STUDY

CAPACITY OF THE NATIONAL ASYLUM SYSTEM IN THE REPUBLIC OF MOLDOVA

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CAPACITY OF THE NATIONAL ASYLUM SYSTEM IN THE REPUBLIC OF MOLDOVA

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Contents

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LIST OF ACRONYMS

PACE	Parliamentary Assembly of the Council of Europe
CoE	Council of Europe
1951 Convention	Convention Relating to the Status of Refugees, adopted on 28 July 1951 in Geneva
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ESC	European Social Charter
AID	Asylum and Integration Directorate
UDHR	Universal Declaration of Human Rights
ECRE	European Council on Refugees and Exiles
GIM	General Inspectorate for Migration
MoIA	Ministry of Internal Affairs
IOM	International Organisation for Migration
1967 Protocol	Protocol relating to the Status of Refugees
UNHCR	UN Refugee Agency

SECTION I. INTRODUCTION

1.1. Background

This Study was conducted under the Council of Europe project "**Strengthening the human rights protection of refugees and migrants in the Republic of Moldova**", which aims to provide tailor-made support to the Republic of Moldova in the field of asylum and migration, including in light of the refugee situation from Ukraine. Building on the rich body of Council of Europe standards, and in particular on the jurisprudence of the European Court of Human Rights and promising practices in the field, the Project provides support to national authorities and other actors to respond to the needs of refugees and migrants and to build resilient migration, asylum and reception systems in the long term. The project is funded and implemented under the Council of Europe Action Plan for the Republic of Moldova 2021-2024. It is also carried out in line with the Council of Europe Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025).

The project provides support for the advancement of the legislative and practices framework on the protection of the human rights of refugees and migrants in line with European and international human rights standards and with a gender-sensitive approach, contributes to strengthening the capacity of a wide range of professionals to respond effectively to the needs of refugees and migrants, contributes to the facilitation of access to support and information services.

In the context of the Republic of Moldova's foreign policy goal of accession to the European Union, as a Member State it will have to implement the entire acquis communautaire, in the same way it is applied in the other EU Member States. Therefore, at the pre-accession stage, it is important to transpose EU directives into the national legal system in order to bring national legislation in line with EU law, so that it is prepared for its application in the future. This includes the national asylum framework, which is to be improved and brought in line with the principles and rules of the European directives in the field of asylum. The main objective is for the asylum system in the Republic of Moldova to become more humane, more flexible, more responsive to the individual needs of each group of vulnerable persons; to become capable, at any stage of the asylum procedure or phase of the reception process, of quickly identifying, assessing and responding effectively to the special needs of the most vulnerable applicants for international protection, offering them appropriate treatment and guarantees throughout the asylum procedure.

In the process of revising the regulatory framework in the field of asylum, consideration should be given not only to EU rules and procedures, but also to human rights standards, so as to ensure harmonisation of common criteria for identifying persons in genuine need of international protection, with full respect for human dignity and of the right to asylum of asylum seekers and their accompanying family members, respect for private and family life, freedom of expression and information, the right to education, the freedom to choose an occupation and the right to work, the freedom to conduct a business, the rights of the child, the right to social security and social assistance, the right to health care.

At the same time, even though there is a common asylum system at EU level which lays down rules determining common standards for asylum procedures, reception conditions, recognition and protection of beneficiaries of international protection, at the time when the Study was conducted,[1] the system was in the process of being reformed. In 2016, and again in 2020, with the New Pact on Migration and Asylum,[2] the European Commission proposed a comprehensive Common European Framework for Migration and Asylum Management, including a series of legislative proposals to reform EU asylum rules.

The reform of the Common European Asylum System requires a set of measures to be adopted in order to have a more humane, balanced and efficient European asylum policy, capable of ensuring that asylum seekers receive equal and adequate treatment, sufficiently generous to the most vulnerable, and strict towards potential abuse, while respecting in all cases the fundamental rights arising from international law, in particular the Geneva Convention relating to the Status of Refugees, the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the United Nations Convention on the Rights of the Child.

1 The study on the capacity of the national asylum system in the Republic of Moldova was completed in December 2023.

2 Available at: https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A52020DC0609

For these reasons, in addition to assessing the compliance of the national asylum framework with existing EU legislation and international and regional human rights standards, the study makes reference to the regulations reflected in the new legislative proposals to reform EU asylum rules.

1.2. PURPOSE AND OBJECTIVES OF THE STUDY

The modern institution of asylum in Europe, including the legal framework established by the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto (the 1951 Convention is grounded on the right to seek and enjoy asylum, affirmed in Article 14 of the Universal Declaration of Human Rights. International law provides a general framework for the protection of asylum seekers and refugees. International refugee law, including relevant regional instruments, is an essential part of this framework and addresses their specific concerns.

The 1951 Convention defines those to be recognised and protected as refugees and sets out a number of rights and duties of refugees in the receiving country. Although the 1951 Convention does not establish procedures for determining refugee status as such, the existence of fair and efficient asylum procedures is an essential element of its full and inclusive application. It is incumbent on Contracting States to establish such procedures in their national legislation. In order to fulfil this obligation, the Republic of Moldova, by Art. 19 para. (3) of the Constitution, has recognised the right to asylum and ensured the development of the regulatory framework that determines the content, conditions for granting and withdrawing this right. Thus, Law No 270/2008 on asylum in the Republic of Moldova establishes the legal status of asylum seekers, beneficiaries of international protection, temporary protection and political asylum, as well as the procedure for granting, terminating and withdrawing protection.

The aim of this study is to analyse the national asylum regulatory framework and to formulate recommendations for strengthening the capacity of the national asylum system accordingly.

The main objectives of the study are the following:

- Assess the compatibility of the national asylum regulatory framework with international and European asylum and human rights standards;
- Identify the main shortcomings and challenges of the national asylum system in the process of granting international protection;
- Formulate recommendations for improving the national regulatory framework in line with international and European standards in the field of asylum and human rights.

1.3. MAIN FINDINGS AND RECOMMENDATIONS

The Republic of Moldova has ratified the 1951 UN Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees. The aim of Moldova's asylum policies is that the state offers asylum on its territory on the basis of the principle of non-refoulement and grants protection in accordance with international standards under international and national law. Compared to the legislation of other post-Soviet states, the national regulatory framework in this field is one of the most advanced.

The study shows that the process of aligning national legislation with EU regulations has ensured that most of the EU key documents in the field of migration and asylum have been incorporated into the domestic regulatory system. As a result, the applicable asylum legislation is largely in line with the European reference framework.

Strengthening and adjusting the national regulatory framework to the European and international standards of the asylum system will facilitate the adherence of the national asylum system and ensure adequate reception conditions to EU standards.

The study identifies a number of challenges in the context of the bringing the asylum regulatory framework in line with EU legislation, including:

- the need to strengthen procedural safeguards for asylum seekers to support their case at all stages of the procedure;

- early identification of persons in need of special procedural safeguards;
- increasing procedural safeguards for persons with special needs and for unaccompanied minors and providing the necessary support at all stages of the procedure;
- setting stricter rules to prevent abuse of the asylum system and to sanction abusive applications;
- the three-step approach to accessing the asylum procedure, consisting of submitting, registering and lodging an application;
- introducing the admissibility procedure for asylum applications and the asylum procedure at the border;
- effective guarantees for persons detained under the accelerated and border procedure;
- improving the quality of the asylum examination procedure by providing training for staff in the field of international protection;
- ensuring that the staff responsible for examining applications comply with ethical principles;
- ensuring the highest quality standards in the asylum procedure;
- establishing an efficient mechanism for managing mass arrivals;
- devolving the procedure for examining asylum applications through the regional directorates of the General Inspectorate for Migration.

The development and implementation of a clear and coherent asylum policy, which complies with the obligations undertaken at EU and international level (Global Compact on Refugees), through the legal instruments to which the Republic of Moldova has acceded, by achieving a balance between the rights and obligations of persons in need of international protection, must become a priority.

The procedure for granting and withdrawing international protection must be conducted with full respect for human rights, including the right to human dignity, the prohibition of torture and inhuman or degrading treatment or punishment, the right to protection of personal data, the right to asylum, protection against refoulement, non-discrimination, equality of rights between men and women, the rights of the child, the right to an effective remedy, and taking into account the special needs of vulnerable persons.

Ensuring adequate reception conditions and European standards for the operation of the Accommodation Centre, integration of foreigners and provision of diversified and improved integration services must be part of the actions aimed at strengthening the national asylum system.

A gender-sensitive approach should be adopted in the process of harmonising legislation, taking into account Moldova's obligations under the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), in order to ensure that women in need of international protection and who have been subjected to gender-based violence receive an adequate level of protection.

The General Inspectorate for Migration, especially as an integrating institution in the field, must be adequately supported by the Government and the Ministry of Internal Affairs in order to reach a level of capacity that allows it to optimally fulfil its competences and tasks in both normal situations and possible crises.

The existence of an effective mechanism to deal with emergency situations that could result from mass arrivals of irregular migrants and the development of the inter-institutional interaction mechanism to increase the safety of the population will ensure the functionality of the national asylum system.

The Republic of Moldova needs an effective and efficient asylum system, capable of providing sufficient and decent reception conditions, processing asylum applications quickly and efficiently and ensuring the quality of decisions taken, so that persons in need of international protection can effectively obtain it, with full respect for human rights. In this context, the main recommendations are the following:

- Harmonisation of the national regulatory framework with the European Union asylum legislation.
- Ensuring the training of the officials of the General Inspectorate for Migration in the field of harmonisation of legislation and preparation for the accession of the Republic of Moldova to the European Union.
- Conducting an assessment of the response capacity of public authorities to mass arrivals of foreigners in crisis situations.
- Developing operational standards related to asylum, taking into account the human rights-based approach.

- Assessing the risks and benefits of implementing modern digital solutions in the asylum procedure.
- Strengthening the knowledge and skills of asylum officials through general, specific or thematic asylum training activities.

SECTION II. THEORETICAL AND CONCEPTUAL FOUNDATIONS

2.1. DEFINITION OF KEY CONCEPTS WITHIN THE SCOPE OF THIS STUDY

Deciding authority - the institution responsible for examining the application for international protection, which has the power to take decisions on the application.

Asylum application - a written or verbal expression of will to the authorities indicating that a form of protection is being sought.

Subsequent application - a further application for international protection lodged under EU law after a final decision has been taken on the previous application.

Public custody - a measure restricting freedom of movement against a foreigner who has not executed the return decision or who could not be returned.

Detention - any measure of confinement of an applicant for international protection in a specific place, where the applicant is deprived of his/her freedom of movement.

Residents of the Republic of Moldova - persons who have been recognised the refugee status by the authorities of the Republic of Moldova, as well as persons who have been granted humanitarian protection or temporary protection.

Unaccompanied minor – a foreigner under the age of eighteen who enters the territory without being accompanied by an adult person who is responsible for him/her by law or a legal act and for as long as he/she is not effectively taken into the care of such a person.

Asylum procedure - the totality of acts and actions conducted, as well as activities carried out by the competent authorities, with a view to granting a form of protection on the territory of the Republic of Moldova.

International protection under Moldovan law - refugee status and status granted under humanitarian protection.

Subsidiary protection - form of international protection granted under EU legislation.

Humanitarian protection - form of protection granted under the legislation of the Republic of Moldova.

Applicant – a foreigner who has made an application for international protection on which a final decision has not yet been taken.

2.2. INTERNATIONAL AND REGIONAL ASYLUM REGULATIONS

2.2.1. United Nations standards and other instruments on asylum[3]

The Universal Declaration of Human Rights, adopted in 1948, guarantees, in Article 14, the right of persons to seek and enjoy in other countries asylum from persecution. Subsequent human rights treaties have developed this right, guaranteeing the right to seek and receive asylum in a foreign territory in accordance with the state legislation and international conventions.

The **1951 UN Convention relating to the Status of Refugees** and the **1967 Protocol** to the Convention flow directly from the right to seek and enjoy asylum, provided for in Article 14 of the UDHR, and are the fundamental international instruments for the protection of refugees. The 1951 Convention strengthens

3 This list is not exhaustive and other international law instruments such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the Convention on the Rights of Persons with Disabilities (CRPD) may also be relevant.

previous international instruments regarding refugees and provides the most comprehensive codification of refugee rights at international level. The Convention sets out a single universal definition of the term "refugee", the key principles and rights of persons granted refugee status, but also the responsibilities of the states granting asylum. The scope of the Convention is to grant international legal protection to refugees and to ensure their enjoyment of fundamental human rights and freedoms. The 1967 Protocol extended the scope of the 1951 Convention, which was only limited to European refugees in the post-World War II period, and removed its geographical and temporal restrictions, transforming the Convention into a universal instrument protecting all persons fleeing conflict and persecution.

The key principles of the Convention include non-discrimination, non-refoulement, non-sanctioning for irregular entry or stay. The principle of non-refoulement, whereby states undertake not to expel or return refugees to territories where their life or freedom would be threatened,[4] is a fundamental principle from which no reservations or derogations are permitted.[5]

The rights contained in the 1951 Convention include the right not to be expelled except under strictly defined conditions, the right to decent work, the right to housing, the right to property and intellectual property, the right to education, the right to freedom of religion, the right to access to justice, the right to freedom of movement within the territory of the State, the right to civil status, identity and travel documents, and the right to social protection.[6]

The **International Convention on the Elimination of All Forms of Racial Discrimination, 1965**, obliges States Parties to pursue, by all appropriate means, a policy intended to eliminate all forms of racial discrimination, to guarantee the right of everyone to equality before the law without distinction as to race, colour, national or ethnic origin, and to take special and concrete measures in the social, economic, cultural and other fields, to adequately ensure the development or protection of particular racial groups or particular individuals belonging to such groups, in order to guarantee them, on an equal footing, the full and equal enjoyment of their human rights and fundamental freedoms.

The **International Covenant on Civil and Political Rights, 1966**, guarantees the right to life, prohibits torture and cruel, inhuman or degrading treatment or punishment, provides for the principle of non-refoulement and prohibits arbitrary detention. This protection is also provided in cases where there is danger to life.

The **1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** prohibits the expulsion, rejection or extradition of a person to another State, where there are substantial grounds for believing that he/ she would be in danger of being subjected to torture. In determining whether there are such grounds, the competent authorities must take into account all relevant circumstances, including, where appropriate, the existence in the State concerned of a situation characterised by systematic, gross, flagrant and major violations of human rights.[7]

The **1989 International Convention on the Rights of the Child** obliges States Parties to take appropriate measures to ensure that a child who claims refugee status or who is considered a refugee under applicable rules and procedures of international or national law, whether unaccompanied or accompanied, receives appropriate protection and humanitarian assistance to enable him/her to enjoy the rights recognized in the Convention and other international human rights or humanitarian instruments. To this end, States shall cooperate to protect and assist children in such situations and to trace the parents or other family members of any refugee child with a view to obtaining the information necessary for the reunification of his/her family. In cases where neither a parent nor other family member can be identified, the child shall be granted the same protection as any other child who is permanently or temporarily deprived of his or her family environment regardless of the reason, in accordance with the Convention.[8] The Convention also prohibits the unlawful or arbitrary detention of children.

The **New York Declaration for Refugees and Migrants**, adopted by the UN General Assembly on 10 September 2016,[9] is a landmark political declaration designed to improve the way the international community is

4 See: Article 33 of the Convention

5 See: Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol https://www.refworld.org/pdfid/45f17a1a4.pdf

6 See: https://www.unhcr.org/about-unhcr/who-we-are/1951-refugee-convention

7 See: Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

8 See: Article 22 of the International Convention on the Rights of the Child

9 See: https://www.unhcr.org/media/new-york-declaration-refugees-and-migrants-0

responding to large refugee and migrant flows and the protracted refugee presence. The New York Declaration sets out a comprehensive framework for the refugee response, outlining specific actions needed to reduce pressure on host countries, increase refugee self-reliance, expand access to solutions in third countries and improve conditions in countries of origin to enable refugees to return in safety and dignity. Based on these four key objectives, on 17 December 2018, the UN General Assembly adopted the Global Compact on Refugees.[10]

The 1951 Convention and the 1967 Protocol are complemented by a number of regional refugee protection instruments. In Europe, these are the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Union Directives and other relevant instruments of the EU *acquis communautaire* on asylum.[11]

2.2.2. The European Convention on Human Rights and the other Council of Europe instruments and recommendations relevant in the field of asylum

The Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention), **1950**. Few provisions of the Convention and its Protocols explicitly concern foreigners and they do not contain a right to asylum. However, the Convention is relevant to migration issues and the European Court of Human Rights has generated a rich a rich jurisprudence relevant in asylum and immigration matters. Cases in this area relate to States obligations vis-a-visa migrants, in particular under Articles 2, 3, 5, 8 and 13 of the Convention and Article 4 of Protocol no. 4.

Article 1 of the Convention obliges States to "guarantee" the rights set out in the Convention "to everyone within their jurisdiction". This includes foreigners. A signatory State to the Convention is responsible under Article 1 for all acts and omissions of its authorities, regardless of whether that act or omission was the consequence of a national law or of the need to comply with international legal obligations.

Article 13 of the Convention obliges States to provide national remedies for complaints lodged under the Convention. The principle of subsidiarity gives States the primary responsibility for ensuring compliance with their obligations under the Convention, leaving recourse to the ECtHR, as a last resort.

Article 3 prohibits torture and other forms of inhuman treatment. Under Article 3, Member States must not expose a person to a real risk of death penalty, torture or inhuman or degrading treatment or punishment, persecution or serious violation of other fundamental rights.

States also have an international obligation to ensure that public officials comply with the Convention. All CoE Member States have incorporated or implemented the Convention in their national legislation, which means that their judges and officials have the obligation to act in accordance with the provisions of the Convention.

The **provisions of the** Council of Europe's **European Social Charter**, adopted in 1961 and revised in 1996, complement the provisions of the Convention in respect of social rights. The ESC does not provide for a court, but has the European Committee of Social Rights (ECSR), composed of independent experts who decide on the conformity of national law and practice under two procedures: the reporting procedure, under which states submit national reports at regular intervals, and the collective complaints procedure, which is an optional procedure allowing organisations to lodge complaints.

The 2011 **Council of Europe Convention on preventing and combating violence against women and domestic violence** (Istanbul Convention), regulates aspects regarding the protection of migrant, refugee and asylum-seeking women and girls against gender-based violence, including the gender aspects of asylum and forms of violence that migrant girls, in particular, may face, such as genital mutilation or forced marriage.[12]

The Convention requires States Parties to ensure that gender-based violence against women can be recognised as a form of persecution within the meaning of the 1951 Convention, and to ensure that each of the grounds set out in the 1951 Convention is interpreted in a gender-sensitive manner. The Istanbul Convention reiterates the obligation to comply with the principle of non-refoulement and establishes the obligation to ensure that victims of violence against women in need of protection, regardless of their status or residence, are not returned to any country where their life would be in danger or where they could be subject to torture, inhuman or degrading treatment or punishment.

