

EMERGENCY ORDINANCE no. 113/2005
for modifying and completing the Government Emergency Ordinance
No.194/2002 on the regime of aliens in Romania

Considering the importance of accomplishing in due time the engagements assumed by Romania in 2005 in view of its accession to the European Union, as the transposing of community documents in the migration field within Romanian legislation,

Considering the fact that the changing of legislation regarding the regime of aliens is a basic objective in the application of the Schengen Action Plan as well as the Priority Actions Plan for the accession to the European Union, their urgent implementation represents one of the tasks which, if can not be realised may activate the clause of postponing the accession of Romania to European Union,

Considering the necessity of solving the difficulties met for the application of the current legislation on the regime of aliens,

Considering that all those elements regard the public interest and represent particular situations of which settlement can not be put off.

In accordance with Article 115, paragraph (4) of The Romanian Constitution, republished the Romanian Government has adopted this Emergency Ordinance.

Sole article.- The Government Emergency Ordinance No.194/2002 on the regime of aliens in Romania, republished in Official Journal of Romania, Part I, no.201 of 8 March 2004, with its further amendments, shall be amended and completed as follows:

1. Under Article 5, paragraphs (3) and (4) shall be introduced after paragraph (2) with the following content:

“(3) The Romanian Government, through its institutions, shall transmit to the European Commission and the governments of the other Member States, in due time but no later than the date of publication, the following information:

- a) draft normative acts providing measures which are intended to be taken with regard to third country workers and members of their families, in the areas of entry, residence and employment, including illegal entry, residence and employment, as well as the realization of equality of treatment in living and working conditions, wages and economic rights, the promotion of integration into the workforce and society, and the voluntary return of such persons to their countries of origin;
- b) draft agreements relating to the matters mentioned in point a), as well as draft cooperation agreements which they intend to negotiate or renegotiate with third

countries, when these agreements involve provisions relating to the matters mentioned in point a);

c) draft agreements relating to conditions of residence and employment of their nationals working in third countries and members of their families, which they intend to negotiate or renegotiate with those countries.

(4) The Romanian Government shall transmit to the European Commission and the governments of the other Member States, the texts of provisions laid down by law, regulation or administrative action already in force, and also the texts of agreements made with third countries, regarding the matters mentioned by (3)(a) above.”

2. Under Article 8, paragraph (2), point (c) shall have the following content:

„c) they have previously not respected the purpose declared when obtaining the visa, or, as the case may be, the purpose of entry or have attempted to cross the Romanian border using false or falsified documents;”

3. Under Article 12, paragraph (1) shall have the following content:

“(1) The alien who has legally entered the Romanian territory shall give notice of his/her presence to the territorially competent police unit, within 3 days upon entry. EU and EEC nationals shall be exempted.”

4. Under Article 13, point (a) of the paragraph (1) shall be repealed.

5. Under Article 13, paragraph (11) shall be introduced after paragraph (1), with the following content:

“(1¹) The alien who changes his/her residence shall be obliged to present himself/herself to the territorially competent office of The Authority for Aliens in order to be registered and his/her identity documents to be changed, within 15 days since he/she moved to the new residence.”

6. Under Article 14, paragraph (1) shall have the following content:

“(1) In case the alien no longer is in possession of the document he/she used to cross the Romanian border, he /she must present a new document valid for crossing the border.”

7. Under Article 14, paragraph (11) shall be repealed.

8. Under Article 19, paragraph (11) shall be introduced after paragraph (1), with the following content:

“(1¹) The aliens who are airplane pilots and the other members of the crew, bearers of a flight licence or a crew certificate as provided in annex no. 9 of the Chicago Convention on International Civil Aviation signed on the 7th of December 1944, shall be exempted from the obligation to bear a passport and visa, only when on duty and:

- (a) they are not leaving the transit airport;
- (b) they are not leaving the destination airport;
- (c) they are not leaving the city next to the airport;

(d) they are only leaving the airport in order to get to another Romanian airport.”

9. Under Article 24, paragraph (1), point (i) shall have the following content:

“(i) *other purposes* – for aliens temporarily transferred by the foreign companies, for trainees and seasonal workers, those who follow long-term medical treatment, aliens whose presence on the Romanian territory is necessary out of national security interests and those performing other activities which do not breach the Romanian laws.”

