relevant country of origin information)
- Monitoring the implementation of the new aliens legislation in practice, in particular as regards the regime of public custody and cases in which reasons of national security are invoked, to prevent arbitrary detention of asylum-seekers and refugees
- Decentralization of the asylum system through the creation of branches of the National Refugee Office in border areas including improvement of the infrastructure at important border-points (reception centres, availability of interpreters and lawyers etc.)
- Strengthening of civil society and increasing public awareness of refugee and asylum matters
- Improvement of the funding opportunities for refugee assistance through NGOs in Romania
- Development and implementation of gender and age-specific support packages to help refugees integrate in Romanian society
- Development and implementation of programmes to ensure voluntary return of unsuccessful asylum-seekers in safety and dignity to their countries of origin

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