10 See: https://www.unhcr.org/about-unhcr/who-we-are/global-compact-refugees

11 See: https://ecre.org/wp-content/uploads/2021/03/Legal-Note-8.pdf

12 See: https://rm.coe.int/cm-rec-2019-11-guardianship-en/16809ccfe2

Recommendation Rec(2022)17 of the Committee of Ministers to member states on the protection of the rights of migrant, refugee and asylum-seeking women and girls,[13] emphasises that women and girls are exposed to a range of violence that is specific to them because they are women or that disproportionately affects them, and that, in this respect, such violence is gender-based; it recognises that migrant, refugee and asylum-seeking women and girls may be particularly exposed to violence, trafficking, exploitation and abuse in their countries of origin, during their journey and in countries of transit and/or destination; it finds that this may constitute a serious violation of their human rights, especially as they face structural difficulties and barriers in overcoming such violence, trafficking, exploitation and abuse in their various forms.

The Committee of Ministers recommends that member states take all necessary measures to promote and implement the principles set out in the Recommendation and its Annex in order to ensure that migrant, refugee and asylum-seeking women and girls can effectively access and exercise their rights.

Recommendation Rec(2019)11 of the Committee of Ministers to member states on effective guardianship for unaccompanied and separated children in the context of migration[14] covers issues related to the protection, reception, care and well-being of unaccompanied and separated children through guardianship; it provides concrete guidance for the formulation of legislation, the planning of public policies and institutional measures, ensuring access to justice and effective remedies for these children, as well as for the concrete aspects of cooperation and coordination between relevant stakeholders, including at international level.[15]

Recommendation Rec(2003)5 of the Committee of Ministers to member states on measures of detention of asylum seekers[16] contains the principles for the detention of asylum seekers and contains recommendations to member states to implement these principles in legislation and administrative practice.

Recommendation Rec(2005)6 of the Committee of Ministers to Member States on exclusion from refugee status in the context of Article 1F of the 1951 Convention[17] provides recommendations on the interpretation of Article 1F of the 1951 Convention, including notions and procedural issues.

Recommendation Rec(2000)9 of the Committee of Ministers to member states on temporary protection[18] emphasizes that temporary protection is an exceptional, practical measure, limited in time, and that it complements the protection regime enshrined in the 1951 Convention and its 1967 Protocol. The document provides recommendations on registering beneficiaries, ensuring freedom of movement within the territory of the host state, access to at least: adequate means of subsistence, including accommodation; adequate medical care; education for children; access to the labour market in accordance with national law.

The Council of Europe Committee of Ministers' Guidelines on human rights protection in the context of accelerated asylum procedures[19] set out the principles for the application of accelerated asylum procedures, reiterate the procedural safeguards to be respected when examining an asylum application under the accelerated procedure, address issues related to the concepts of "safe country of origin" and "safe third country", the quality of the decision-making process, the time limit for lodging and examining the asylum application, the right to effective and suspensive remedies, detention, social and medical assistance, protection of private and family life, role of the UNHCR.

Recommendation 1703 (2005) of the Parliamentary Assembly of the Council of Europe on protection and assistance for separated children seeking asylum[20] contains recommendations to states on the recognition of the primacy of the principle of the best interests of the child; recognition and application of the principle of non-discrimination of all children; refraining from refusing entry into their territories to separated children; measures for the urgent appointment of a legal representative for separated children; appropriate hearing and questioning of separated children in the framework of asylum proceedings; recognition of child-specific forms of persecution as persecution within the meaning of the 1951 Convention; facilitation of family reunification; detention of separated children.

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13 Details at: https://rm.coe.int/recomandarea-a-comitetului-de-ministri-catre-statele-membre-privind/1680a86af0

14 See: https://rm.coe.int/cm-rec-2019-11-guardianship-en/16809ccfe2

15 See: https://rm.coe.int/memorandumul-explicativ-la-recomandarea-cm-rec-2019-11/1680a8f512

16 See: https://www.refworld.org/docid/3f8d65e54.html

17 See: https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=530ca07a4

18 See: https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=534cfd9c4

19 See: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805b15d2

20 See: https://pace.coe.int/en/files/17328/html

2.2.3. European Union rules and policies in the field of asylum

The **Treaty on the Functioning of the European Union** has regulated the creation of the Common European Asylum System (CEAS) intended to ensure the protection of the rights of asylum seekers and the rights of refugees by all EU Member States. At present, the CEAS establishes common standards and cooperation to ensure that asylum seekers are treated equally in an open and fair system, irrespective of the state to which they apply. The system includes five instruments: Asylum Procedures Directive, Reception Conditions Directive, Minimum Standards Directive, Dublin Regulation, EURODAC Regulation.

The **EU Charter of Fundamental Rights**, ***OJ C 326, 26.10.2012***, is the EU primary law that CEAS instruments have to comply with. It includes the right to asylum, expulsions and protects persons against removal, expulsion or extradition to a state where there is a serious risk of being subjected to the death penalty, torture or other inhuman or degrading treatment or punishment. The Charter also guarantees, *inter alia*, the rights of the child, the right to liberty and security and the right to an effective remedy and a fair trial.

The **Asylum Procedures Directive (Directive 2013/32/EU)**[21] sets out common procedures for granting and withdrawing international protection, establishes clear rules regarding the application for international protection. The Directive aims to set the conditions for fair, rapid and quality asylum decisions and provides specific safeguards for vulnerable persons. Asylum seekers with specific needs are given the necessary support to explain their application. The Directive does not include an exhaustive list of asylum seekers presumed to need specific procedural safeguards, although it refers to the need for such guarantees in relation to age, sex, sexual orientation, gender identity, disability, serious illness, mental disorder or as a result of torture, rape or other serious forms of psychological, physical or sexual violence. The Directive includes a specific provision setting out the safeguards to be complied with in the case of unaccompanied children.

The **Reception Conditions Directive (Directive 2013/33/EU)**[22] sets common minimum standards for the living conditions of asylum seekers and aims to ensure human rights and guarantee a decent standard of living: access to housing, food, employment, education, medical assistance.

The Directive contains provisions on the detention of asylum seekers and an exhaustive list of grounds for detention to avoid arbitrary detention. The Directive also limits periods of detention; restricts the detention of vulnerable persons, especially children; provides legal safeguards (access to free legal assistance, written information when appealing against a detention order); establishes the conditions allowed for detention, such as access to open spaces and contact with lawyers, non-governmental organisations and family members.

Vulnerable persons with specific reception needs covered by the Directive are: children, unaccompanied children, people with disabilities, elderly people, pregnant women, lone parents with minor children, victims of human trafficking, people with serious illnesses, people with mental disorders and other serious forms of psychological disorders, victims of physical or sexual violence. The Directive provides reception conditions for asylum seekers and guarantees related rights such as the right to healthcare, education and work.

The **Qualification Directive (Directive 2011/95/EU)**[23] establishes: criteria for granting refugee status or beneficiary of subsidiary protection status; access to a range of rights and integration measures for them in all EU countries (residence permits, travel documents, access to education and employment, social benefits and medical assistance); definition of "refugees" and "stateless persons eligible for obtaining subsidiary protection" as well as "family members"; principles for assessing applications; conditions for granting refugee status; conditions for obtaining subsidiary protection; situations and grounds for loss or exclusion from the granting of refugee status or subsidiary protection; rights of beneficiaries of international protection (protection against refoulement, access to information, protection of family unity, issuance of residence permits and travel documents, access to employment, access to education, social protection, representation of unaccompanied minors, access to housing, freedom of movement, integration facilities, repatriation assistance).

21 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection

22 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:32013L0033&from=EN

23 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted

The **Dublin Regulation**[24] sets out principles, criteria and mechanisms for deciding which EU country is responsible for examining an asylum application, granting applicants enhanced protection until their status is decided; a new system for early identification of problems related to national asylum or reception systems and addressing their root causes before they lead to major crises; additional guarantees for applicants (right to information, individual interviews; additional safeguards for minors, enhanced protection for children and family members of applicants, dependants and relatives of applicants, free legal assistance on request, right to appeal against a decision for transfer to another EU country); non-application of detention on the grounds of asylum application; introduction of an early warning, preparedness and crisis management mechanism to address shortcomings in national asylum systems; help for EU states facing large numbers of applicants for international protection at their borders.

The **EURODAC Regulation**[25] extends the EURODAC system, which is an EU-wide biometric database containing fingerprints of asylum seekers, to allow authorities access to the database for the purpose of investigating, detecting and preventing terrorist offences and other serious criminal offences.

The **Schengen Borders Code**[26] lays down the rules governing checks on persons at external borders, entry conditions, conditions for the temporary reintroduction of internal border control in the event of a serious threat to public policy or internal security. The Code provides that: border control activities must be in accordance with the 1951 Convention relating to the Status of Refugees and the obligations related to access to international protection, in particular the principle of non-refoulement and fundamental rights; border checks must be conducted with full respect for human dignity, in a manner that does not discriminate against any person on grounds of gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

The **Return Directive**[27] establishes a common set of rules for the return of non-EU nationals who do not (no longer) fulfil the conditions for entry, stay or residence on the territory of a Member State, as well as related procedural safeguards, encouraging the voluntary return of irregular migrants.

The **Family Reunification Directive**[28] lays down the conditions for the exercise of the right to family reunification by third-country nationals residing lawfully in the territory of the Member States.

Directive 2001/55/EC on Temporary Protection[29] establishes a system to address mass arrivals in the EU of foreign nationals who are unable to return to their countries, in particular because of war, violence or human rights violations; establishes immediate temporary protection for these displaced persons; promotes a balance of Member States' efforts to receive persons, but does not impose mandatory distribution of asylum seekers between Member States.

Communication from the Commission to the European Parliament and the Council on the protection of children in migration[30] proposes urgent action addressed to the European Commission and EU agencies for the protection of migrant children and comes with recommendations to EU Member States. It also aims to ensure closer relations between asylum and migration authorities and child protection services. Key aspects of the Communication concern the strengthening of child protection systems along migration routes; the development of child protection systems and cross-border child protection cooperation; the protection of unaccompanied children from countries outside the EU; measures to identify and protect unaccompanied

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24 Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person

25 Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice

26 Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders

27 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 staying third-country nationals

28 Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification

29 Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof

30 See Communication from the Commission to the European Parliament and the Council, Protection of migrant children, COM/2017/0211 final https:// eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex%3A52017DC0211

children quickly and comprehensively; effective reception measures for children in EU Member States (initial individual vulnerability assessment, access to inclusive formal education and medical assistance, etc.); status determination and procedural safeguards; the best interests of the child and the effective use of data, research, training and funding.

The **New Pact on Migration and Asylum** is a set of new rules and policies on migration and the asylum process for the European Union. The Pact, which was proposed in September 2020 and agreed between the European Parliament and the Council in December 2023, sets out a common approach to migration and asylum that is based on solidarity, responsibility and respect for human rights. It will replace the above-mentioned CEAS instruments.[31]

31 At the time of writing, there is no final text of the instruments agreed under the Pact. Therefore, this study does not analyse in detail the requirements of the Pact.

SECTION III. COMPARATIVE ANALYSIS OF LEGISLATION AND POLICIES IN THE FIELD OF ASYLUM IN THE REPUBLIC OF MOLDOVA AND IN THE EUROPEAN UNION

3.1. ACCESS TO THE ASYLUM PROCEDURE

The modern institution of asylum, including the legal framework established by the 1951 Convention and the 1967 Protocol thereto, stems directly from the right to seek and enjoy asylum, provided for in Article 14 of the Universal Declaration of Human Rights. This right has been reaffirmed in an increasing number of regional instruments on refugee and human rights, including the Charter of the European Union which, in Article 18, guarantees the right to asylum.

The principle of non-refoulement lies at the heart of the exercise of the right to asylum and is the cornerstone of international refugee protection and international human rights law. This principle is codified, *inter alia*, in Article 33 para. (2) of the 1951 Convention and applies to any action which results in removal from the territory, deportation, return, extradition, refoulement at the border or refusal of admission, etc., and, therefore, exposure of refugees to risk. The principle of non-refoulement is not subject to territorial restrictions and applies regardless of where the State concerned exercises jurisdiction. The prohibition of refoulement, provided for in international refugee law, is complemented by the prohibitions on return contained in and elaborated on the basis of international human rights law, which prohibits, *inter alia*, the removal from the territory of a person who faces the risk of torture or other cruel, inhuman or degrading treatment or punishment or other forms of serious harm. The principle of non-refoulement applies to all refugees, including those who have not been formally recognised as such, and to asylum seekers whose status has not yet been determined. In the context of human rights, the principle of non-refoulement is not subject to limitations or derogations.

The right to asylum provided for in international law covers a number of fundamental human rights. However, this right remains an independent right aimed at ensuring personal safety and security and the prospect of continuing to live a life free from risk. Although the principle of non-refoulement is a fundamental right and the cornerstone of international refugee protection, the right to asylum under international law goes far beyond the prevention of return. The institution of asylum includes, *inter alia*, (i) access of asylum seekers to processes of status determination and needs protection that are both fair and effective and comply with the 1951 Convention and the 1967 Protocol; (ii) the obligation to admit refugees to the territories of States; (iii) the obligation to provide UNHCR with prompt, unhindered and safe access to applicants for protection; (iv) the obligation to rigorously apply the exclusion clauses stipulated in Article 1F of the 1951 Convention; (v) the obligation to treat asylum seekers and refugees in accordance with standards applicable in the field of human rights and provided by refugee law; (iv) the responsibility of host States to protect the civilian and pacifist nature of asylum; and (vii) the obligation of refugees and asylum seekers to respect and comply with the laws of host States. [32]

3.1.1. Access to the asylum procedure in the territory and at the border: operational standards compliant with human rights

Under international law, states have the sovereign power to control the entry, exit and continued presence on their territory of persons who are non-nationals of that state. However, international law also provides that measures taken in this respect cannot prevent third-country nationals from applying for asylum.

32 See: https://www.refworld.org/docid/5017fc202.html

Access to the territory of persons fleeing persecution in their countries of origin is one of the essential rights set out in the 1951 Convention and in the relevant European legal instruments. States may not impose penalties on refugees for their unlawful entry and presence on their territory, provided that they present themselves to the authorities and give a well-founded reason for such irregular entry or presence.

The principle of non-refoulement is essential for the realisation of the right to seek asylum. This right prohibits, without discrimination, any conduct by the State which leads to return, in any manner, whatsoever to an unsafe foreign territory, including rejection at the border or non-admission to the territory. In order to ensure compliance with the principle of non-refoulement and in order for the right to asylum to be effective, every person who may be in need of international protection must be guaranteed access to the asylum procedure. In other words, in the context of asylum, the principle of non-refoulement entails the obligation to grant persons seeking international protection access to the territory and to fair and efficient asylum procedures, to determine whether or not the person will be granted international protection.

In this context, it should be noted that according to the legislative proposals for the reform of EU asylum rules, developed in the framework of the new Pact on Migration and Asylum, a proposal for a Regulation introducing a screening procedure as part of the new pre-entry phase has been drafted as a result of an asylum application.

The aim of the new regulation on the screening procedure is to ensure the rapid identification of the correct procedure applicable to a person entering the EU without fulfilling the entry conditions. The screening procedure at external borders will apply to all persons who do not fulfil the entry conditions, including those who apply for international protection. This concerns persons who have been apprehended for irregular crossing of the external border by land, sea or air, persons brought ashore following a rescue operation at sea and those who have lodged an application for international protection at external border crossing points or transit zones without fulfilling the entry conditions. The regulation will also apply to persons apprehended on EU territory who have circumvented external border controls.

The screening procedure will include identification and security checks, but also health and vulnerability checks. The screening procedure should, as a general rule, be conducted close to external borders or at other dedicated locations in the territories of the Member States within a maximum of five days, during which time the persons must remain at the disposal of the national authorities. At the end of the screening procedure, all persons concerned will be directed to the competent authorities: asylum or, where appropriate, transfer or return.

In addition, Member States will have to set up an independent mechanism to monitor the compliance with human rights during the screening procedure. The new mechanism will be empowered to monitor compliance with the principle of non-refoulement and respect for national rules on taking into custody, if these are applied under the screening procedure.[33]

The procedures for granting international protection aim to ensure three major objectives:

Firstly, ensuring effective access to asylum procedures is vital to ensure that applicants for international protection have the opportunity to apply for such protection, and that applications are effectively examined to determine whether applicants qualify for international protection under the law. From this perspective, access to procedures implies both rights and obligations.

33 See: 2020/0278(COD) Screening Regulation
https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/0278(COD)&l=en

Secondly, once the application has been lodged and is in the process of being examined, ensuring good administration requires basic principles and safeguards to ensure individual and thorough examination of the asylum application. These principles and safeguards must be respected in order to protect the rights of applicants for international protection throughout the process and to ensure the correct identification of applicants who qualify for protection.

Thirdly, the State is obliged to ensure that applicants for international protection have the right to an effective remedy before a court of law against decisions taken on asylum applications.

The legislation must contain sufficient safeguards to ensure and improve effective access to procedures for persons seeking international protection. These safeguards should reflect the rationale that access to international protection is a key precondition for ensuring respect for the principle of non-refoulement.

According to Law 270/2008, the competent authorities shall ensure access to the territory of the Republic of Moldova of any foreigner at the state border, from the moment of manifestation of will to ask for protection. No asylum seeker may be expelled or returned from the border or from the territory of the Republic of Moldova. Asylum seekers are not penalised for irregular entry or stay on the territory of the country and their treatment must comply with international human rights standards. The competent authorities have the obligation to ensure access to the asylum procedure to any foreigner in the territory of the country or at the state border, from the moment of expressing his/her will in writing or verbally, which shows that he/she is seeking the protection of the Republic of Moldova.

The European Union asylum *acquis* introduces a number of legal concepts relevant to ensuring effective access to the asylum procedure, which are not found in the national legal framework. Thus, Article 6 of Directive 2013/32/EU clarifies how the asylum procedure is initiated, stating that any third-country national or stateless person who expresses a wish to apply for international protection should be registered as soon as possible by a Member State as an applicant for international protection. It also:

- sets out the legal standards ensuring access to the asylum procedure on the basis of three stages consisting of submission, registration and application, without detailing how these notions are to be understood in practice;[34]
- in conjunction with Articles 7 and 8, it stipulates the implications of the general principle of effective, easy and timely access to asylum procedures.