10. Under Article 46, paragraph (1) shall have the following content:

“(1) Aliens holding a temporary or permanent stay permit, as well as the aliens who were granted the refugee statute by the Romanian authorities, may request to the Authority for Aliens the family reunification for:

- a) spouse;
- b) minor, not married children, out of a marriage as well as those adopted by both spouses;
- c) dependant, not married, minor children of the bearer of the stay right, including those adopted;
- d) dependant, not married, minor children of the spouse of the bearer of the stay right, including those adopted;”

11. Under Article 48, paragraph (1), point (a) shall have the following content:

a) those who are temporarily transferred by:

i) a foreign company with headquarters on the territory of a member state of the World Organisation of Trade to a business representative office, sub-centre or branch of this, on the territory of Romania, or to a trade company, legal person whose associate/ shareholder is the mother company with the same activity object, if they prove they are not employed or employees of the Romanian legal person;

ii) an employer with headquarters abroad to a legal person in Romania, on the basis of a commercial contract or a contract for providing services between the two parties;

12. Under Article 48, point (b1) shall be introduced after point (b), with the following content:

“b¹) those assigned as administrators of a company, if the following conditions are met:

- (i) on basis of a mandate contract;
- (ii) at the time of appointment, he/she is not a shareholder in the company or any other legal person in Romania and hasn't been for the past two years;
- (iii) there is no other alien shareholder in the company concerned, who obtained a stay right for this purpose.”

13. Under Article 49, point (d) shall have the following content:

“(d) first degree relatives, in ascendant line.”

14. Under Article 50, paragraph (2), point (c) shall have the following content:

- c) the alien holds a valid travel document, except the cases where the document has expired after entering Romania and, for reasons irrespective of the will of the alien, the document could not be renewed;

15. Under Article 50, paragraph (2), point (g) shall have the following content:

“g) he/she proves he/she has social health insurance.”

16. Under Article 51, paragraph (41) should be introduced after paragraph (4) with the following content:

“(4¹) If the prolongation of the stay right is requested on basis of marriage and supplementary verifications are necessary in accordance with Article 64, the term for solving the application may be prolonged to the maximum of 90 days, case into which the stay right is prolonged de iure until the application is solved;”

17. Under Article 58, paragraph (1), point (c) shall have the following content:

“c) he proves the means of support in amount of at least the net minimum monthly salary for the period of the validity of the stay permit.”

18. Article 63 shall have the following content:

“Article 63

Subsequent Renewal of the Temporary Stay Right for Family Reunification

(1) The stay right for family reunification may be subsequently renewed if the applicant:

- a) presents translated and legalized documents which prove the existence of the marriage or of the kinship;
- b) presents the written statement of the family member who requested the reunification evidencing that they will live together;
- c) proves the appropriate dwelling space;
- d) proves that the alien family member who requested the reunification holds means of support exceeding the amount provided for upon the issue of the stay permit, at the level of at least the minimum salary per national economy, for each family member.

(2) The right to stay granted on the basis of the marriage with a Romanian citizen shall be renewed as follows:

- a) for aliens married to Romanian nationals, on condition that:
 - i) they present the marriage certificate in original and copy and the certificate has legal effects on the Romanian territory;
 - ii) they prove that they hold means of support at the level of at least the minimum salary per national economy.
- b) for aliens who are partners of Romanian nationals, on condition that:

- i) they present birth certificates of the resulted Romanian national children, in original and copy;
 - ii) presents the written statement of the Romanian national, authenticated by a public notary, evidencing that they live together;
 - iii) they prove that they hold means of support at the level of at least the minimum salary per national economy.
- c) for minor children, not married, including those adopted, on condition that:
- i) are presented translated and legalized documents which prove the existence of the marriage or of the kinship;
 - ii) they prove that they hold means of support at the level of at least the minimum salary per national economy.
- d) for first degree relatives, in ascendant line, on condition that:
- i) are presented translated and legalized documents which prove the existence of the marriage or of the kinship;
 - ii) they prove that they hold means of support at the level of at least the minimum salary per national economy.”

19. Under Article 68, paragraph (1), point (a) shall have the following content:

a) *aliens temporarily transferred* - by presenting a work permit issued in accordance with the law. The stay right for this purpose may be prolonged one time only for up to one year. For further prolongations, the provisions applicable are the ones regarding the stay right for employed aliens”

20. Under Article 68 paragraph (1), point (b1) should be introduced after point (b) with the following content:

“b¹) the aliens assigned as administrators of a company, if the following conditions are met:

- i) on basis of a mandate contract;
- ii) at the time of appointment, he/she is not a shareholder in the company or any other legal person in Romania and hasn't been for the past two years;
- iii) there is no other alien shareholder in the company concerned, who obtained a stay right for this purpose.”

