

Ordinance no. 43
Amending and Completing Government Ordinance no. 102/2000
on the Status and Regime of Refugees in Romania

On the basis of Article 108 in the Constitution of Romania, and of Article 1, VI.4 in Law no. 559/2003 empowering the Government to issue ordinances,

the **Government of Romania** hereby adopts the present ordinance.

Art. I. – Government Ordinance no. 102/2000 on the Status and Regime of Refugees in Romania, published in Romania’s Official Gazette, Part I, no. 436 of 3 September 2000, approved with amendments by Law no. 323/2001, with subsequent amendments and completions, shall be further amended and completed as follows:

1. Paragraph (1) under Article 2 shall run as follows:

"Art. 2. - (1) Refugee status may be granted, upon request, to an alien who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country."

2. Article 5 shall run as follows:

"Art. 5. – Conditioned humanitarian protection may be granted to an alien who does not fulfill the conditions provided in Article 2, paragraph (1), and in relation to whom there are compelling reasons to believe that, if he or she is returned to his or her country of nationality, he or she risks being subjected to a violation of his or her rights in one of the following forms:

1. conviction to death penalty or execution of such a penalty, or
2. torture, inhuman or degrading treatment or punishment; or
3. serious individual threat to his or her life or physical integrity resulting from generalized violence in situations of internal or international armed conflicts, if the applicant belongs to the civilian population."

3. Article 7 shall run as follows:

"Art. 7. - (1) A person shall be considered an asylum-seeker from the moment he or she expresses his or her will, in written or oral form, in front of the competent authorities, to apply for the protection of the Romanian state, for one of the reasons provided in the present Ordinance.

(2) In order to be granted refugee status in Romania, an alien shall in person lodge a written application with the National Refugee Office within the Ministry of Administration and Interior, or with any of the territorial bodies of the Ministry of Administration and Interior.

(3) Application for refugee status shall be lodged as soon as:

- a) the applicant has presented himself or herself at a state border control point;
- b) the applicant has entered the territory of Romania; or
- c) events have occurred in the applicant’s country of origin that make him or her seek protection, for the alien with the right to stay in Romania”

4. A new article shall be introduced after Article 7. The new Article 7¹ shall run as follows:

"Art. 7¹. – An asylum-seeker shall not be expelled or forcibly returned from the border or the Romanian territory, as long as the disposition to leave the territory included in the decision to reject his or her application for the refugee status is not enforceable."

5. Article 13, paragraph (1) (a) shall run as follows:

"a) the right to stay in Romania, until the expiry of a 15-day period starting from the moment when the decision to reject his or her application has become enforceable, with the exception of aliens whose applications have been rejected as manifestly unfounded in an accelerated procedure, in which case the right to stay shall cease as soon as the decision has become enforceable;"

6. A new bullet point shall be included after Article 13, paragraph (1) (g). The new point (g¹) shall run as follows:

"g¹) the right to be accommodated in one of the reception and accommodation centers subordinated to the National Refugee Office, within the limits of the places available, until the cessation of his right to stay, for an asylum-seeker who lacks the financial means of support"

7. Paragraph (2) under Article 13 shall run as follows:

"(2) Asylum -seekers who lack the financial means of support may be granted up to ROL 25,000/person/day for food, up to ROL 15,000/person/day for accommodation, and up to ROL 5,000/person/day for other expenses, upon their request, the amounts being made available from the State budget through the budget of the Ministry of Administration and Interior."

8. Paragraph (5) under Article 14 shall run as follows:

"(5) The decision to reject an application for refugee status shall also contain the reasons for rejecting any of the forms of protection stipulated under Articles 2, 3 or 5, as well as an order to leave Romania's territory within 15 days from the date when the decision has become enforceable ."

9. Paragraph (1) under Article 15 shall run as follows:

"Art. 15. - (1) A complaint may be lodged against the decision mentioned under Article 14, paragraph (3) within 10 days from receipt of the proof of notification or of the document stating that the applicant can no longer be found at his or her last declared residence. Complaints lodged within the deadline mentioned above shall have a suspensive effect on the execution of the order to leave Romania's territory."