Article 7 contains specific rules on applications made on behalf of dependants or minors, or by a minor on his/her own behalf. Article 8 refers to the information and counselling of persons taken in custody or who are at the border crossing points, including in transit areas, at external borders regarding the possibility of lodging an application for international protection.

Thus, access to the asylum procedure is based on a three-step approach consisting of making, registering and lodging an application. The distinctions between the terms used in Article 6 "**making** an application, "**registering** of an application" and "**lodging** of an application" can be summarised as follows:[35]

34 The interpretation of the terms "submission", "registration", "lodging" is provided by the European Union Agency for Asylum in its legal analysis "Asylum procedures and the principle of non-refoulement", available at: https://euaa.europa.eu/sites/default/files/asylum-procedures-ja_en.pdf

35 Details at: https://euaa.europa.eu/publications/practical-guide-registration

Making an application is the first step that triggers the asylum procedure. A person is considered to have made an application when they have expressed their wish to receive international protection. Such a wish can be expressed in any form and applicants do not necessarily need to use specific words such as "international protection" or "asylum". The defining element must be that the person expresses fear of persecution or serious harm on return to his/her country of origin or, in the case of a stateless person, to the country of former residence. If there is any doubt as to whether a particular statement can be construed as an application for asylum, the person should be explicitly asked if they wish to receive international protection. The applicant must be entitled to his/her rights as an asylum applicant from the moment of application.

The application must be registered as soon as it is made. At this stage, the authorities responsible for receiving and registering applications, including the border police, should register applications together with the personal data of each applicant. Those authorities must inform the applicant of his/her rights and obligations as well as of the consequences for the applicant in case of non-compliance with those obligations. The applicant must be provided with a document certifying that the application has been submitted. The time limit for lodging an application starts from the moment an application is registered.

The lodging of the application is the act that formalises the asylum application. The applicant must be provided with the necessary information on how and where to lodge his/her application and must be given an effective opportunity to do so. At this stage, the applicant must provide all the information at his/her disposal that is necessary to substantiate and complete the application. The time limit for the administrative procedure starts from the moment an application is lodged. At that time, the applicant must be issued with a document attesting to his/her status as an applicant, which should be valid for the entire duration of his/her right to remain on the territory of the State.

The importance of the distinction between the moment when an application is "made" and the moment when it is "lodged" for the purposes of the principle of effective access to procedures is clear, resulting from Art. 6 para. (2), according to which Member States shall ensure that a person who has made an application for international protection has an effective opportunity to lodge it as soon as possible. If the applicant fails to do so, the State Party may presume that the applicant has implicitly withdrawn or abandoned the application, with the application of that procedure.[36]

In contrast to the current regulations, the proposal for a Regulation on Asylum Procedures[37] regulates, in several separate articles, the steps underlying access to the asylum procedure, making a clear distinction between them.

More specific rules on the lodging of applications for international protection are laid down in Art. 6 para. (3), which is an optional clause, granting States the permission "*require that applications for international protection be lodged in person and/or at a designated place*". Where a Member State invokes this rule and requests that applications be lodged in person, a legal adviser, family member or other representative may not do so on behalf of the applicant unless the applicant is present in person at the time of lodging the application.

36 See Article 28 of Directive 2013/32/EU

37 See: Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, available at: https://eur-lex.europa.eu/legal-content/RO/ALL/?uri=COM:2016:0467:FIN

As regards applications made on behalf of dependants or minors and by minors on their own behalf, a number of issues are relevant. In addition to the fact that regulatory and administrative measures must be taken to ensure that every person who has reached the age of majority and has the capacity to act has the right to lodge an asylum application in his/her own name, the State may provide that an application may be lodged by an applicant on behalf of minors, but also on behalf of a dependent who has reached the age of majority. In such cases, dependants who have reached the age of majority without legal capacity must also give their consent to the application being lodged on their behalf. Otherwise, such persons must be able to lodge the application on their own behalf. Consent must be given at the time of lodging the application or at least at the time of interviewing the dependant who has reached the age of majority. Before consent is sought, the person must be informed individually of the procedural consequences of lodging the application on his/her behalf and of his/her right to lodge a separate application.

A minor may apply for asylum either on his/her own behalf, if he/she has the legal capacity to act in proceedings under State law, or through his/her parents, other adult persons who are members of his/her family or another adult person responsible for him/her, or through a representative.

National law may determine the cases when a minor may lodge an application on his/her own behalf and cases when an application by an unaccompanied minor must be lodged by an authorised representative.

The proposals for documents drawn up in the context of the structural reform of the European asylum and migration framework[38] provide for the possibility for applicants to lodge an application on behalf of their spouse or partner with whom they are in a stable and long-term relationship, who are to be informed individually of the relevant procedural consequences of lodging an application on their behalf and of their right to make a separate application for international protection. At the same time, the right of every person to apply for international protection is guaranteed by the fact that if the applicant does not lodge an application on behalf of his/her spouse, partner, adult dependants without legal capacity or minors, within the time-limit for lodging an application, the spouse or partner may still do so on his/her own behalf and the dependants or minors are to be granted the necessary support by the decision-making authority.

The applicant for international protection must be adequately informed of his/her rights and obligations, in a timely manner and in a language he/she understands or may reasonably be presumed to understand. Given that, for example, if the applicant refuses to cooperate with the national authorities (e.g. does not provide the necessary elements for the examination of the application, refuses to have his/her fingerprints or facial image taken, does not lodge the application within the prescribed time limit), the application could be rejected as abandoned, the applicant must be informed of the consequences of failing to comply with these obligations.

In order to facilitate access to the procedure at border crossing points, including transit zones, three specific safeguards must be implemented:[39]

- providing information on the possibility to apply for international protection;
- providing, through interpretation services, the basic communication necessary to enable the competent authorities to understand whether persons express a wish to receive international protection and to facilitate access to the asylum procedure;
- ensuring effective access for organisations and individuals providing advice and counselling to applicants for international protection, to applicants at border crossing points, including in transit areas.

At the same time, in order to facilitate access to the asylum procedure, it is necessary to proactively identify persons who may wish to apply for international protection, by providing relevant information on the right to apply for asylum, by guiding them to the appropriate procedures, by ensuring that their rights are respected. The obligation to provide information on the possibility to apply for international protection requires that the authorities likely to receive applications for international protection, but not competent to register them, have relevant information and that the staff of these institutions receive the necessary level of training appropriate to their tasks and responsibilities, have instructions on how to inform applicants about where and how to lodge applications for international protection.

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38 See: Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, available at: https://eur-lex.europa.eu/legal-content/RO/ALL/?uri=COM:2016:0467:FIN

39 See: Practical tools for first contact officers - a practical guide https://euaa.europa.eu/ro/publications/instrumente-practice-pentru-functionarii-de-prim-contact-ghid-practic

The measures taken at border crossing points mark one of the main moments when the special needs of vulnerable persons can be declared or detected. It is the responsibility of the first contact officers to identify the special needs of vulnerable persons and to refer them to national authorities in order to benefit from the necessary support and/or further assessment.

In all cases, every person, whether or not they have explicitly applied for international protection, has the right to asylum, the right to dignity, the right to life, the right not to be subjected to torture or to inhuman or degrading treatment or punishment, based on the principles of non-refoulement, non-discrimination, confidentiality, the best interests of the child, fairness and efficiency in the asylum procedure, individual, impartial and objective assessment of the application.[40]

In order to be able to fulfil their functional obligations effectively and to ensure human rights, general principles applicable to the asylum procedure and ethical principles, the staff of the authorities responsible for receiving and registering applications should possess adequate knowledge, receive the necessary training in the field of international protection and human rights, be guided in their work by operational standards, regulations, internal instructions. The guidelines produced by the European Union Agency for Asylum[41] and the Identification Tool for Persons with Special Needs can be consulted in the process.[42]

RECOMMENDATIONS

- Examining the relevance of regulating access to the asylum procedure in the Republic of Moldova based on the three-step approach: making, registration and lodging of an asylum application;
- Developing regulations, methodological instructions and operational standards in Moldova in line with human rights principles and rights that provide support and guidance to ensure effective and fair access to the asylum procedure;
- Identifying training needs for staff of the competent authorities for the reception and registration of asylum applications in the Republic of Moldova, taking into account their role in the process of ensuring access to the asylum procedure in compliance with human rights and refugee protection standards.

3.1.2. Asylum applications at the border

International protection may be applied for by a person anywhere within the territory, territorial waters, transit zones or borders of a country, either by expressly requesting asylum or by invoking the need for protection. Access to the asylum procedure may be subject to different procedures, depending on the way the asylum seeker crossed the border or his/her location. Thus, ensuring effective access to the asylum procedure directly at the border may be extremely important in some countries and less relevant for other countries, if consideration is given to how refugees can actually gain access to the territory. However, the reception and registration of asylum applications requires the existence of administrative rules and procedures, whereby the authorities document the person's intention to seek protection, collect personal data and other relevant information, verify documents confirming the identity of the person concerned. These procedures take place before certain authorities, within set time limits and often in set locations.

According to Directive 2013/32/EU, in cases where applications for international protection are submitted to authorities that are likely to receive such applications, but are not competent to register them under national law, Member States must ensure that registration takes place with the competent authority within the set time limit. In order to ensure effective and rapid access to the procedure for examining applications for protection, officials who first come into contact with applicants for international protection, in particular border guards, must be provided with relevant information and benefit from the necessary training on how to recognise and manage applications for international protection. They should be able to provide applicants who are present on the territory, including at the border or in transit zones, with relevant information on where and how to submit applications for international protection.

With regard to applications for international protection made at the border or in a transit zone before a decision on the applicant's entry in the territory is taken, the EU asylum *acquis* grants Member States the possibility to provide for procedures for examining the admissibility and/or substance of an application under

40 For more information see: https://www.echr.coe.int/documents/d/echr/Guide_Immigration_ENG

41 For more information, see the webpage of the European Union Agency for Asylum https://euaa.europa.eu/

42 See: EASO tool for identifying persons with special needs https://ipsn.euaa.europa.eu/ro/despre-acest-instrument#Why%20was%20this%20tool%20developed?

the accelerated procedure, allowing a decision to be taken directly on the spot, in well-defined circumstances, regarding such applications.

In the context of the newly agreed Pact on Migration and Asylum, the current proposal suggests that border procedures involving, depending on the circumstances, detention during the procedure should remain optional and be applied for the examination of admissibility or substance of applications for the same reasons as in an accelerated examination procedure. If detention applies, it should be subject to the relevant safeguards under the Reception Conditions Directive. The procedure at the border will be as short as possible while allowing for a full and fair examination of asylum applications. It is proposed to apply the border procedure to unaccompanied minors only if they pose a danger to national security or public order.

According to Article 52 of Law 270/2008, the authorities competent to receive applications for asylum are the structural and territorial subdivisions of the General Inspectorate for Migration, the General Inspectorate of Border Police under the Ministry of Internal Affairs, police bodies, institutions under the National Administration of Penitentiaries or the subdivisions of temporary detention of the law enforcement bodies. The asylum application will be sent to the competent subdivision of the General Inspectorate for Migration under the conditions specified by law. The said authorities draw up minutes in which they indicate the personal data, the circumstances that led the person to apply for asylum, the country of origin and other data declared by the applicant or data of which the said authorities are aware. The General Inspectorate of Border Police shall ensure access of asylum seekers to the territory of the country only after informing the General Inspectorate for Migration and with its permission.

The Moldovan legal framework does not provide for the procedure for examining the admissibility of an asylum application, nor for the asylum procedure at the border. In this context, the competent authorities are to carefully consider the relevance of introducing the asylum procedure at the border, given that this procedure involves the detention of asylum seekers in certain circumstances and additional resources that would be required in relation to its necessity in the context of the Republic of Moldova.

On a separate note, the task of border police in Moldova is to identify persons who may wish to apply for asylum, provide them with information and direct them to the competent authority, without denying anyone access to the asylum procedure.[43] Prompt and efficient referral to the competent authority is essential to guarantee the right to asylum in practice and it is not the responsibility of the border police to assess whether the person in front of him/her has protection needs and can be granted international protection.

In practice, this means that the border police has a crucial role to play in ensuring access to the asylum procedure by proactively identifying persons who may wish to apply for asylum, by providing relevant information on the right to apply for asylum and refer them to the competent authorities. At the same time, border crossing points are among the main places where the special needs of vulnerable persons can be identified and they can be referred to the competent authorities for support. To better identify the special needs of vulnerable persons, the European Union Agency for Asylum's (EUAA) practical tool on the identification of persons with special needs (IPSN) can be used.[44]

While each state has the right to decide whether to grant access to its territory to a foreign national, this decision must be taken in strict compliance with asylum and human rights law. However, cases of arbitrary or collective expulsions at European borders - the so-called "pushbacks" phenomenon cannot be overlooked in the context of asylum applications at the border. According to the Report on Refoulement Policies and Practices in Council of Europe Member States,[45] submitted to the Parliamentary Assembly of the Council of Europe by the Council of Europe Committee on Migration, Refugees and Displaced Persons, in order to control and manage migration flows, Council of Europe member states focus a large part of their efforts on border security. In this context, "refusals of entry and expulsions without any individual assessment of protection needs have become a documented phenomenon. Given that these practices are widespread and, in some countries, systematic, these "refusals" called "pushbacks" can be considered as part of national policies rather than accidental actions.

The greatest risk associated with refoulement is the risk of *return*, which means that a person is sent back to a place where they could face persecution within the meaning of the 1951 Convention or be subjected to inhuman or degrading treatment in the sense of the Convention. The persistent and growing practice

43 See: Practical tools for first contact officers - a practical guide https://euaa.europa.eu/ro/publications/instrumente-practice-pentru-functionarii-de-prim-contact-ghid-practic

44 See: EASO tool for identifying people with special needs https://ipsn.euaa.europa.eu/ro

45 See: Report | Doc. 14909 | 08 June 2019 Pushback policies and practice in Council of Europe member States https://pace.coe.int/en/files/27728/html

and policy of refoulement is a clear violation of the fundamental right to asylum and the principle of non-refoulement, which forms the core of international refugee law and the EU Charter. There are reports and evidence of inhuman and degrading treatment by the authorities of Council of Europe member states regarding these rejections, through intimidation, dispossession or destruction of migrants' property and even the use of violence and deprivation of migrants of food and basic services. In the denial of the push-back action, these types of inhuman and degrading treatments (sometimes systematic) are not recognised and consequently not properly investigated. In order to desist from all types of rejections, Member States should react actively and appropriately to every sign or evidence of their occurrence."

PACE also notes that there is a tendency to dismiss or accuse, stigmatise and even incriminate non-governmental organisations, human rights defenders and civil society actors who work to help foreigners gain access to asylum procedures and protection. When reporting and seeking to investigate push-backs and related human rights violations, NGOs are often blamed and negatively perceived for "interference", despite their role as key actors in facilitating migrants' access to rights and justice. In this regard, PACE has called on Council of Europe member states to respect the role of NGOs and human rights defenders, in line with their commitments as set out in the Committee's Recommendation CM/Rec(2007)14 of the Committee of Ministers on the legal status of non-governmental organisations in Europe.

Although the Republic of Moldova is not mentioned among the examples of rejection cases presented in the above-mentioned report, as a CoE Member State it is to take into account PACE Resolution 2299 (2019),[46] under which Member States are called upon, *inter alia*:

- increase the means available to border services to enable them provide adequate support to refugees, asylum seekers and migrants arriving at national borders, regardless of their status;
- ensure that foreigners arriving at the border are informed of their legal status, including their right to apply for international protection;
- ensure communication in a language that foreigners can understand, including interpretation (if necessary using remote interpretation facilities available on the internet), taking into account the special needs of vulnerable persons such as children, traumatised and illiterate persons;
- ensure the provision of interpretation services at borders and throughout the reception and medical examinations, registration and processing of asylum applications;
- to immediately cease any practices of forcing migrants to sign documents they do not understand, which could lead them to believe that they are signing asylum applications, while the documents relate to expulsion;
- introduce and/or improve training programmes for border guards, emphasising that border protection and surveillance must be conducted in full compliance with international obligations to respect individual rights to protection, information, legal assistance and freedom from arbitrary detention.

RECOMMENDATIONS

- Revise the instructions on the procedure for receiving asylum applications and cooperation with the General Inspectorate for Migration, bearing in mind that any measures taken at border crossing points and in places of detention must be proportionate to the objectives pursued, non-discriminatory and in full compliance with human rights.
- Carefully examination of the relevance of introducing the admissibility procedure for asylum applications and the border procedure, bearing in mind that the latter does not exclude detention of asylum seekers and requires additional resources.
- Ensure independent and sustainable monitoring of border control activities, which is essential to stop the actions for refusal of entry and refoulement of asylum seekers at the border, by granting access to independent institutions and NGOs to all border areas and border surveillance material, and by effectively addressing and examining complaints from refused/refouled persons and NGO reports.

46 See: Resolution 2299 (2019) Pushback policies and practice in Council of Europe member States https://pace.coe.int/en/files/28074/html

3.1.3. Criteria for granting international protection and the content of the protection granted: analysis of selected concepts or provisions

Criteria for granting international protection[47]

A person is considered a refugee within the meaning of the 1951 Convention when he/she meets the criteria for the term "refugee" provided by Article 1A of the Convention. This occurs prior to the date at which his/her refugee status is formally determined. Recognition of his/her refugee status does not therefore make him/her a refugee but declares him/her to be one. He/she does not become a refugee because of recognition, but is recognised because he/she is a refugee.[48]

Among the provisions of the 1951 Convention that define refugee status, three categories of clauses are distinguished, called "inclusion", "cessation" and "exclusion" clauses. Inclusion clauses set out the criteria that a person must meet in order to obtain refugee status. These clauses form the positive criteria on the basis of which refugee status is determined.

According to Art. 1 A (2) of the Convention, the term "refugee" applies to any person who:

"as a result of events occurring before 1 January 1951 and 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 of the protection of that country; or who, not having a nationality and being outside the country of his or her former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it".

The constituent elements of the term "refugee" are interpreted in the "Handbook on Procedures and Criteria for Determining Refugee Status"[49] and in the "EASO Practical Guide: Conditions for obtaining international protection status".[50]

Directive 2011/95/EU[51] lays down standards on the conditions to be met by third country nationals or stateless persons in order to become beneficiaries of international protection. The Directive provides the definition of acts of persecution and the grounds for persecution, as well as the situations that are considered "serious harm", the existence of which are conditions for obtaining subsidiary protection.

Law No. 270/2008 sets out the acts that are considered to be persecution within the meaning of Art. 17[52] of the Law and the forms of acts of persecution (Art. 45 para. (1), para. (2)), grounds for persecution (Art. 46) and situations considered to be "serious harm" (Art. 45 para. (3)).