21. Under Article 68, paragraph (3) and (4) shall have the following content:

“(3) When they apply for the prolongation of their stay right, the aliens provided in (1) (a) (b) and (c) must prove means of support at the level of at least the minimum salary per national economy, and those provided in (1) (b¹) must prove means of support at the level of at least 500 euro per month, generated from the activity they had within the mandate contract.

(4) The aliens provided in (1) (d) are exempted from the obligation to prove means of support.”

22. Under Article 69, paragraph (1) shall have the following content:

“(1) The permanent stay right is granted, upon request, within the conditions of the present emergency ordinance, for an undetermined period of time, to the alien who

has a temporary stay right or to the refugee recognized by the Romanian authorities, to whom the permission was granted to establish his/her domicile in Romania.”

23. Under Article 70, paragraph (3) shall be repealed.

24. Under Article 70, paragraphs (41) and (42) shall be introduced after paragraph (4) with the following content:

„(4¹) The aliens who were granted asylum by the Romanian authorities may be granted permission to establish their domicile in Romania, without fulfilling the conditions set by (1)(b).

(4²) The aliens who prove that they have invested more than one million euro or have created more than 100 jobs may be granted permission to establish their domicile in Romania, without fulfilling the conditions set by (1)(a). The proof of the investment or of the creation of jobs shall be calculated in accordance with the degree of participation to the gains and losses in the company.”

25. Article 71 shall have the following content:

**“Article 71
Conditions for the Establishment of Domicile in Romania**

(1) In order to establish their domicile in Romania the aliens must personally submit an application to the territorial office of the Authority for Aliens or, by case, National Refugee Office, accompanied by the following documents:

- a) aliens with the temporary stay right:
 - i) the border crossing document, in original and legalised copy
 - ii) legalised copy of the civil status documents
 - iii) documents to prove that they legally hold a dwelling space, in original and legalised copy
 - iv) proof of means of support.
 - v) certificate of criminal record issued by the Romanian authorities
 - vi) proof of social health insurance
- b) aliens with the refugee statute:
 - i) the border crossing document, in original and legalised copy
 - ii) legalised copy of the civil status documents
 - iii) documents to prove that they legally hold a dwelling space, in original and legalised copy
 - iv) certificate of criminal record issued by the Romanian authorities
 - v) certificate of criminal record issued by the Romanian authorities

(2) In case the applicants who are refugees do not have the documents provided in (1) (b) (i) and (ii), the application shall be analysed on basis of the declared identity.”

26. Under Article 86, paragraph (2) point (a) shall have the following content:

“a) have illegally crossed the Romanian border;”

27. Under Article 86, paragraph (2), point (a1) should be introduced after point (a) with the following content:

“a¹) did not leave the Romanian territory upon expiry of their stay right granted by the visa or on basis of international agreements or normative acts which unilaterally eliminates the visa regime, and more than 60 days have passed since expiry of the stay right.”

28. Under Article 86, paragraph (2), point (e) should be introduced after point (d) with the following content:

“(2) have been convicted for intentionally committing felonies, and the imprisonment time provided for the respective felony is of more than 3 years.”

29. Under Article 86, paragraph (31) should be introduced after paragraph (3) with the following content:

“(3¹) The applicable procedures in case of non-cooperation of diplomatic missions regarding issuing of travel documents for the removal of aliens from the Romanian territory shall be established by means of a common order of the minister of foreign office and the minister of the administration and the interior.”

30. Article 882 should be introduced after article 881 with the following content:

Article 88²

The organization of joint flights with Member States
for removals from the territory of third-country nationals

“(1) The Authority for Aliens is responsible for organising and/or participating in joint flights with the competent authorities from other Member States for the removal of third country aliens, against who a removal decision has been taken.

(2) When the Authority for Aliens decides to organise a joint flight for the removal of third-country nationals which is open to the participation of the other Member States, it shall inform the national authorities of those Member States.

(3) The Authority for Aliens shall adopt the necessary measures to ensure that the joint flight is conducted properly, by selecting the air carrier, according to the legal provisions, obtaining, from the third-countries of transit and destination, the authorisations which are required for the implementation of the joint flight, by determining, in agreement with the participating Member States, the number of the escorts which is appropriate and by conclude all the appropriate financial arrangements with the participating Member States, as well as any other necessary measures.