10.Paragraph (3) under Article 15 shall run as follows:

"(3) Complaints shall be reviewed by the court whose territorial jurisdiction includes the competent structure of the National Refugee Office that issued the decision."

11.Paragraph (5) under Article 15 shall run as follows:

"(5) Complaints shall be forwarded without delay to the competent court that will take a decision within 30 days."

12.Paragraph (7) under Article 15 shall run as follows:

"(7) The complainant or the National Refugee Office may submit an appeal against the court's decision within 5 days since the decision was taken. The appeal lodged within the deadline mentioned above shall have a suspensive effect on the execution of the order to leave Romania's territory."

13.Paragraph (8) under Article 15 shall run as follows:

"(8) The appeals shall be decided within 30 days from the date when they were registered by the Tribunal."

14.Paragraph (9) under Article 15 shall run as follows:

"(9) The decisions of the court of first instance that have not been appealed against within the deadline stipulated by law, as well as the decisions of the Tribunal, shall be irrevocable and enforceable."

15. Paragraph (1) under Article 16 shall run as follows:

"Art. 16. - (1) an alien shall be under the obligation to leave Romania's territory within 15 days from the date when the order to leave the territory, included in the decision to reject his or her application for refugee status, has become enforceable."

16. Paragraph (3) under Article 20 shall run as follows:

"(3) Complaints shall be reviewed by the court whose territorial jurisdiction includes the competent structure of the National Refugee Office that issued the decision, and they shall have a suspensive effect on the execution of the order to leave the territory."

17. Paragraph (4) under Article 20 shall run as follows:

"(4) The court shall review a complaint within 10 days, and shall pronounce a decision stating the grounds on which it was based, whereby:

- a) it rejects the complaint for at least one of the reasons stipulated under Article 18, paragraph (1);
- b) it accepts the complaint, and orders the competent structure of the National Refugee Office that issued the decision to review the application in an ordinary procedure."

18. Article 21 shall run as follows:

"Art. 21. - (1) An application lodged with the territorial bodies of the Ministry of Administration and Interior located at a state border control point shall be forwarded without delay to the competent structures of the National Refugee Office, which shall review the application and pronounce a decision within two days of receipt.

(2) After having conducted an interview and having studied the reasons invoked by an asylum-seeker based on the data available about the situation in his or her country of origin, the official stipulated under Article 12, paragraph (2) may decide:

- a) to grant the applicant a form of protection and the right to enter Romania, if he or she falls under the terms of Articles 2, 3 or 5;
- b) to grant the applicant the right to enter Romania and to have access to an ordinary refugee status determination procedure, if his or her application cannot be rejected on account of one of the reasons stipulated under Article 18, paragraph (1);
- c) to reject the application as unfounded.

(3) An applicant may lodge a complaint against a decision to reject his application within 2 days from notification

(4) Complaints shall be lodged with the structure of the National Refugee Office that issued the decision, which is to forward them without delay to the court in whose territorial jurisdiction it is based.

(5) The court shall review complaints within 5 days, and pronounce a decision, stating the grounds on which it is based, whereby:

- a) it rejects the complaint for at least one of the reasons stipulated under Article 18, paragraph (1);
- b) it accepts the complaint and orders the competent structure of the National Refugee Office that issued the decision to review the application in an ordinary procedure, and to allow the applicant entry to the country's territory.

(6) In the cases stipulated under paragraph (5), the decision of the court shall be final and irrevocable."

19. Article 23, paragraph (1) (h) shall run as follows:

"h) to have access to all the forms of education, under the terms of the law;"

20. A new bullet point shall be introduced under Article 23, paragraph (1), after (m). The new point (n) shall run as follows:

"n) to receive, upon request, within the limits of the State funds available, reimbursable aid equivalent to the minimum gross domestic salary, for a period of up to 6 months, if, for objective reasons, he or she lacks the means to provide for basic needs. For well-founded reasons, this aid can be extended for a further period of up to 3 months."

21. Paragraph (3) under Article 23 shall be repealed.

22. Paragraph (4) under Article 23 shall run as follows:

"(4) The funds needed for granting the reimbursable aid stipulated under paragraph (1) (n) shall be made available from the budget of the Ministry of Labour, Social Solidarity, and Family."