A comparative analysis of the national and international legal framework reveals a similarity between the regulations of Law 270/2008 and those of Directive 2011/95/EU, which establish the grounds for granting international protection, based on the definition of refugee provided by the 1951 Convention.

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47 In this sub-section are analysed selected non-exhaustive criteria that present most interest for the purposes of analysis of provisions of Moldovan legislation.

48 Handbook on Procedures and Criteria for Determining Refugee Status, Based on the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, Reprinted, December 2000, Chișinău

49 Available at: www. refworld.org, Refworld | Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees.

50 Available at: https://euaa.europa.eu/sites/default/files/publications/EASO-Practical-Guide-for-international-protection_RO.pdf

51 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), available at: https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:32011L0095.

52 Art. 17 of Law no. 270/2008: *"Upon request the refugee status of a foreigner who, having a 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/her nationality and is unable or, owing to such fear, is unwilling to avail himself/herself of the protection of that country; or who, not having a nationality and being outside the country of his/her former habitual residence, as a result of such events, is unable or, owing to such fear, unwilling to return to it, is recognised".*

The proposal for a Regulation on a common procedure for international protection in the EU[53] (including the proposal for a revised Regulation)[54] and the proposal for a Regulation on standards on the qualification and status of third country nationals or stateless persons as beneficiaries of international protection,[55] adapt the rules on the conditions for obtaining international protection status and on the content of such status. In this respect, it may be of interest to consider aspects regarding the setting out of more prescriptive provisions on the obligation of the applicant to substantiate his/her application, to specify the grounds for persecution, to assess the alternatives for protection within the country of origin (internal protection alternative) and the grounds for withdrawal of the status in case the beneficiary of international protection is a danger to the security of the State or has been convicted of a particularly serious crime.

In the context of assessing protection alternatives within the country of origin, the concepts of protection needs arising outside the country of origin, harm and protection, protection within the country of origin and persecution, including the grounds for persecution, need to be defined. Protection within the country of origin from persecution or serious harm should be effectively available to the applicant in a part of the country of origin to which he/she can travel safely and lawfully, where he/she can be admitted and where he/she can reasonably be expected to settle. Verification of the existence of such protection within the country of origin, as suggested in the new proposal, should be an integral part of the assessment of the application for international protection and should be conducted after the decision-making authority has established that in the absence of such protection the international protection criteria are applicable. The burden of proving the existence of protection within the country of origin should lie with the decision-making authority[56].

At the same time, the "best interests of the child" must be taken into account, in line with the UN Convention on the Rights of the Child and the EU Charter, including the principle of family unity, the welfare and social development of the child, safety and security considerations and the views of the child in accordance with his/her age and maturity. When examining applications for international protection lodged by minors, it is necessary to take into account the forms of persecution or serious harm to which children may be subjected[57] (e.g. recruitment of minors into armed forces, child trafficking, child prostitution and pornography and/or violation of specific children's rights, harmful traditional practices).

The notion of "family members" should take into account the different specific situations of dependency and the special attention to be paid to the best interests of the child. It should also reflect the reality of current migration trends, according to which applicants often arrive on the territory of a State after having spent a long time in transit. The concept should therefore include families formed outside their country of origin but prior to their arrival on the territory of the State.

The EU Qualification Directive[58] introduces in Article 10 a definition of the persecution ground "membership of a social group". This concept was subsequently clarified by the Court of Justice of the European Union (CJEU),[59] stressing the need to interpret this rule in line with the Istanbul Convention applicable in the EU. For the purpose of defining a particular social group, due consideration will be given to specific aspects of the applicant's gender, such as gender identity and sexual orientation, as well as aspects that may be linked to certain traditions and customs, resulting, for example, in genital mutilation, forced sterilisation or forced abortion, insofar as these aspects are related to the applicant's well-founded fear of persecution. At the same time, national legislation should include a reference to the fact that, when examining an application for international protection, methods have to be used to assess the applicant's credibility in a manner that respects the rights of the person, in particular human dignity and respect for private and family life, and, in specific cases, the assessment should not be based on stereotypes or prejudices.

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53 Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, available at: https://eur-lex.europa.eu/legal-content/RO/ALL/?uri=COM:2016:0467:FIN

54 Available at: https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:52020PC0611

55 Available at: https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:52016PC0466&from=ES

56 For more information on the regulation of this concept in the current EU asylum acquis, see: https://euaa.europa.eu/sites/default/files/easo-practical-guide-qualification-for-international-protection-2018.pdf and https://ecre.org/wp-content/uploads/2016/07/ECRE-Information-Note-on-the-Qualification-Directive-recast_October-2013.pdf

57 UNHCR, UNHCR Guidelines on International Protection No. 8: Asylum claims for children under Art. 1 A(2) and 1 F of the 1951 Convention, available at: https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=4cced15c2

58 See: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF

59 See: Case number = C621/21, Judgment ECLI:EU:C:2024:47 https://curia.europa.eu/juris/liste.jsf?lgrec=fr&td=%3BALL&language=en&num=C-621/21&jur=C

As far as exclusion from protection is concerned, Law 270/2008 does not provide clarity as to whether crimes committed for allegedly political purposes can lead to exclusion from recognition of refugee status. In this context, it should be noted that, at EU level, the commission of a crime for political purposes does not currently constitute a ground for exclusion from recognition of refugee status. However, particularly violent acts which are not proportionate to political objectives and acts of terrorism which are characterised by violence against the civilian population, even if committed for an allegedly political purpose, are considered as common law offences, which may determine the exclusion from refugee status.[60]

Content of protection granted

The 1951 Convention embodied the fundamental concepts of the refugee protection regime and has remained the foundation of this protection regime to this day. Its provisions are a cornerstone in the development of rules on the treatment provided to refugees.

The Convention sets out the minimum standards required for the treatment of refugees, including the basic rights and obligations of refugees in countries of asylum. Five standards on refugee rights have been proposed in the Convention.[61]

The first standard is that refugees benefit from the same treatment as other foreigners, except where the Convention provides for more stringent conditions.

The second standard includes a number of rights, which the parties grant to refugees on its territory under the same conditions as its own citizens.

The third standard consists of granting, at least, the same favourable conditions with regard to religion as to its own citizens.

The fourth standard concerns conditions no less disadvantageous than for any of the foreigners.

The fifth standard relates to the rights that States Parties grant to refugees, providing them with conditions that are as advantageous as possible and no worse than those enjoyed by foreigners in similar situations.

According to Directive 2011/95/EU, international protection granted by the EU member state includes the following rights:[62]

- **protection against refoulement;**
- access for refugees and beneficiaries of subsidiary protection to **information** on the rights and obligations attached to their status in a language they can understand or may reasonably be presumed to understand;
- protection of **family unity**;
- unless there are compelling reasons of national security or public order, issuance of:
  - **residence permits** - valid for at least three years in the case of refugees and at least one year (two years on renewal) in the case of subsidiary protection; and of
  - **travel documents** for travel outside the national territory - in the case of subsidiary protection, only if the respective persons cannot obtain a national passport;
- **access to employment** and vocational training and professional training opportunities, with equal treatment as regards employment conditions;
- **access to education** - equal treatment with own nationals in the case of **minors** and with nationals of other non-EU countries legally residing in the respective territory, in the case of **adults**;
- equal access to procedures for the **recognition of foreign diplomas and professional qualifications**;
- equal treatment with own nationals in terms of **social protection** (this may be limited to basic benefits in the case of subsidiary protection);

60 For more information on this, see https://euaa.europa.eu/publications/practical-guide-exclusion

61 See: https://ibn.idsi.md/sites/default/files/imag_file/4.Evolutia%20si%20Relevanta%20actuala%20a%20conventiei%20din%201951%20privind%20statutul%20refugiatilor.pdf

62 See: Directive 2011/95/UE

- **access to health care** under the same access conditions as those applicable to the nationals of the Member State that has granted the protection
- **representation of unaccompanied minors** by a legal guardian or, if necessary, by a body responsible for the welfare of minors or by any other appropriate form of representation established within the national legal system;
- **access to housing** under conditions equivalent to other non-EU nationals, who are legally residing in the respective territory;
- **freedom of movement** within the national territory under the same conditions and with the same restrictions as those provided for the nationals of other non-EU countries, who are legally residing in the respective territory;
- access to **integration facilities**;
- if necessary, **help with repatriation**.

According to Law 270/2008, the content of the protection granted to beneficiaries of international protection is largely similar to the protection granted under EU law. However, there is a need to harmonise Law 270/2008 by a structured and logical transposition of the EU provisions in a manner that is in line with the national legal system, while preserving the essence, meaning and purpose of the EU provisions, taking into account the following aspects:

- Persons granted international protection have a set of rights and obligations, which should be without prejudice to the rights and obligations laid down in the Geneva Convention.
- When applying the legal provisions on the content of international protection, the specific situation of persons with special needs, such as unaccompanied minors, persons with disabilities, elderly persons, pregnant women, single parents with minor children, victims of trafficking in human beings, persons with mental health problems and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, must be taken into account, provided that an individual assessment of their situation finds that they have special needs.
- The best interests of the child must constitute a primary consideration for the relevant authorities, in all cases.
- The competent authorities may restrict access to paid activities in the case of positions involving the exercise of public authority and responsibility for the defence of the general interests of the State or other public authorities. In the context of the exercise of the right to equal treatment with respect to membership of an organisation representing workers or carrying out a specific activity, there is also the possibility that beneficiaries of international protection may be excluded from participation in the management of bodies governed by public law and from holding public office.
- In order for beneficiaries of international protection to effectively enjoy the rights and benefits provided for by the legal framework, it is necessary to take into account their specific needs and the specific difficulties they face in the integration process and to facilitate their access to integration rights, in particular, with regard to vocational training opportunities and actions and access to procedures for the recognition of foreign diplomas, qualifications or other official qualification titles, in particular, the lack of supporting documents and their inability to bear the costs related to recognition procedures.
- Equal treatment in terms of social security should be ensured between beneficiaries of international protection and nationals of the State granting them protection.
- Furthermore, in particular in order to avoid social hardship, beneficiaries of international protection should be granted social assistance without discrimination. However, as far as beneficiaries of humanitarian protection are concerned, it is acceptable to limit social protection to basic benefits, which include at least a minimum financial allowance, assistance in the event of sickness or pregnancy and assistance for child-raising, insofar as these benefits are granted to own citizens under the legislation in force.
- In order to facilitate the integration of beneficiaries of international protection, access to certain types of social assistance provided for by legislation could be made conditional on their effective participation in integration measures, both for beneficiaries of refugee status, as well as for the beneficiaries of the status conferred by humanitarian protection. At the same time, the State must determine the modalities of access to integration measures and may institute the mandatory requirement

to participate in such integration measures, such as: language courses, civic integration courses, vocational training and other employment-related courses.

- Beneficiaries of international protection must be guaranteed access to both physical and mental health care.

RECOMMENDATION

- When revising some of the provisions of Law 270/2008, legislators should take into account both the European Union legislation in force at the time and the new EU legislative framework in the field of asylum and migration.

3.1.4. Access of vulnerable groups and persons with special needs to the asylum procedure

International law establishes specific protection and special measures for certain groups of persons so that they can enjoy their human rights on an equal footing. Such groups are considered to be in need of enhanced protection because, due to their particular vulnerability or structural inequality, their rights are perceived to be exposed at greater risk of being violated. The major treaties in the field of human rights recognise the special legal position of certain groups, such as women (Convention on the Elimination of All Forms of Discrimination against Women), children (Convention on the Rights of the Child), persons with disabilities (Convention on the Rights of Persons with Disabilities), who require specific measures to protect their rights.

In this regard, the UN Convention on the Rights of the Child recognises in its preamble that "the child, by reason of his or her physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth" and establishes the right of the child who is temporarily or permanently deprived of his or her family environment to special protection and assistance from the State.

Similarly, the UN Convention on the Rights of Persons with Disabilities recognises that girls and women with disabilities are at greater risk of violence, abuse or exploitation. And some women with disabilities, such as refugees, migrants and asylum seekers, face additional barriers because they are denied access to medical assistance.[63]

European case law has recognised asylum seekers as a vulnerable group in its own right and defined them as members of "a particularly disadvantaged and vulnerable group of the population in need of special protection"[64] and has noted the existence of a broad international and European consensus regarding this need for special protection, as underlined by the 1951 Convention, the mission and activities of the UNHCR and the standards set out in Directive 2013/33/EU.

According to the relevant ECtHR case law with reference to Art. 3 of the Convention, States are obliged to take appropriate measures to provide care and protection to the most vulnerable, such as children, victims of torture, violence or trafficking, persons with health problems and other persons who are in vulnerable situations. This includes the obligation to take active steps to identify vulnerabilities as early as possible through effective vulnerability assessment procedures and to ensure that people are informed with regards to such procedures.[65]

EU asylum legislation has incorporated an open definition of vulnerable persons and linked it to the legal obligation of EU Member States to establish specific mechanisms to identify them in the asylum procedure. The need to take into account the special needs of particularly vulnerable applicants is recognised in several EU instruments governing migration.

Article 21 of Directive 2013/33/EU provides a non-exhaustive list of the categories of applicants for international protection, considered vulnerable persons. These include: minors, unaccompanied minors, persons with disabilities, elderly persons, pregnant women, lone parents with minor children, victims of trafficking in human beings, persons suffering from serious medical conditions, persons with mental health problems and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence. The Directive also defines the notion of "applicant with special reception needs", which means a vulnerable

63 See: Committee on the Rights of Persons with Disabilities, General comment No. 3 (2016) on women and girls with disabilities, para. 39, available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/262/56/PDF/G1626256.pdf?OpenElement

64 See: CASE OF M.S.S. v. BELGIUM AND GREECE https://hudoc.echr.coe.int/fre?i=001-103050

65 See: Fundamental rights of refugees, asylum applicants and migrants at the European borders https://www.refworld.org/docid/5e7e3de84.html

person in accordance with Article 21 who needs special safeguards in order to enjoy rights and fulfil obligations in accordance with this Directive.

Under the provisions of Directive 2013/33/EU, special safeguards are granted to minors, unaccompanied minors and victims of torture and violence, who receive the necessary treatment for the harm caused by such acts, in particular access to appropriate medical and psychological treatment or care.

Directive 2013/32/EU recognises that some applicants may require special procedural safeguards because of individual circumstances such as, *inter alia*, age, sex, sexual orientation, gender identity, disability, serious illness, mental disorder or as a result of torture, rape or other serious forms of psychological, physical or sexual violence. For the purposes of the Directive, the term "applicant in need of special procedural safeguards" means an applicant whose capacity to enjoy the rights and fulfil the obligations under the Directive is limited due to individual circumstances.

If an applicant is identified as having special reception needs, the State will provide the necessary support throughout the asylum procedure. Furthermore, following an assessment procedure, States are obliged to grant special procedural safeguards to applicants for international protection who require it and to provide them with the appropriate support in order to benefit from the rights under the asylum procedure.

Minors, in particular ***unaccompanied minors***, enjoy the widest range of special procedural safeguards provided for in international and Community asylum law due to the particular vulnerability of children in need of international protection. International refugee law and EU asylum law recognises that (i) the particular vulnerability of children in need of international protection and (ii) the provision of appropriate reception conditions, including those tailored to the specific needs of children in need of international protection, are essential to ensure that children can effectively exercise their right to asylum. Insufficient or inadequate reception conditions will have an increased negative impact on the right of children to seek international protection and on the effective exercise of this and other rights.[66]

International standards, Council of Europe standards and European Union standards establish the fundamental principle according to which the best interests of the child must be a primary consideration in all actions and decisions concerning children, including asylum-seeking and refugee children. They benefit fully from the rights provided for in the 1951 Convention (immunity from prosecution for irregular entry or stay, principle of non-refoulement) and the International Convention on the Rights of the Child. The latter provides a framework for the protection of every child within the jurisdiction of the State, including asylum-seeking and refugee children, irrespective of nationality, immigration or stateless status, setting out a series of principles on the protection of children that apply at all stages of relocation, including:

- Best interests of the child, including asylum-seeking and refugee children;
- Non-discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status or on the basis of the status, activities, opinions or beliefs expressed by the child's parents, legal guardians or family members;
- The fundamental right to life, survival and development to the maximum extent possible;
- The right to freely express views that have "due weight" in accordance with the child's age and level of maturity;
- The right of asylum-seeking and refugee children to adequate protection and humanitarian assistance.

ECtHR case law has found that children, whether accompanied or unaccompanied, are in a situation of extreme vulnerability, which takes precedence over considerations of the child's irregular immigration status.[67] States are obliged to implement appropriate measures to ensure that children seeking asylum receive protection and humanitarian assistance. Reception conditions must, *inter alia*, comply with the provisions on the prohibition of inhuman or degrading treatment, the right to respect for private and family life, the right to an effective legal remedy and the prohibition of discrimination. At the same time, States are obliged to implement special safeguards for unaccompanied and separated children. National authorities should identify such children as soon as possible and take steps to ensure that they are placed in appropriate accommodation. A guardian and/or

66 See: Submission by the Office of the United Nations High Commissioner for Refugees in the case of Defence for Children International (DCI) v. Belgium https://www.refworld.org/docid/500419f32.html

67 UN High Commissioner for Refugees (UNHCR), *Submission by the Office of the United Nations High Commissioner for Refugees in the case of Defence for Children International (DCI) v. Belgium*, 13 July 2012, available at: https://www.refworld.org/docid/500419f32.html

legal representative must also be appointed. Any failure or inaction to provide assistance and accommodation may amount to degrading treatment under Article 3 of the ECHR.[68]

Under the EU asylum *acquis*, Member States must take into account the specific situation of children and ensure a standard of living adequate for the physical, mental, spiritual, moral and social development of the child. According to Directive 2013/33/EU, particular attention is to be paid to the following factors: the possibility of family reunification; the well-being and social development of the minor; the safety and security of the minor, in particular where there is a risk of the minor becoming a victim of trafficking in human beings; the views of the minor in accordance with his/her age and maturity.[69]

The accommodation and detention of unaccompanied minors takes place under the conditions of Directive 2013/33/EU, which guarantees family unity, provides for accommodation options, taking into account the best interests of the minor, his/her age and maturity. The same obligations are incumbent on the State under Article 31 of Directive 2011/95/EU in relation to unaccompanied minors who have been granted asylum. Detention of minors seeking asylum is an exceptional measure of last resort and is applied for a minimum period of time. Minors should be detained separately from adults. Detention of minors in prisons is prohibited.[70]

Minors, like other applicants for international protection, are granted access to material reception conditions from the moment they submit their application for international protection, guaranteeing them an adequate standard of living. According to Directive 2013/33/EU, minors seeking international protection have access to education, access to medical assistance and adequate accommodation.