(4) In case the Authority for Aliens decides to take part in joint flight, it shall inform the national authority of the organising Member State of its intention to participate in the joint flight, specifying the number of third-country nationals to be removed and provides a sufficient number of escorts for each third country national to be removed. If the escorts are to be provided solely by the organising Member State, the Authority for Aliens shall ensure the presence of at least two representatives on board, who shall be in charge of handing over the third-country nationals for whom they are responsible to the authorities of the country of destination.

(5) The Authority for Aliens shall ensure that each third-country national and the escorts hold valid travel documents, entry and/or transit visas and any other necessary additional documents and, through The General Directorate for Consular Relations, shall solicit the assistance of the diplomatic missions of Romania.”

31. Under Article 93 paragraph (1) shall have the following content:

“(1) Taking into public custody is a measure of restraining free movement on the Romanian territory, decided by a magistrate against the alien who could not be returned within the term established by this ordinance as well as against the alien declared undesirable or against whom the court took the measure of expulsion.”

32. Under Article 101, paragraph (11) shall be introduced after paragraph (1) with the following content:

“(1¹) The measure provided in paragraph (1) may also be disposed against the aliens who have exited Romania after their stay became illegal, without being subject to a measure of removal from the territory.”

33. Under Article 102, paragraph (2), point (c1) should be introduced after point (c) with the following content:

“(c¹) The measure provided in paragraph (1) may also be disposed against the aliens who have exited Romania after their stay became illegal, without being subject to a measure of removal from the territory.”

34. Under Article 106, paragraph (2) point (c) shall be repealed.

35. Article 1203 should be introduced after article 1202 with the following content:

“Article 120³

Granting the temporary stay right to aliens who are victims of tracking in human beings, smuggling in migrants or victims of the offence provided in Article 130¹

(1) The aliens who are victims of tracking in human beings, smuggling in migrants or victims of the felony provided in Article 130¹, may be granted a temporary stay permit, even if they have illegally entered the territory, upon request from the prosecutor or court, if the following conditions are met:

- a) they clearly manifest the intention to cooperate with the Romanian authorities in order to identify and bring to penal responsibility all those who participated in committing the crimes whose victims they were;
- b) they have severed all relations with those suspected of committing the offences whose victims they were;
- c) granting them the stay right presents an opportunity for the investigations or the judicial proceedings;
- d) their staying in Romania does not pose a threat to public order and national security.

(2) The stay right may be granted, for a period of 6 month, with the possibility of being prolonged for further periods under the same conditions.

(3) The stay right may be revoked if:

- a) the conditions set out in paragraph (1) are no longer fulfilled, or
- b) the bearer of the stay right has intentionally renewed contacts with those suspected of committing the offences provided in paragraph (1), or
- c) the competent authority finds that the victim's cooperation is fraudulent or that his/her complaint is fraudulent or wrongful, or
- d) the victim ceases to cooperate, or
- e) the competent authorities decide to discontinue the proceedings, as a consequence of being in one of the cases provided by article 10 of the Penal Procedure Code.

(4) The stay permit shall be issued free of charge to the persons provided in paragraph (1).”

36. Under Article 124, point 31 should be introduced after point 3 with the following content:

“(3¹) failure to comply with the obligation provided in Article 13 (1¹).”

37. Under Article 125, point (a) shall have the following content:

- a) with a fine from 100 RON to 500 RON, those provided by points 3,3¹,4,6,6¹,8,9,10,11 and 12.

38. Under Article 1301, paragraph (31) should be introduced after paragraph (3) with the following content:

“(3¹) If the offence provided in paragraph (1) was committed by a person who is member of an organised group, or the person has obtained for himself or someone else important material benefits, the special maximum of the detension period shall be suplimented with 3 years.”

39. Article 1302 should be introduced after article 1301 with the following content:

“Article 130²
Responsibility of legal persons

(1) If the offence provided in paragraph (1) was committed in the name or interest of a legal person, by its organs or representatives, it is punishable by fine from 15.000 RON to 30000 RON.

(2) The same fine shall be applicable if the offence provided in paragraph (1) was committed in the name or interest of a legal person, as a result of non-exercising by the persons provided in Para. (1) of control attributions, by any person under their authority.

(3) The responsibility of the legal person does not entail exemption from penal responsibility of the persons who participated in committing the offence provided by Article 130¹.”

40. Article 1351 shall have the following content:

“Article 135¹

Provisions which are applicable upon the date of accession
of Romania to the European Union

The provisions of Article 5 paragraph (3) and (4), Articles 88¹, 88², 92¹, 120¹ and 120²
shall enter into force upon the date of accession of Romania to the European Union.”

Bucharest, 14 July 2005

Official Journal no. 658 of 25 July 2005