23. Paragraph (1) under Article 25 shall run as follows:

"Art. 25. - (1) A person who was granted a form of protection shall be under the obligation to reimburse the aid received under the terms of Article 23, paragraph (1) (n), if he or she has earned income that makes that reimbursement possible, without affecting his or her ability to provide for himself or herself and his or her family."

24. Article 26 shall run as follows:

"Art. 26.- (1) A form of protection granted under the terms of Articles 2, 3 or 5 shall cease to apply when the beneficiary:

- a) has voluntarily re-availed himself or herself of the protection of the country of his or her nationality; or
- b) having lost his or her nationality, he or she has voluntarily re-acquired it; or
- c) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality; or
- d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to the reasons based on which he or she was granted the form of protection; or
- e) can no longer continue to refuse to avail himself of the protection of the country of his or her nationality, because the circumstances in connection with which he or she has been granted a form of protection under the terms of Articles 2, 3 or 5 have ceased to exist, and cannot invoke compelling reasons referring to prior persecutions that could motivate his or her refusal;
- f) being a person who has no nationality, he or she is able to return to the country of his or her former habitual residence, because the circumstances in connection with which he or she has acquired a form of protection under the terms of Articles 2, 3 or 5 have ceased to exist.

(2) The provisions under paragraph (1) (e) shall not apply to a person who has been granted a form of protection under the terms of Articles 2, 3 or 5 and who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of his or her nationality.

(3) The provisions under paragraph (1) (f) shall not apply to a person who has been granted a form of protection under the terms of Articles 2, 3 or 5 and who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his or her former habitual residence."

25. Articles 27 and 28 shall be repealed.

26. Article 29, paragraph (1) (a) shall run as follows:

"a) granted to the applicant by his or her false declaration or by fraud, and there are no other reasons for maintaining the form of protection granted, or for granting another form of protection;"

27. Article 30 shall run as follows:

"Art. 30. - (1) The official mentioned under Article 12, paragraph (2) shall establish the cessation or order the cancellation of form of protection by a decision stating the grounds on which it is based, *ex officio* or upon the proposal of one of the institutions with responsibilities in the domain of national security or public order.

(2) Establishing cessation or ordering cancellation of form of protection shall not apply to the family members of the person for whom a decision such as the one mentioned under paragraph (1) was issued.

(3) Depending on the reasons that formed the basis for cessation or cancellation of form of protection, the official mentioned under Article 12, paragraph (2) may issue an order, as the case maybe, for the person to leave the country's territory.

(4) An alien may appeal against the decision mentioned under paragraph (1) under the terms of the present Ordinance, resorting either to an ordinary or an accelerated procedure, as the case may be."

28. Two new bullet points shall be added to Article 32, paragraph (1). The new points (d) and (e) shall run as follows:

"d) is a legal person and is based in the Municipality of Bucharest;

e) shall be a party to all the court cases whose object is an application for granting a form of protection under the terms of the present Ordinance."

Art. II. – This Ordinance shall take effect 60 days after its publication in Romania's Official Gazette, Part I.

Art. III. – Within 60 days from the date this Ordinance is published in Romania's Official Gazette, Part I, the Government shall adopt a decision for amending and completing the Methodological Norms for the Implementation of Government Ordinance no. 102/2000 on the Status and Regime of Refugees in Romania, approved by Government Decision no. 622/2001, published in Romania's Official Gazette, Part I, no. 396 of 18 July 2001.

Art. IV. – Applications lodged prior to the coming into force of the present Ordinance shall be solved using the provisions in force on the date they were lodged.

Art. V. – Government Ordinance no. 102/2000 on the Status and Regime of Refugees in Romania, approved with amendments by Law no. 323/2001, with subsequent amendments and completions, as well as with the amendments contained in this Ordinance, shall be republished in Romania's Official Gazette, Part I, after having been approved by law, and after the texts have been renumbered.

PRIME MINISTER
ADRIAN NASTASE

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Bucharest, 29 January 2004.

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