According to Directive 2013/32/EU, States may give priority to examining an application for international protection in the case of unaccompanied minors or other vulnerable applicants within the meaning of Art. 21 of Directive 2013/33/EU or those in need of special procedural safeguards. In this respect, it should be noted that EU legislation contains specific provisions applying to unaccompanied minors in the asylum procedure, such as: lodging the application for international protection on their own behalf or through their parents or other legal representative; ensuring representation and assistance of the minor; offering the possibility of a personal interview in cases expressly set out in national legislation; conducting interviews with minors in a child-friendly manner; applying the accelerated procedure or the border procedure only in strictly defined exceptional cases.

As part of the procedure for examining an application for international protection, States may use medical examinations to determine the age of unaccompanied minors when there is doubt concerning their age. Any medical examination must be conducted by qualified medical personnel, with respect for human dignity. States must ensure that unaccompanied minors are informed in advance of this examination and that there is consent from them or their representatives. If there is any doubt as to the applicant's age, the applicant is presumed to be a minor. With regard to age assessments, the UN Committee on the Rights of the Child states that, in cases of uncertainty, the individual must be given the benefit of the doubt, so if there is a possibility that the individual is a child, he/she should be treated as such.[71]

EU law does not establish an absolute prohibition on the return of unaccompanied minors. Their return is conducted under the conditions of Article 10 of Directive 2008/115/EU.[72] The best interests of the unaccompanied minor must be taken into account when deciding on his/her removal. The State must ensure that he/she is handed over to a member of his/her family, a designated guardian or appropriate reception centres in the State of return.

According to the Community asylum *acquis*, persons with ***disabilities***, persons with ***mental health problems***, persons with ***serious illnesses*** and persons who have been subjected to ***torture, rape or other serious forms of psychological, physical or sexual violence*** fall under the category of vulnerable persons who are granted special protection and whose specific situation must be taken into account.

The provisions of Directive 2013/33/EU apply to persons with disabilities as well as to other categories of vulnerable persons throughout the asylum procedure. States shall provide support to persons with disabilities,

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68 https://fra.europa.eu/sites/default/files/fra_uploads/fra-coe-2020-european-law-land-borders_en.pdf, p. 12

69 See: Art. 23 of Directive 2013/33/EU

70 See: Art. 11 para. (2) and para. (3) of Directive 2013/33/EU

71 UN Committee on the Rights of the Child (CRC), General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6, para. 31 (i)

72 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 irregular third-country nationals, available at: https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:32008L0115

taking into account their special reception needs, including medical assistance and mental health care, where appropriate. The mental health of vulnerable applicants in detention is a priority for States, which monitor them and provide them with the necessary assistance according to their health status.

According to Directive 2013/32/EU, Member States must endeavour to identify applicants in need of special procedural safeguards prior to a first instance decision being taken. Such applicants should be provided with the appropriate support, including sufficient time, to create the necessary conditions for them to have effective access to procedures and to present the necessary elements to substantiate their application for international protection.

Where adequate support cannot be provided to an applicant with special procedural needs in accelerated or border procedures, he/she will be excluded from those procedures, and where the applicant is unable or unwilling to be interviewed due to enduring circumstances beyond his/her control, the personal interview on the substance of the application may be omitted. The decision-making authority is entitled to consult a medical specialist to determine whether this condition is temporary or of a lasting nature.

While EU asylum legislation lays down specific rules for an extended list of vulnerable persons, the Moldovan legislative framework contains general provisions in this respect. Law 270/2008 does not establish a definition of vulnerable persons and does not contain a list of asylum seekers who would need special procedural safeguards in the asylum procedure, but it does contain certain procedural provisions for persons with special needs.

Thus, Section 4 of the Law is devoted to the procedure for examining the application of persons with special needs, which is very limited and includes: unaccompanied minors, victims of torture or violence, and persons with mental disorders (mental illness or mental deficiency).[73]

Similar to the provisions of EU legislation, the law provides more extensive safeguards for unaccompanied minors, namely: priority in the examination of the asylum application (not accelerated procedure, as well); access to rehabilitation, assistance and counselling services for minors who are victims of abuse, neglect, exploitation, torture, inhuman or degrading treatment or who have suffered from armed conflict; immediate measures to identify the parents or other carers of the unaccompanied minor, taking into account the best interests of the child and his/her views and ensuring confidentiality of information regarding these persons.

At the same time, the law contains regulations similar to those in the European directives as regards the appointment of a legal representative for the unaccompanied minor, including the suspension of the asylum procedure until the appointment of a legal representative, and also provides for the need for coordination of actions concerning minors between authorities, but does not specify in concrete terms the direct role of the legal representative in relation to the minor. There is no clarity as to the terms of appointing the legal representative, the period for which he/she was appointed, and when he/she ceases to exercises his/her responsibilities. There are also legislative shortcomings as regards informing the unaccompanied minor about the appointment of a legal representative. All this can have negative consequences for the respect of the principle of the best interests of the child, the representation of the child's interests and the realisation of his/her rights.

At national level, medical examination to determine the age of an unaccompanied minor when there are serious doubts in this respect, as in the Community instruments, is a measure of last resort used, if proof by other means is not possible. It requires the following principles to be complied with: obtaining the prior consent of the minor and his/her legal representative, informing them, in a language the minor is presumed to understand, of the methods of medical examination, the possible consequences of the result of this examination and the effects in case of refusal to conduct it. The decision to reject the asylum application of an unaccompanied minor who has refused to undergo a medical examination will not be based solely on that refusal. The minor enjoys all the rights of an asylum seeker until the results are obtained. However, it should be noted that although the law provides for the application of the benefit of the doubt to credible applicants, who have made every effort to support their asylum claim, it is not sufficiently clear whether this also applies to unaccompanied minors who have undergone medical examination but doubts about their age persist. In accordance with the provisions of Directive 2013/32/EU, these applicants are presumed to be minors.

Law 270/2008 regulates, in general terms, aspects relating to the accommodation of unaccompanied minors. They are applied the measure of protection of children separated from their parents, minors being placed in social services. The law does not provide for the possibility of accommodating minors in alternative forms of placement, taking into account the opinion, age and their degree of maturity. There is also a lack of clarity

73 See: Articles 66-73, Section 4, Chapter VI "Procedure for the examination of asylum applications" of the Law No 270 of 18.12.2008 on asylum in the Republic of Moldova.

regarding the actions of the authorities with regard to the minor in situations when the minor's adult members, siblings or other relatives or persons in whose care the minor is, are already present on the territory of the State where the minor is seeking international protection. It is not clear whether the conditions in which the minor is accommodated are appropriate and adapted to the extremely vulnerable position of the unaccompanied minor.

The procedure for submitting the asylum application as well as the interviewing of unaccompanied minor asylum seekers is in line with the standards set out in Directive 2013/32/EU.

Minor asylum seekers have access to compulsory education and health care under the same conditions as minors who are citizens of the Republic of Moldova. However, there are no specific regulations as regards the situation of unaccompanied minors and how they exercise their rights in practice, given that the law does not specify the time limits for the appointment of the legal representative, which may be delayed.

According to the law, unaccompanied minors benefit from all social assistance measures granted to children who are citizens of the Republic of Moldova.

The special safeguards applied to asylum seekers who are victims of torture or any form of violence are limited only to conducting the forensic expertise. It is unclear what further action is taken by the competent authorities and what special procedural safeguards are offered to these persons. Thus, adults who have been subjected to torture or other inhuman or degrading treatment or violence, being recognised by international bodies as being extremely vulnerable, do not benefit during the asylum procedure from safeguards expressly laid down in the law as regards access to appropriate treatment, legal, medical, psychological and other assistance appropriate to their special needs. The law also does not contain express provisions regarding compliance with the principle of confidentiality of information provided by them during the interview.

The national legal framework on asylum guarantees persons with mental disorders (mental illness or mental deficiency) who are asylum seekers, assistance in exercising their legal capacity if, following a psychiatric examination, they are found to lack discernment.[74] Pending the appointment of a person responsible for their care, asylum seekers with mental disorders or mental illnesses enjoy the rights provided for asylum seekers. The legal representative lodges the asylum seeker's application and assists him/her in preparing for the interview for refugee status determination, when it is deemed possible to conduct the interview. The law ensures that people with mental disorders have access to information regarding the interview and that an official with special training in interviewing techniques for people with special needs conducts the interview.

As in the case of victims of torture, inhuman or degrading treatment, the special procedural safeguards offered to asylum seekers with mental disorders and mental illness are very limited and are limited to the establishment of judicial protection. The law does not provide access to relevant support services for applicants with mental disorders.

In conclusion, the procedural safeguards offered by the national asylum system to persons with special needs are limited and insufficient to meet their needs for effective access to the asylum procedure. Law 270/2008 covers only certain aspects of the asylum procedure applied in relation to asylum seekers with special needs, and the regulations are often of a fragmentary nature, lacking coherence and clarity of the procedure, at all stages. The lack of provisions regarding the obligation to identify the special procedural needs of vulnerable persons affects their effective access to special procedural safeguards and hinders the effective exercise of the right to asylum and other human rights.

RECOMMENDATIONS:

- Providing a broad definition of vulnerable persons in need of special procedural and reception safeguards to better understand and respond to these needs and to comply with obligations under international law.
- Extending the categories of persons with special needs in line with the EU asylum *acquis* and international law.
- Supplementing Law 270/2008 with regulations making it compulsory to identify the special needs of vulnerable persons asylum seekers.
- Developing mechanisms for the rapid and efficient identification of vulnerable persons, assessment of their special needs in terms of the procedure, in order to provide relevant support, according to these special needs.

74 See: Art. 73 of Law 270/2008 on asylum in the Republic of Moldova

- Strengthening procedural safeguards, as well as support measures granted to persons with special needs to ensure that asylum seekers with special needs have effective access to the asylum procedure and the capacity to exercise their asylum right and other rights.

3.1.5. Immigration detention of asylum seekers and alternatives to detention

The rights to liberty and personal security are fundamental rights, reflected in the international prohibition of arbitrary deprivation of liberty and which are supported by the right to freedom of movement.

The 1951 Convention, by its Article 31, obliges Contracting States not to impose criminal penalties on refugees on account of their irregular entry or stay and not to impose restrictions as regards their freedom of movement, unless such restrictions are necessary. Restrictions can only be applied until their refugee status in the country concerned is settled or until they are admitted to another country. These regulations are essential to the purpose of the Convention, ensuring that refugees can have effective access to international protection and constitute a non-penalty clause for refugees entering or present in the territory of a State Party without authorisation.

For Art. 31 para. (1) of the 1951 Convention to be effective, it must be applied in respect of every person who is or claims to be in need of international protection and must cease to apply only after a final decision on the asylum claim has been issued, after a fair procedure, which has decided otherwise. Art. 31 para. (1) also applies to asylum seekers whose applications are deemed inadmissible because a decision on their refugee status has not yet been taken.

The effective implementation of Art. 31 of the Geneva Convention is the responsibility of all branches of government - legislative, executive and judicial - and involves cooperation, coordination and communication between institutions and actors, in particular border control, prosecution and asylum authorities.[75]

Article 9 of the International Covenant on Civil and Political Rights proclaims the right to liberty and security of the person and prohibits arbitrary arrest or detention, and states that no one may be deprived of his/her liberty except on lawful grounds and in accordance with the procedure prescribed by law.[76]

According to Art. 5 of the European Convention on Human Rights, no one can be deprived of his/her liberty save in exceptional cases and in accordance with the law. The Convention contains an exhaustive list of grounds for detention, one of which is to prevent unauthorised entry or to facilitate the removal of a person, and Article 2 of Protocol No 4 to the Convention refers to restrictions on freedom of movement, provided that the State concerned has ratified this Protocol. The restriction on this freedom must be necessary and proportionate and respect the purposes defined in Article 2 para. (2) of Protocol No. 4. This provision applies only to persons who are "lawfully within the territory" and therefore does not refer to persons in an irregular situation.

In order to determine whether a person's situation is protected under Art. 5 of the Convention or Article 2 of Protocol No 4, the ECtHR considers that an assessment of the situation of each individual person has to be conducted, taking into account a number of criteria, such as: the type, duration, effects and manner of implementation of the measure in question. The difference between deprivation of liberty and restriction of freedom of movement is decided by the Court in each individual case, depending on the degree or intensity and not the nature or reason for the measure. The assessment depends on the facts specific to each case. To make a distinction between restriction of freedom of movement and deprivation of liberty in the context of taking foreign nationals in custody in airport transit zones and in reception centres, for the identification and registration of immigrants, the Court takes into account the following factors, summarised as follows: i) the specific situation of the person and the options he/she has, ii) the applicable legal regime of the State concerned and its purpose, iii) the relevant duration, particularly in terms of the purpose and procedural protection afforded to the applicants during that time, and iv) the nature and level of restrictions actually imposed on or endured by the applicants.[77]

EU law provides for the right to liberty and security under Article 6 of the EU Charter of Fundamental Rights. Secondary law governing detention in the context of asylum and pending return are governed by two different legal regimes. Deprivation of liberty is regulated in Art.

75 See: UNHCR Detention Guidelines https://www.unhcr.org/fr-fr/en/media/unhcr-detention-guidelines

76 For further information, see General Comment No. 35 to the Covenant, available at: https://www.ohchr.org/en/calls-for-input/general-comment-no-35-article-9-liberty-and-security-person

77 Guide on Article 5 of the European Convention on Human Rights, Right to liberty and security, updated on 31 December 2021, available at: Guide on Article 5 - Right to liberty and security (Romanian) (coe.int)

8 of Directive 2013/33/EU[78] and Art. 28 of the Dublin Regulation[79] for asylum seekers, and in Art. 15 of Directive 2008/115[80] on return - for persons subject to the return procedures. Interpreting these provisions, the CJEU has emphasised that, given the importance of the right to liberty enshrined in Article 6 of the Charter and the seriousness of the interference that detention represents with this right, limitations on the exercise of this right must apply only to the extent strictly necessary.[81] For detention to be free from arbitrariness, certain requirements must be met, such as giving reasons for any detention and allowing access of the person detained to a prompt judicial review. In terms of the concept of "detention", this term means "any measure of confinement of an applicant for international protection in a specified place, where the applicant is deprived of freedom of movement. Detention involves a deprivation of freedom of movement, and not merely a restriction of it, deprivation which is characterised by isolating the person concerned from the rest of the population in a specified place".[82]

Directive 2013/33/EU emphasises that detention must be subject to the principle of necessity and proportionality, be a measure of last resort and that it can only be applied after all alternative non-custodial measures to detention have been properly examined and found to be ineffective in the case in question. Alternatives to immigration detention, and that any alternative measure to detention must respect the fundamental human rights of asylum seekers. In order to avoid arbitrary detention, an exhaustive list of grounds for detention of an asylum seeker has been adopted:

- to establish or verify their identity and nationality;
- to establish the elements of the asylum application which cannot be obtained without resorting to detention, in particular where there is a risk of absconding of the applicant;
- to decide, in the context of a procedure, on his/her right to enter the territory;
- if he/she is in detention, subject to the return procedure under Directive 2008/115/EC and submits an application for international protection in order to postpone or prevent the return;
- when reasons of national security or public order so require;
- in accordance with Art. 28 of the Dublin Regulation, which, ***under certain conditions***, allows for the placement in detention for the security of the transfer procedures under the Regulation.

Under the Return Directive 2008/115/EC, the detention of third-country nationals is subject to the principle of necessity and proportionality and is only possible when other sufficient but less coercive measures cannot be applied effectively in each individual case. Detention should be for the shortest time possible and should only be maintained "as long as removal measures are ongoing and conducted with due diligence". Detention is allowed for the following two reasons, in particular when there is a risk of voluntary departure or other serious interference in the return or removal process: to prepare the return process and/or to conduct the removal process.

Moreover, both Directives limit detention periods; restrict the detention of vulnerable persons, especially children; provide legal safeguards (e.g. access to free legal assistance, written information in case of lodging an appeal to a detaining body); introduce specific reception conditions for detention centres, such as access to open spaces and contact with lawyers, NGOs and family members.

Thus, in line with international standards and EU law, deprivation of liberty on immigration grounds can only be used as a measure of last resort, with each individual case being assessed for to determine whether all the preconditions necessary to prevent ***arbitrary detention*** are met. This must be an extreme measure,

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78 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:32013L0033

79 Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), available at: https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:32013R0604

80 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 staying third-country nationals, available at: https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:32008L0115

81 See: JUDGMENT OF THE COURT (Fourth Chamber) 14 September 2017 (*) ECLI:EU:C:2017:680 https://curia.europa.eu/juris/document/document.jsf;jsessionid=B404278FD654DEB1385E08633ECBB3A9?text=&docid=194431&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=2747048

82 See CJEU Judgement ECLIEU:C:2020:367 of 14 May 2020, available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=226495&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=4407224

provided for in national law and applied only when absolutely necessary, proportionate to a legitimate aim and in accordance with international treaties. In the context of the application of the measure of detention to asylum seekers, three purposes are noted, in accordance with international law, for which this measure may be necessary, in a given case: protection of public order, public health and national security.

According to ECtHR case law, the "guarantee against arbitrariness" means that such detention should be in good faith; closely linked to the purpose of preventing illegal entry into a territory; conducted under the conditions of appropriate detention, since such a measure does not apply to criminals but to foreigners who, usually for fear of their lives, have fled their own country; and finally, of a reasonable duration necessary to achieve its purpose. The Court expresses reservations as to the practice of authorities who automatically place asylum seekers in detention, without proceeding to an individual assessment of their situation.[83]

Since seeking asylum is not an illegal act, any restrictions imposed on persons exercising this right must be within the limits of the law, carefully circumscribed and subject to prompt review. Respecting the right to seek asylum implies the establishment of open and humane reception mechanisms for asylum seekers, including treatment that is safe, dignified and in compliance with human rights.

Moldovan legislation does not provide for the placement in detention (public custody) of asylum seekers, except in situations where, for reasons of national security or public order, return from the territory of the country is required.[84] The reception of asylum seekers is conducted in accommodation centres under the GIM. According to Law No. 270/2008, in line with the 1951 Convention, asylum seekers are exempted from criminal sanctions for irregular entry or stay on the territory of the Republic of Moldova, this good practice contributing to the unhindered access to the territory and to the asylum procedure of persons in need of international protection.

At the same time, according to Law No. 200/2010, a foreigner pending removal or who could not be returned, who has crossed or attempted to cross the state border illegally, who has entered the country during the period of prohibition previously ordered, whose identity could not be established, who has been declared undesirable, whose expulsion has been ordered or if there is a risk of his/her absconding, may be taken into public custody. Unaccompanied minors and families with minors are taken into public custody only as a last resort and for a minimum period of time. Foreigners taken into detention (public custody) are placed in the Temporary Placement Centre for Foreigners run by the GIM.

The national legal framework does not contain regulations on alternatives to public custody (immigration detention).

In fact, there is no evidence that detention has any effect on curbing irregular immigration. Regardless of such an effect, detention (public custody) policies aimed at limiting this phenomenon are considered unlawful under international human rights law because they are not based on an individual assessment of the relevance of detention placement. However, there are many ways in which irregular immigration can be addressed - other than detention (public custody) - that take into account the concerns of governments as well as the particular circumstances of the individual concerned.[85]

Consideration of alternatives to detention that are less intrusive for purposes of immigration control is necessary to protect against arbitrary detention under Art. 9 para. (1) of the International Covenant on Civil and Political Rights, as well as in accordance with the UNHCR Detention Guidelines developed in 2012 (UNHCR Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (Guideline 4.1.)).[86] Various Council of Europe bodies have also underlined that detention will only be permissible if it is in accordance with a procedure prescribed by law, and only, if, after the careful and individual examination of the necessity of deprivation of liberty, it has been established that less coercive measures cannot be applied effectively in each case. Alternatives to detention, feasible in the individual case should always be sought and found ineffective before any detention order is made.[87]

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83 Guide on Article 5 of the European Convention on Human Rights, Right to liberty and security, updated on 31 December 2021, available at: Guide on Article 5 - Right to liberty and security (Romanian) (coe.int)

84 See: Art. 11 of the Law on Asylum No. 270 of 18.12.2008

85 Report of the UN Special Rapporteur on the human rights of migrants François Crépeau, A/HRC/20/24, 2 April 2012, available at: http://www.unhcr.org/refworld/docid/502e0bb62.html

86 See: Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=51b198514

87 See: Legal and practical aspects of effective alternatives to detention in the context of migration. Analysis of the Steering Committee for Human Rights adopted on 7 December 2017 https://rm.coe.int/legal-and-practical-aspects-of-effective-alternatives-to-detention-in-/16808f699f

The twenty Council of Europe guidelines on forced return establish a general principle that alternatives to immigration detention should be considered first (Guideline 6).[88]

In the case of persons seeking international protection, the Detention Guidelines set out the international rules governing decisions to detain persons seeking international protection and the standards of treatment to which they are entitled, namely:

<table>
<tr><th></th><th colspan="3">UNHCR Detention Guidelines</th></tr>
<tr><td>Guideline 1</td><td colspan="3">The right to seek asylum must be respected</td></tr>
<tr><td>Guideline 2</td><td colspan="3">The rights to liberty and security of person and to freedom of movement apply to asylum-seekers</td></tr>
<tr><td>Guideline 3</td><td colspan="3">Detention must be in accordance with and authorised by law</td></tr>
<tr><td rowspan="3">Guideline 4</td><td colspan="3">Detention must not be arbitrary and any decision to detain must be based on an assessment of the individual's particular circumstances, according to the following:</td></tr>
<tr><td>Guideline 4.1</td><td>Guideline 4.2</td><td>Guideline 4.3</td></tr>
<tr><td>Detention is an exceptional measure and can only be justified for a legitimate purpose</td><td>Detention can only be resorted to when it is determined to be necessary, reasonable in all the circumstances and proportionate to a legitimate purpose</td><td>Alternatives to detention need to be considered</td></tr>
<tr><td>Guideline 5</td><td colspan="3">Detention must not be discriminatory</td></tr>
<tr><td>Guideline 6</td><td colspan="3">Indefinite detention is arbitrary and maximum limits on detention should be established in law</td></tr>
<tr><td>Guideline 7</td><td colspan="3">Decisions to detain or to extend detention must be subject to minimum procedural protections</td></tr>
<tr><td>Guideline 8</td><td colspan="3">Conditions of detention must be humane and dignified</td></tr>
<tr><td>Guideline 9</td><td colspan="3">The special circumstances and needs of particular asylum-seekers must be taken into account</td></tr>
<tr><td>Guideline 10</td><td colspan="3">Detention should be subject to independent monitoring and inspection</td></tr>
</table>

In addition to ensuring compliance with human rights standards, UNHCR encourages governments to review their detention policies and practices based on the latest research and comparative analysis of alternatives to immigration detention.

A useful source in this regard would be the compilation of the EU Agency for Fundamental Rights (FRA) "Alternatives to detention for asylum seekers and persons in return procedures".[89] This compilation is addressed to policy makers and practitioners promoting the use of alternatives to detention and presents various tools and research materials, together with international human rights standards and the EU legal framework. The compilation provides a selection of instruments on the right to liberty, the non-binding UN and CoE instruments on alternatives to detention and the EU regulations in this field, the case law of the ECtHR, the EU Court of Justice and the UN Human Rights Committee on alternatives to detention, the recently developed tools and research publications.

Alternatives to detention, many of which can be used in combination, can be broadly grouped into the following categories:

- the obligation to surrender passports or travel documents;
- residence restrictions, such as the obligation to live and stay overnight at a certain address;

88 See: Twenty Guidelines of the Committee of Ministers of the Council of Europe on Forced Return, September 2005 https://www.coe.int/t/dg3/migration/archives/Source/MalagaRegConf/20_Guidelines_Forced_Return_en.pdf

89 See: Alternatives to detention for asylum seekers and people in return procedures, 9 October 2015 https://fra.europa.eu/en/publication/2015/alternatives-detention-asylum-seekers-and-people-return-procedures#

- bail and the provision of guarantees by third parties;
- regular reporting to the authorities (police or competent migration authorities);
- placement in open-type institutions with case support;
- electronic monitoring.

The obligation to surrender passports or travel documents may be imposed either as a single measure or in combination with other alternatives, such as an obligation not to leave a particular location or area. It is a soft measure which essentially serves to ensure that valid identity and travel documents are not lost or destroyed during the period necessary to prepare for the return and removal process.

Residence restrictions impose an obligation to stay at a certain address or to live in a certain geographical area and are often combined with a requirement for regular reporting. Designated locations can be open or semi-closed facilities run by the state or NGOs, as well as hotels, hostels or private housing. The regime imposed may vary, but in general the person must be present at the designated location at certain time intervals, while absences may only be allowed with a well-founded justification.

Release on bail and provision of guarantees by third parties. In the context of criminal law, it is not uncommon for bail to be applied to a detained person and for this measure to be replaced, in certain circumstances, by other preventive measures. Release on financial guarantees is rarely used in asylum and return procedures, partly because it is assumed that asylum seekers or foreigners under the return procedure would not have the financial means to post the bail.

Regular reporting to the authorities obliges people to report to the police or immigration authorities at regular time intervals and is one of the most common alternatives to detention. A daily, weekly or monthly reporting obligation may be imposed as an additional requirement to the obligation to live in a particular region or location.

Placement in open units with case support is an innovative alternative to detention that combines social work with time spent in designated locations/institutions. Asylum seekers or foreign nationals under the return procedure are placed in open spaces and receive individual counselling on their personal situation and existing options. This alternative form has been put in place following evidence according to which compliance with a return decision depends on the level of trust that the person affected by the decision has in the host country's authorities. Such trust is built through individual counselling and contacts with external actors such as NGOs.

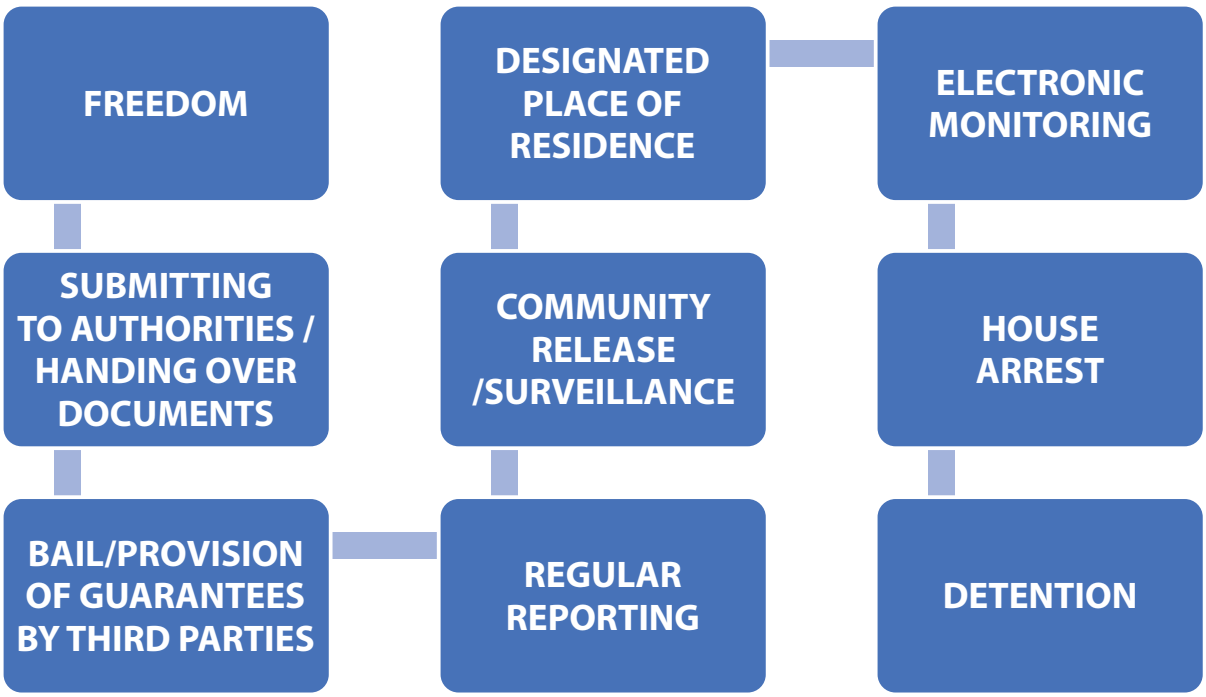
Electronic monitoring is primarily used in the context of criminal law. Its use as an alternative to detention for asylum seekers and persons in the return procedure is limited. Electronic monitoring is the most intrusive of the alternatives to detention as it substantially interferes with a person's right to privacy, restricts freedom of movement and can have a negative impact on a person's dignity. Thus, its use in the field of migration has been criticised by various human rights bodies as it can lead to discrimination by potentially associating people wearing electronic bracelets with criminals.

Similar to detention, alternatives to this measure should also be regulated by **laws and legal rules** in order to avoid arbitrary restrictions on freedom in general or freedom of movement. The principle of legal certainty requires adequate regulation of these alternatives, and regulations must specify and explain the available alternatives, the criteria that apply to their use, as well as the authorities responsible for their implementation and enforcement.

Alternatives to detention that restrict the liberty of asylum seekers may have an impact on human rights and are **subject to human rights standards**, including regular review of each case by an independent institution. Persons to whom alternatives to detention apply should have timely access to effective complaint mechanisms, as well as effective remedies, where appropriate. Alternatives to detention should be available not only in theory but also in practice.

In designing alternatives to detention, it is important to comply with the principle of **minimum interference** and to pay particular attention to the specific situation of vulnerable groups such as children, pregnant women,

the elderly or people with disabilities or who have suffered trauma. However, this should take into account the international consensus that children should, in principle, not be detained.



Good practice indicates that alternatives are most effective when asylum seekers:

- are treated with dignity, humanity and respect throughout the asylum procedure;
- are clearly and comprehensively informed, at every stage, as regards their rights and obligations associated with alternatives to immigration detention, as well as of the consequences of non-compliance;
- have access to legal advice throughout the procedure;
- receive adequate material support, accommodation and other reception conditions, or access to means of subsistence (including the right to work);
- may benefit from individualised case management services in relation to asylum applications lodged.

Detention of migrant children is a major challenge for all states, including detention of families with minors. Although the measure of detention is not effectively applied also to children accompanying family members or legal representatives, they are taken into detention together with their family or legal representative and thus subject to measures restricting certain rights.

Detention of children in the context of asylum and immigration is contrary to international human rights law, according to the UN Working Group on Arbitrary Detention, the UN Committee on the Rights of the Child and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. However, children are protected from arbitrary detention not only by the general safeguards applicable to adults, but also by additional measures specifically designed to protect their specific needs as vulnerable persons. These largely derive from the principle of the best interests of the child[90] , the right of the child to develop and the right to respect for family life. In addition, there are special safeguards that apply only to unaccompanied children. Unaccompanied children are particularly vulnerable and therefore entitled to special protection.[91]

Thus, the Council of Europe Commissioner for Human Rights considers that, in principle, migrant children should not be subject to detention in the context of immigration and asylum. The Commissioner also emphasized that

90 See: Children in migration: fundamental rights at European borders. Joint note by the Council of Europe and the European Union Agency for Fundamental Rights (FRA) 18 December 2023, pag.6
https://rm.coe.int/prems-162623-gbr-2050-children-in-migration-16x24-web-bat/1680add8c8

91 See: Alternatives to detention for asylum seekers and people in return procedures, 9 October 2015
https://fra.europa.eu/en/publication/2015/alternatives-detention-asylum-seekers-and-people-return-procedures#

"having a dependent child should be a reason for an adult not to be detained, except where there is a legal order of a criminal court" The ECtHR has ruled that the extreme vulnerability of children and the inherently intimate nature of detention causes them stress and anxiety. Children in detention are extremely vulnerable as a result of feelings of distress and inferiority in such situations, which can jeopardise their development.[92] Finally, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) also considers that CoE Member States should strive to avoid the use of deprivation of liberty of a migrant who is a child in an irregular situation. In accordance with the principle of the best interests of the child, as formulated in Article 3 of the UN Convention on the Rights of the Child, the detention of children cannot be justified solely on the basis of their being unaccompanied or separated, or on the basis of their migrant status, or residence, or lack thereof. This applies to both accompanied and unaccompanied children.[93]

The Court's judgement of 17 January 2023 in ***Minasian and Others v. Moldova*** found violations of Art. 5 para. (1) of the Convention - detention of minor children without any legal basis, accompanying their mother in detention and failure of the national courts to examine the question whether the detention of children is a measure of last resort and whether the detention centre is adequate to accommodate families with minor children; violation of Art. 5 para. (4) of the Convention - the inability of children to challenge the legality of their detention.

At the same time, in cases where children are involved, the ECtHR has exceptionally held that deprivation of liberty may only be necessary to achieve its purpose, namely the expulsion of the entire family. The presence of a child in a place of detention for adults is not in conformity with Art. 5 para. 1 (f) of the Convention unless the authorities have resorted to this measure as a last resort and only after verifying that another less restrictive measure could not be applied.[94]

In conclusion, when considering the taking into public custody of children accompanying parents or another legal representative, it is necessary to take into account: the right to family, the right to family privacy, the conditions of accommodation centres, access to education, social integration. In all cases the best interests of the child must prevail.

The use of alternatives to detention benefits both the state and the individual, as on the other hand, they are more cost-effective, and on the other hand, they are less restrictive and ensure respect for human rights to a greater extent than deprivation of liberty. Although regulations on alternative measures to detention exist in practically all EU Member States, they are still hardly applied, and even if they do exist, they are applied mainly in cases involving particularly vulnerable persons. Several EU Member States still do not collect statistics on alternatives to detention, making it difficult to assess the extent to which they are actually used.

RECOMMENDATIONS

- Amendment of Law 200/2010 by introducing regulations that would provide for more non-custodial alternatives to immigration detention.
- Expressly establishing, in the text of Law 200/2010, the detention placement procedure only as a last resort, for the minimum possible period, subject to proportionality and necessity tests and only after due consideration of all alternative non-custodial measures.

3.1.6. Avoiding abuse of the asylum procedure. Withdrawal of refugee status

Abuse of the asylum procedure is the situation where an applicant for a form of international protection is aware that he/she does not need protection and can return to his/her country without problems. As a rule, abuse of the asylum procedure involves the lodging of applications for international protection in the territory of one or more States with the manifest aim of securing residence in the territory of the State or States concerned, even if the applicant does not fall in the category of persons who qualify for a form of international protection. Thus, foreigners apply for international protection under various pretexts which, in many cases, are of an economic nature and have nothing to do with the minimum conditions to be met in order to be granted a form of protection.

For the first time, the need for measures to address manifestly unfounded or abusive asylum claims was

92 ECHR, Kanagaratnam and Others v. Belgium, No. 15297/09, 13 December 2011, para. 67–69.

93 Ibidem

94 Ibidem

recognised in the UNHCR Executive Committee Conclusion No. 28 (XXXIII)-1982[95], with the mention that the decision by which a claim is declared manifestly unfounded or abusive should be taken only by or with reference to the authority competent to determine refugee status. Subsequently, in Conclusion No. 30 (XXXIV)-1983[96] the UNHCR Executive Committee recognised that asylum applications lodged by persons who do not meet the criteria set out in the 1951 Geneva Convention are a serious problem in several States, and that they are burdensome for the authorities and to the detriment of asylum seekers who have good reasons for claiming recognition of refugee status. UNHCR has held that national procedures for determining refugee status may contain special provisions for the expeditious examination of unfounded claims.

According to the Council of Europe Committee of Ministers' Guidelines on the Protection of Human Rights in the Context of Accelerated Asylum Procedures of 01.07.2009,[97] the procedure derogates from normally applicable time-limits and/or procedural safeguards in order to accelerate the decision-making process. Procedures whereby a State may declare an application inadmissible without examining the substance of the application also fall within the scope of the Guidelines.

Directive 2013/32/EU recognises, in recital 18 of the preamble and in Art. 31 para. (2) of the Directive, that (2) that it is in the interest of EU Member States and applicants for international protection that the decisions on applications for international protection are taken as soon as possible, but clearly stipulates that the speed of the asylum procedure cannot influence "an adequate and complete examination". Thus, Member States may provide for the acceleration of an examination procedure in accordance with the basic principles and guarantees laid down in Chapter II "Basic principles and guarantees" of Directive 2013/32/EU and/or its performance at the border or in transit zones, only in the limited cases referred to in Art. 31 para. (8) of the Directive, as follows: irrelevance of the facts presented by the applicant; coming from a safe country of origin; submitting false documents or withholding relevant information/documents which would have a negative impact on the decision; destroying identity or travel documents in bad faith; submitting inconsistent and contradictory, false or obviously improbable representations which contradict the verified information; submitting a subsequent application for international protection that is not inadmissible under Art. 40 para. (5) of the Directive;[98] lodging an application to delay or frustrate the enforcement of a removal decision; entering the territory of a Member State unlawfully or unlawfully prolonging stay without good reason, either by not presenting himself or herself to the authorities or by not making an application for international protection as soon as possible; refusing to have his/her fingerprints taken; being considered a danger to national security or public order.

According to Directive 2013/32/EU, Member States may consider an application: (i) unfounded - where it has been established that the applicant does not qualify for international protection; (ii) manifestly unfounded - in the case of unfounded applications where any of the situations listed in the previous paragraph apply, if defined as such in national law; (iii) inadmissible - if another Member State has granted international protection, a country which is not a Member State is considered as the applicant's first country of asylum or is regarded as a safe third country for the applicant, the application is a subsequent application in which no new elements or data have been submitted, a dependant of the applicant lodges an application after having given his/her consent, so that his/her case can be examined under an application made on his/her behalf.

In order to prevent abuse of the asylum procedure, Art. 20 of Directive 2013/33/EU gives Member States the possibility to limit or withdraw the benefits of material reception conditions, in pre-established circumstances: accommodation, food and clothing provided in kind or in the form of financial allowances or vouchers, or as a combination of these three elements, as well as a daily allowance.

In the Republic of Moldova, Art. 62 of Law 270/2008 establishes a fast-track procedure for examining asylum applications that are (i) abusive; (ii) manifestly unfounded; (iii) submitted by persons who pose a threat to national security or public order.

An application for asylum is considered abusive if: the applicant has misled the authorities as to his/her identity and/or nationality by submitting false information or documents or by withholding relevant information and documents which could have had an adverse influence on the decision; the applicant has submitted another application for asylum by providing other personal data; the applicant has not provided any information establishing his/her identity or nationality or has not submitted in bad faith identity papers or travel documents

95 See: Conclusions on International Protection Adopted by the Executive Committee of the UNHCR Programme 1975 – 2017 (Conclusion No. 1 – 114) https://www.refworld.org/docid/5a2ead6b4.html

96 Available at: https://www.refworld.org/docid/3ae68c6118.html

97 Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805b15d2

98 "If a subsequent application is not further examined under this Article, it shall be deemed inadmissible pursuant to Article 33 para. (2) let. (d)"

that could help establish his/her identity or nationality; the applicant has lodged an application to delay or frustrate the enforcement of a previous or imminent removal decision. The asylum application is considered manifestly unfounded in the following situations: the applicant has made inconsistent, contradictory, obviously improbable or insufficient representations; the applicant has submitted a new application in which he/she does not invoke new relevant elements; the applicant has entered the territory of the Republic of Moldova unlawfully or has unlawfully prolonged his/her stay without good reason and has not presented himself/herself to the authorities in order to lodge an asylum application, as soon as possible, in view of the circumstances of his/her entry in the territory.

The national regulatory framework does not provide for limitation or withdrawal of benefits for abuse of the asylum procedure.

Although, in the context of preventing abuse of the asylum system, national regulations on the accelerated/ rapid procedure for examining asylum applications contain some rules which are contained in Directive 2013/32/EU, there is a need for the approximation thereof. At the same time, in order to prevent abuse of the asylum system it would be appropriate to: introduce and regulate the inadmissibility procedure for manifestly unfounded asylum applications, introduce the concept of safe country; regulate procedural rules for the examination of the new asylum application (subsequent application); transpose the concepts and terminology used in EU legislation.

In the process of harmonising asylum legislation with EU legislation in the area of preventing abuse of the asylum procedure, the following aspects should be taken into account.

In order to prevent abuse of the asylum procedure, according to Article 20 of Directive 2013/33/EU, states are entitled to limit or withdraw material reception conditions in several cases: leaving the place of accommodation without the permission of the competent authority, if such permission is required; failure to comply with the obligation to report to authorities, to submit information or to attend personal meetings in connection with the asylum procedure; lodging a subsequent application as defined in Art. 2 let. (q) of Directive 2013/32/EU.[99] For the first two cases, where the applicant is found or voluntarily presents himself or herself to the competent authorities, a decision will be taken, based on the reasons for his/her disappearance, in terms of restoring the benefit of granting some or all of the material reception conditions, which have been withdrawn or limited.

Material reception conditions may also be limited where it can be established that the asylum seeker, without justifiable reason, did not make an application for international protection as early as possible/as soon as he/ she had the opportunity to do so after arrival in the State concerned; where an asylum seeker has concealed the fact that he/she has financial resources and has therefore inadequately benefited from the material reception conditions. Last but not least, Member States may lay down penalties applicable to serious breaches of the rules of accommodation centres or particularly violent behaviour.

Decisions to limit or withdraw material reception conditions or sanctions are taken on a case-by-case basis and are reasoned and based on the particular situation of the person concerned, especially in the case of vulnerable persons, taking into account the principle of proportionality. In all cases, States are obliged to ensure access to medical care and to guarantee a dignified standard of living for all applicants.

Furthermore, in order to limit the possibility of abuse of the reception system, material reception conditions should only be provided to the extent that applicants for international protection do not have sufficient means to support themselves. When assessing the resources of an applicant and imposing an obligation on him/ her to bear or contribute to the costs of the material reception conditions, the principle of proportionality is to be complied with and account is to be taken of the personal situation of the applicant and the need to respect his/her dignity or personal integrity, including his/her specific reception needs. At the same time, applicants for international protection should not be required to bear or contribute to the costs of the medical assistance they need. It is also necessary to limit the possibility of abuse of the reception system by specifying the circumstances in which accommodation, food, clothing and other essential non-food items provided in the form of financial allowances or vouchers may be replaced by reception conditions provided in kind and the circumstances in which daily subsistence allowance may be limited or withdrawn, while ensuring an adequate standard of living for all applicants.

In the same context, it should be noted that according to the new proposals for regulations within the EU, aimed at preventing abuse of the asylum procedure, an application for international protection will be examined if the applicant is fingerprinted, if the applicant provides the information necessary for the

99 „Subsequent application" means a further application for international protection lodged after a final decision on the previous application has been taken, including cases where the applicant has explicitly withdrawn his/her application and cases where the decision-making authority has rejected an application following its implicit withdrawal in accordance with Art. 28 para. (1) of Directive 2013/32/EU

examination of the application and if the applicant is currently present and remains on the territory of the Member State responsible. Failure to comply with any of these obligations may result in the application being rejected as abandoned, in accordance with the procedure for implicit withdrawal of the application. The current optional procedural instruments for the application of sanctions (limitation or withdrawal of material reception conditions)[100]in case of abusive behaviour of applicants, secondary movements and manifestly unfounded applications, will become mandatory. In particular, the proposal provides for a clear, exhaustive and mandatory list of the reasons for which the examination of an application should be accelerated and for which applications should be rejected as manifestly unfounded or abandoned. In addition, the possibility to respond to subsequent applications that abuse the asylum procedure is strengthened, allowing in particular for the removal of the applicants concerned from the territories of the Member States before and after an administrative decision on their applications has been taken. At the same time, all safeguards, including the right to an effective remedy, are preserved in order to guarantee the rights of applicants in all cases.

According to the applicable legal principles and standards, a person who has been recognised as a refugee by a State on the basis of the 1951 Convention and its 1967 Protocol can only lose refugee status when certain conditions are met. The following three categories should be distinguished:

1) Annulment:[101] a decision to invalidate recognition of refugee status that should not have been granted in the first instance. Annulment affects determinations that are final, i.e. are no longer subject to appeal or review. This has the effect of rendering refugee status null and void from the date of the original determination.

2) Revocation:[102] the withdrawal of refugee status where a person engages in conduct that falls under the provisions of Art. 1F(a) or 1F(c) of the 1951 Convention after being recognised as a refugee. This has effect for the future.

3) Termination:[103] cessation of refugee status under Art. 1C of the 1951 Convention because international protection is no longer required or justified on the basis of voluntary acts of the person concerned or a fundamental change in the prevailing situation in the country of origin. The cessation has effect for the future.

The reasons listed above for the cessation of international protection granted to the refugee should not be confused with expulsion pursuant to Art. 32 nor with the loss of protection against refoulement pursuant to Art. 33 para. (2) of the 1951 Convention. Neither of these provides for the loss of refugee status by a person who, at the time of the initial determination, met the eligibility criteria of the 1951 Convention.[104] The conditions and criteria for ending refugee status, as well as the definition of terms

"Cancellation", "revocation" and "cessation" are set out in the UNHCR Note on Cancellation of Refugee Status and the Guidelines on Exclusion and on Termination of Refugee Status referred to in footnotes 64, 65, 66.

There are three ways of ending international protection that are regulated in EU law: revocation, cessation or refusal to renew refugee status or subsidiary protection status.[105] Member States revoke, order the termination or refuse to renew refugee status if, after having granted refugee status, they determine that the refugee is or should have been excluded from the recognition of refugee status under the exclusion clauses; the alteration or omission of certain facts, including the use of false documents, played a decisive role in taking the decision to grant refugee status. At the same time, it remains at the discretion of States to revoke the status granted to a refugee, to terminate or to refuse its renewal, if there are reasonable grounds to consider him/her a danger to the security of the State in which he/she is present, or as a result of his/her having been convicted by a final judgement of a particularly serious crime, and he/she constitutes a threat to the society of that State.

With regard to the subsidiary protection status, cessation or refusal of its renewal is ordered when the person concerned has ceased to be eligible for subsidiary protection, in particular when it is established that he/she should have been excluded from the category of persons eligible for subsidiary protection, or that the alteration or omission of certain facts, including the use of false documents, played a decisive role in taking the decision to grant the status conferred.

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100 See: Article 20 of Directive 2013/33/EU

101 See: Note on the Cancellation of Refugee Status, UNHCR, 2004, available at: https://www.refworld.org/docid/41a5dfd94.html

102 See: Guidelines on international protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, UNHCR, 2003, available at: https://www.refworld.org/docid/3f5857684.html

103 See: Guidelines on international protection: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the "Ceased Circumstances" Clauses), UNHCR, 2003, available at: https://www.refworld.org/docid/3e50de6b4.html

104 See: https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=51b1992a4

105 See: Art. 44 and Art. 45 of Directive 2013/32/EU, Art. 14 and Art. 19 of Directive 2011/95/EU.

Thus, Member States must ensure that the examination with a view to withdrawing the international protection of a person can start when new elements or data come to light indicating that there are grounds for reconsidering the validity of his/her international protection. When the competent authorities examine the withdrawal of international protection, the person concerned benefits from certain safeguards, in particular: he/she is informed in writing that the fulfilment of the conditions for benefiting from international protection are being reviewed and the reasons for the review; he/she is given the opportunity to present in an interview, in person or by a written statement, the reasons why his/her international protection should not be withdrawn; he/she is notified in writing of the decision taken, including the reasons in fact and in law and how to challenge it. Once the competent authority has taken the decision to withdraw international protection, the provisions of Directive 2013/32/EU apply, which regulate: the provision of free legal assistance and free representation in appeal procedures; the right to legal assistance and representation at all stages of the procedure; ensuring that the person authorised to represent the applicant has access to the information in the file, on the basis of which the decision was taken; access by UNHCR and organisations working on behalf of UNHCR to information, procedures, decisions and applicants.

Law No 270/2008 regulates the conditions and procedure for the cessation and cancellation of a form of protection, whether refugee status or humanitarian protection. The national legal framework provides the same safeguards, which are offered by EU law, but at the same time expressly provides for the consequences of the cessation or cancellation of refugee status or humanitarian protection: the cessation or cancellation of these forms of protection does not automatically produce legal effects on the family members of the foreigner; after the cessation or cancellation of the form of protection by an irrevocable decision, the legal provisions on the legal status of foreigners, regulated by Law No 200/2010, apply to the foreigner.

In case of transposition of the EU provisions on the withdrawal of international protection into Law No 270/2008, it is appropriate to take over the terminology of EU legislation in this chapter and to regulate separately the procedural safeguards that the foreigner benefits from in case of examination of the withdrawal of protection granted. At the same time, account should be taken of the trends resulting from the new EU immigration policy. In this respect, according to the proposal for a Regulation on the conditions for obtaining international protection, the aim is to strengthen the rules on the review of status in order to verify whether the eligibility criteria are still met, by introducing systematic and regular reviews, with the strengthening of procedural safeguards.[106]

RECOMMENDATIONS

- Bringing the national regulations regarding the rapid/accelerated procedure for examining asylum applications in line with the rules contained in Directive 2013/32/EU.
- Examination of the relevance and resources needed to introduce and regulate the inadmissibility procedure for manifestly unfounded asylum applications, which could also be operated at the border and in transit zones.
- Introducing the concept of safe country with corresponding guarantees in national legislation.
- Regulation of additional procedural rules for the examination of the new asylum application (subsequent application).
- Examination of the advisability of supplementing the national regulatory framework with provisions making the provision of material reception conditions conditional on the applicant's means of subsistence.
- Separate regulation of the procedural safeguards available to the third-country national in case of examining the withdrawal of the protection granted.
- Transposition of the EU provisions on withdrawal of international protection into Law 270/2008.
- Transposition of concepts and terminology used in EU legislation.

106 See the amended proposal for a Regulation of the European Parliament and of the Council of 23.09.2020 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, available at: https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CONSIL:ST_11202_2020_INIT

3.1.7. Application for asylum submitted by a person to whom international restrictive measures are applied, who has either been previously declared undesirable on the territory of the Republic of Moldova, is in international search, represents a threat to the security of the state or is in other similar situations

Exclusion clauses have been of increased interest to the international community because of states' policies to restrict access to international protection for persons who do not deserve it. The 1951 Convention contains provisions on persons who, although meeting the characteristics of refugees, are excluded from being granted refugee status. The Convention is very explicit in stating that certain acts are so serious that they lead to exclusion of persons who have committed them from international protection. However, exclusion must constitute an exception, be carefully, responsibly and restrictively applied, taking into account the consequences of exclusion for the person concerned. The list of offences justifying exclusion from protection is exhaustive and covers persons who have committed crimes against humanity, crimes against peace, war crimes, serious non-political crimes outside the country of refuge prior to entry into that country, as well as actions contrary to the purposes and principles of the United Nations.

Articles 12 para. (2) and 17 para. (1) of Directive 2011/95/EU, which are based on Art. 1F of the 1951 Convention, contain provisions excluding international protection if the grounds listed in the Convention are present. The exclusion clauses also apply to persons who instigate or participate, in any way, in offences or acts provided for by these articles. In addition, persons in respect of whom there are substantial grounds for believing that they are a danger to the society or safety of the Member State in which they are present, are excluded from the category of persons eligible for subsidiary protection. Additionally, any applicant for international protection may be excluded from the category of persons eligible for subsidiary protection if, prior to admission to the Member State concerned, he/she has committed one or more offences not falling within the scope of Art. 17 (para. 1) which would be punishable by a prison sentence if committed in the respective Member State, and if he/she has left the country of origin only for the purpose of evading the penalties resulting from those offences.

The assessment of exclusion from international protection must be conducted after it has been established whether a person qualifies for international protection.

According to ECtHR case law, since the prohibition of torture and inhuman or degrading treatment or punishment is absolute, regardless of the conduct of the victim, the nature of the alleged crime committed by the applicant is irrelevant for the purposes of the examination of Art. 3 of the Convention. Consequently, the applicant's conduct, however undesirable or dangerous, cannot be taken into account. For example, in ***Saadi v. Italy***, the Court reconfirmed the absolute nature of the prohibition of torture under Art. 3 of the Convention. The complainant was prosecuted in Italy for participation in international terrorism and was ordered to be deported to Tunisia. The ECtHR found that he would face a real risk of being subjected to treatment contrary to Art. 3 if returned to Tunisia. The applicant's conduct and the seriousness of the charges brought against him were irrelevant to the examination of Article 3. It follows, therefore, that regardless of the asylum seeker's conduct and the seriousness of the allegations against him, the asylum application is to be examined, and in the event of the applicant's exclusion from protection and his or her expulsion, a check is to be conducted, as to whether, upon return to his or her country of origin, he would face a real risk of being subjected to treatment contrary to Article 3 ECHR. This recommendation was also made by the Office of the Ombudsman in its thematic study "Respect for the rights of foreign nationals in State custody".[107]

Where the applicant for international protection can be considered, on reasonable grounds, to be a danger to the national security or public policy of the Member State, or where the applicant has been forcibly expelled for serious reasons of public security and public order under national law, Member States may provide for the acceleration of the examination procedure, for applications lodged with the decision-making authority, by compliance with all procedural safeguards and/or conducting it at the border or in transit zones, in the case of applications submitted to these locations, in accordance with the rules governing the border procedure.

It should be noted that the border procedure often involves the placement in detention of the applicant and is applied in accordance with Art. 8-11 of Directive 2013/33/EU, which regulates the detention of asylum seekers, safeguards for detained applicants, detention conditions and detention conditions of vulnerable persons and applicants with special reception needs. For the same reasons, the accelerated procedure and the border procedure can also be applied to unaccompanied minors.

107 See: Thematic Study "Upholding the Rights of the Foreign Citizens in the State Custody", Recommendation (No.1), p. 66, available at: https://ombudsman.md/wp-content/uploads/2020/06/EN_Studiul_Situatia_str%C4%83inilor_FINAL.pdf

According to Art. 18 and Art. 20 of Law 270/2008, a foreigner is excluded from recognition of refugee status and granting of humanitarian protection if there are reasonable grounds to believe that he/she has committed a crime against peace, humanity or a war crime; has committed a serious, particularly serious or exceptionally serious non-political crime before entering the territory of the Republic of Moldova, has committed acts contrary to the purposes and principles of the United Nations, has planned, facilitated or participated in the commission of acts of terrorism, as defined in international treaties to which the State is a party, or poses a threat to public order or the security of the State.

Asylum applications submitted by persons who, through their activity or membership in a particular group, pose a threat to national security or public order, are examined under the accelerated procedure. Asylum seekers who pose a danger to national security or public order are returned from the territory of the Republic of Moldova under the terms of Law No. 200/2010 on the Regime of Foreigners in the Republic of Moldova, with the taking into public custody, where appropriate.

According to Art. 55 of Law No. 200/2010, a foreigner who has conducted, is conducting or in respect of whom there are reasonable indications that he/she intends to conduct activities that may endanger national security or public order, is declared undesirable, which implies his/her removal from the territory of the State. The decision on declaring the foreigner as undesirable can be challenged in a court of law.

Although according to Law No. 200/2012 and Law No. 25/2016,[108] persons who are presumed to be a danger to national security or public order and persons who are prohibited from entering the territory of the Republic of Moldova, including as an international restrictive measure, are not allowed to enter the territory of the Republic of Moldova, in case they apply for asylum at the border crossing point, they become asylum seekers and are to be provided with all procedural safeguards pursuant to Law 270/2008.

In order to optimise the procedure for examining asylum applications submitted by persons against whom international restrictive measures have been applied, who have been previously declared undesirable on the territory of the Republic of Moldova, who are in international search, who pose a threat to the security of the state or who are in other similar situations, the practice established in the EU Member States, according to which these applications can be examined not only in the accelerated (fast-track) procedure, but also in the border procedure, with placement of the applicants in detention, could be taken over.

In the same context, it would be relevant to mention that according to the trends resulting from the new EU immigration policy, it is proposed to make the application of the asylum procedure at the border compulsory in certain cases, including in cases where the applicant presents a risk to national security or public order.[109] At the same time, the new EU immigration policy proposes the introduction of the pre-entry screening procedure, to be applied also in respect of third-country nationals who present themselves at border crossing points without fulfilling the entry conditions and who apply for international protection there.[110]

RECOMMENDATION

- Examining the relevance and resources needed to introduce the border asylum procedure into the national asylum system.

3.1.8. The relevance of devolving the procedure for examining asylum applications through the regional directorates of the General Inspectorate for Migration.

By Government Decision No. 16 of 11.01.2023, the Regulation on the organisation and functioning of the General Inspectorate for Migration was approved, which is the successor to the mission, functions, duties, rights and obligations of the Bureau for Migration and Asylum. At the same time, the new structure of the GIM, the list of specialized subdivisions of the GIM, the list of territorial subdivisions of the GIM and the organisational chart of the GIM were approved. The staff limit of the GIM was established, including the employees of the territorial specialised subdivisions, 247 units, with 50 of the proposed 100 positions being added.

108 Law No. 25 of 04.03.2016 on enforcing international restrictive measures

109 See the amended proposal for a Regulation of the European Parliament and of the Council of 23.09.2020 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, available at: eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CONSIL:ST_11202_2020_INIT

110 See the proposal for a Regulation of the European Parliament and of the Council introducing a screening procedure for third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, available at: EUR-Lex - 52020PC0612 - EN - EUR-Lex (europa.eu)

The transformational reorganisation of the competent authority for foreigners was conducted in order to provide a new architectural/structural approach, to adjust the organisational structure to the needs of capacity, organisation and motivation of the staff, and to ensure the effective fulfilment of the core mission and tasks according to the modernised structure, based on the functional analysis reports of the Ministry of Interior and the Bureau for Migration and Asylum.[111] It is expected that the new organisational structure of the competent authority for foreigners will be able to respond to all current challenges, including in the context of the regional and international immigration crisis, and will mitigate internal and external risks in ensuring public order and state security. The new structure also responds to the requirements imposed by the EU in this area, in the context of Moldova obtaining the status of candidate for accession to the EU.

The GIM's current structure includes specialised subdivisions and territorial subdivisions. According to it, in order to exercise the tasks in the field of asylum, the Asylum and Statelessness Directorate and three territorial subdivisions of the GIM are created within the GIM: Northern Regional Directorate, Southern Regional Directorate and Central Regional Directorate. Their creation is justified by the need to distribute competences, which will benefit exclusively the beneficiaries of public services - foreigners and, where appropriate, Moldovan citizens, who will have the opportunity to benefit from the whole complex of services at territorial level.

The territorial entities are hierarchically subordinate to the central authority, but must benefit from a real transfer of powers that would increase the efficiency of the work conducted, in particular through decision-making at territorial level. The aim of devolving powers at local level is to reduce the number of requests to the Central Counter and to increase the number of requests received and dealt with in the territory, and the accessibility of services for beneficiaries, respectively. At the same time, the intention is to ***devolve all types of decisions*** in order to optimise processes, with an impact on public order and security, in the light of respect for human rights.[112] Respectively, the territorial subdivisions are to exercise some specific tasks in the field of asylum, including the reception, processing, examination and settlement, at the administrative stage, of asylum applications.

The devolution of powers of the Asylum and Statelessness Directorate to the regional directorates of the GIM will increase access to the asylum procedure, on the one hand, and will be a major challenge for the GIM, on the other. In this context, in the process of making the final decision in this respect, several important issues need to be taken into account, which could influence the effective provision of access to the asylum procedure for beneficiaries of international protection.

Ensuring a sufficient number of staff at regional level to ensure the reception, processing, examination and settlement of asylum applications could be difficult due to the moratorium put in place for several years now, on some vacant positions in public institutions, including the GIM. Urgent undertakings to the Ministry of Finance for the allocation of the necessary financial resources to technically lift the moratorium on vacant posts would allow more posts to be allocated to regional directorates.

In order to ensure all procedural safeguards and respect for human rights standards, the GIM should ensure, upon request, that the interview is conducted by a same-sex person. This implies, in addition to increasing the number of positions allocated in the territory, ensuring gender balance, in the recruitment process.

In the process of managing the asylum applications submitted by minors or persons with special needs, the involvement of employees with specific knowledge and skills is required. These issues need to be taken into account in the process of job analysis, human resource planning and staff recruitment.

Having a sound knowledge in the field of asylum is a prerequisite for ensuring proper examination of asylum applications, which requires the existence of competent staff and sufficient resources to provide training that would include general, specific or thematic training activities according to the responsibilities of the position. The GIM is to ensure that the necessary resources are identified and allocated to provide training for staff who is working/will work in the regional directorates.

Ensuring the quality of decisions on asylum applications involves not only the knowledge that staff involved in the process of examining asylum applications must possess, but also mechanisms for monitoring and controlling the quality of the asylum procedure, in particular the quality of the personal interview on the substance of the application and the quality of the decision on the asylum application. In the context of the devolution of decisions in the asylum procedure, operational standards and other tools are to be developed to support persons in leading positions within the GIM.

111 See the information note to the draft Government Decision "On the organisation and functioning of the General Inspectorate for Migration of the Ministry of Internal Affairs", available at: https://particip.gov.md/ro/document/stages/proiectul-hotararii-guvernului-cu-privire-la-organizarea-si-functionarea-inspectoratului-general-pentru-migratie-al-ministerului-afacerilor-interne/9913

112 Ibidem

In addition to the option of devolution of decisions, the GIM could examine the relevance of establishing decision-making powers in the asylum procedure at central level, so that the core tasks of staff working in regional directorates do not include issuing decisions.

ECRE' s study "Asylum authorities: an overview of internal structure and available resources"[113] provides an overview of the structure, composition and functioning of asylum authorities in EU Member States and demonstrates that the capacity of these institutions to conduct a rigorous and fair examination of applications for protection is inherent in the internal organisation and resources. The Study examines how the procedural safeguards of the EU asylum *acquis* are implemented in the context of Member States' obligation to make available adequate means, including competent staff, to the decision-making authorities. This study could be consulted in the framework of the optimisation of internal processes, including the devolution of all types of decisions. At the same time, it would be useful to attract advice in the field of organisational development and human resources management that would provide the necessary support in this complex process.

RECOMMENDATIONS

- Analysis of the benefits and risks of devolving decisions in the asylum procedure, taking into account the shortage of human, financial and technical resources.
- Attracting consultancy in the field of organisational development and human resources management that would provide the necessary support in the optimisation of internal processes.
- Taking the necessary steps with the Ministry of Finance for the allocation of the- financial sources in order to technically lift the moratorium on vacant positions.

3.2. PROCEDURE FOR THE EXAMINATION OF ASYLUM APPLICATIONS: interview, quality standards, monitoring and quality control, digitisation of the asylum procedure

In the interest of the fair recognition of persons in need of protection as refugees within the meaning of Art. 1 of the 1951 Convention or as persons eligible for humanitarian protection in accordance with Art. 19 of Law 270/2008, each applicant should have effective access to procedures, the opportunity to cooperate and communicate adequately with the competent authorities, so that he/she can present the relevant facts on his/her case, as well as benefit from sufficient procedural safeguards to be able to support his/her case at all stages of the procedure.

Procedures for examining refugee status should enable the competent authorities to conduct a rigorous examination of applications for international protection and to give applicants a genuine and fair opportunity to present the reasons for their application in a personal interview.

Although the 1951 Convention does not indicate the procedures to be adopted for the determination of refugee status, which are left to the discretion of each State Party, the Conclusion of the UNHCR Executive Committee of October 1977 sets out the minimum requirements for these procedures, including the requirements on the competent authority for determining refugee status; the requirement to provide the applicant with procedural safeguards, including the right to appeal the decision; the assurance of the right to remain in the territory of the State until a final decision on the asylum application has been taken. Subsequently, in its 1983 Conclusion, which addressed the issue of manifestly unfounded or abusive asylum applications, the UNHCR Executive Committee recognised the serious consequences of an erroneous decision rejecting an asylum claim and recommended that in all cases the applicant should be given a full personal interview conducted by a qualified official and, wherever possible, by an official of the authority competent to determine refugee status.[114] Authorities are also required to avoid excessive delay in examining asylum applications. The ECtHR has held, in this regard, that the positive obligations of the State also include the duty of the competent authorities to

113 See: Asylum authorities An overview of internal structures and available resources, 11 November 2020 https://asylumineurope.org/2019-authorities/

114 See: Conclusions on International Protection Adopted by the Executive Committee of the UNHCR Programme 1975 – 2017 (Conclusion No. 1 – 114) https://www.refworld.org/docid/5a2ead6b4.html

promptly examine a person's application for asylum in order to ensure that his/her situation of insecurity and uncertainty is reduced as far as possible.[115]

According to Art. 14 of Directive 2013/32/EU, before a decision is taken by the decision-making authority, the applicant will be given the opportunity to have a personal interview regarding his/her application for international protection with a person who is competent under national law to conduct such an interview. Personal interviews on the substance of the application for international protection are always conducted by the staff of the decision-making authority, unless the national legal framework provides for the possibility of a preliminary examination of the subsequent application on the basis of written data only, without a personal interview.[116]

The Directive provides procedural safeguards for the personal interview and establishes certain requirements. Thus, in order to ensure communication, applicants for international protection benefit from the services of an interpreter at least when they are to be interviewed in order to present their arguments. The interpreter's services are paid from public funds. When a person has lodged an application for international protection on behalf of his/her dependants, each adult dependant is offered the opportunity to participate in a personal interview. Member States may also determine in national law when a minor is offered the opportunity of a personal interview.[117]

The personal interview will be conducted without the presence of family members, except in cases where the decision-making authority deems it necessary for other family members to be present, with appropriate confidentiality being ensured.[118] The decision-making authority must take appropriate steps to provide the applicant with the opportunity to present the elements necessary to support his/her application as fully as possible, including the opportunity to provide explanations for elements that may be missing and/or those regarding the inconsistencies or contradictions in the applicant's statements.[119]

In order to ensure real equality between applications lodged by women and those lodged by men, examination procedures should pay attention to gender equality. In particular, personal interviews should be organised in such a way as to allow both female and male applicants to talk about their previous experiences in cases involving gender-related persecution.[120]

In accordance with Art. 15 of Directive 2013/32/EU, Member States are obliged to take appropriate measures to ensure conditions that enable the applicant to present all the grounds for his/her application, in particular to ensure that the person conducting the interview is competent to take into account the personal and general circumstances surrounding the application, including the applicant's cultural origin, sex, sexual orientation, sexual identity or vulnerability; that he/she has general knowledge of issues that may affect the applicant's capacity to be subjected to an interview, such as indications that the applicant may have been subjected to torture in the past; as far as possible, to ensure that the interview with the applicant is conducted by a person of the same sex, if the applicant so requests; to choose an interpreter capable of ensuring proper communication between the applicant and the person conducting the interview in the language preferred by the applicant[121] (as far as possible, the interpreter should be of the same sex, if the applicant so requests); to ensure that the person conducting the interview does not wear military dress or the uniform of law enforcement authorities; to ensure that interviews with minors are conducted in a form suitable for them.[122]

According to Art. 14 of Directive 2013/32/EU, a personal interview on the substance of the application may be omitted if the decision-making authority is in a position to take a positive decision on refugee status on the basis of the evidence available or considers that the applicant is unable or unwilling to be interviewed

115 B.A.C. v. Greece, available at https://www.asylumlawdatabase.eu/en/content/ecthr-%E2%80%93-bac-v-greece-application-no-1198115-13-october-2016

116 See: CJEU - Joined cases C-148/13 to C-150/13 A, B and C v Staatssecretaris van Veiligheid en Justitie, 2 December 2014 https://www.asylumlawdatabase.eu/en/content/cjeu-joined-cases-c%E2%80%9114813-c%E2%80%9115013-b-and-c-v-staatssecretaris-van-veiligheid-en-justitie-2https://curia.europa.eu/juris/document/document.jsf?text=&docid=228673&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=4572881

117 For more information, see: Judgment of CJEU, https://curia.europa.eu/juris/document/document.jsf?text=&docid=228673&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=4572881

118 Art. 15 para. (1), (2) of Directive 2013/32/EU

119 Art. 16 of Directive 2013/32/UE

120 Preamble, paragraph 32, Directive 2013/32/EU

121 Unless there is another language which the applicant understands and in which he/she can communicate clearly (see Art. 15 para. (2) let. (c) of Directive 2013/32/EU

122 Art. 15, para. (3), let. (e) of Directive 2013/32/EU

due to enduring circumstances beyond his/her control. Where there is doubt, the decision-making authority will consult a medical specialist to determine whether the condition which renders the applicant unable or unwilling to be interviewed is temporary or of a lasting nature.

Art. 17 of Directive 2013/32/EU sets out the requirement to produce a detailed report as a result of each interview. At the discretion of the Member States, interviews may be audio-recorded or audio-video-recorded, ensuring that the recording or a transcript of the personal interview is made available in connection with the applicant's file. The applicant will be given the opportunity to make comments and provide oral or written clarifications on translation errors or misunderstandings in the report or transcript prior to a decision being taken. The applicant is obliged to confirm that the content of the report or transcript accurately reflects the interview and is subsequently given access to the report, its transcript or the actual recording.

Directive 2013/32/EU establishes that decisions on all applications for international protection must be taken on the basis of the facts, and primarily by authorities whose staff have appropriate knowledge or have received the necessary training in international protection. In order to ensure that applications are examined and decisions are taken objectively and impartially, it is necessary that specialists acting in the procedures conduct their activities in full compliance with ethical principles.

All decisions on applications for international protection must be taken as quickly as possible, without prejudice to a proper and complete examination, and must be reasoned in law and in fact and communicated in writing. The decision of the decision-making authority on the asylum application of an unaccompanied minor must be drafted by an official who has the necessary knowledge of the special needs of minors.

Decisions taken regarding an application for international protection, decisions to refuse to reopen the examination of an application after its completion and decisions regarding the withdrawal of refugee status or subsidiary protection are subject to an effective remedy before a court of law.[123]

According to Law 270/2008, the asylum seeker is given the opportunity to be interviewed with regards to his/her application. The interview will be conducted without the presence of family members, in conditions of confidentiality, unless their presence is deemed necessary for the proper examination of the application. The law provides certain procedural safeguards during the personal interview, such as interviewing, upon request, by a person of the same sex; having the services of an interpreter to ensure proper communication between the applicant and the decision-making officer; the possibility to choose the language in which the interview is to be conducted; conducting the interview in the presence of a lawyer or UNHCR representatives and non-governmental organisations; the right to be informed of the interview notes; to request postponement of the interview for good reasons. The law also establishes special requirements for interviewing mentally ill persons and unaccompanied minor asylum seekers. The interview of unaccompanied minors is conducted in all possible cases, in the presence of the legal representative, by a specially trained decision counsellor.

The law obliges the decision-making authority to record the audio or audio-video interview in accordance with the procedure established by the Director of the GIM. Contrary to the provisions of Directive 2013/32/EU, the applicant has the right to take cognisance of these recordings only after the communication of the decision rejecting the asylum application. The law does not specify whether the applicant has access to the recordings in the case of granting a form of protection.

Last but not least, Law 270/2008 obliges the decision-maker conducting the interview to ensure that the interview is properly organised; to verify the facts presented by the asylum seeker; to take into consideration the personal or general situation of the asylum application, including the origin or vulnerability of the applicant; to provide the applicant with an interpreter.

According to regulations similar to those in Directive 2013/32/EU, the personal interview may be omitted if the Asylum and Integration Directorate is able to take a positive decision on the basis of the evidence in the file or if it is considered that the applicant cannot or is not able to be interviewed due to lasting circumstances beyond his/her control. In addition, an interview may be omitted if it is considered, on the basis of the information provided by the applicant and the contents of the file, that the application for asylum is unfounded or abusive.

Law 270/2008 does not establish special requirements for interpreters and for the professional training of eligibility counsellors and general knowledge on specific issues, except for special training in interviewing unaccompanied minors and persons with mental disorders.

The legislator has put forward a number of requirements with regard to decisions taken on an asylum application: the decision to grant humanitarian protection must contain the reasons for non-recognition of refugee status and exclusion decisions or measures must be based on the principle of proportionality; the decision rejecting

123 Preamble, paragraph 50, Directive 2013/32/EU

an asylum application must be reasoned and contain the factual and legal situation, as well as information on the appeal procedure and its time limit; any decision must be communicated in writing in Romanian with an oral translation into the language the applicant understands; decisions on asylum applications may be appealed through administrative litigation without compliance with any prior procedure.

As in the case of the interview, Law 270/2008 does not establish a requirement for the person taking the decision to have adequate knowledge.

In this context, it should be noted that there are complex categories of applications for international protection, the examination of which requires extensive knowledge. For example, applications for asylum based on religion are often among the most complicated applications to be examined. The many different manifestations of "religion" and its relationship to persecution are sometimes difficult to understand and can generate misconceptions. This can result in lengthy personal interviews that risk going off-topic or fail to gather elements of immediate relevance to the application in question. Applications for international protection based on political opinion, likewise, generate specific challenges and misconceptions regarding what qualifies as "political opinion", creates difficulties in identifying elements to be taken into account depending on the overall context of the country of origin and the personal situation of an applicant basing his/her asylum application on (imputed) political opinions. Identifying the causal link between the act of persecution feared by the applicant and the ground of political opinion can similarly often pose problems, as well. Belonging to a particular social group is another ground of persecution that gives rise to an application for international protection. It is a notion that is often discussed and is difficult to understand intuitively.[124] As outlined in the UNHCR Guidelines on International Protection,[125] there is no "closed list" containing certain social groups and the concept needs to be understood in the context of the diverse and changing nature of groups within different societies, and Directive 2011/95/EU also mentions the perception of the surrounding society as a key element of the notion of a "particular social group". Understanding the situation of people seeking asylum on grounds of sexual orientation and/or gender identity and the local context in the country of origin can also be difficult due to the complex terminology used in different countries, insufficient information, but also the cultural background of the eligibility counsellor.[126]

In addition to the above, the eligibility counsellor may be confronted during the personal interview with other problematic issues that could lead to an unfair decision being taken in the absence of sound knowledge and skills.[127] However, the proper examination of asylum applications presupposes that the decision-making authority has adequate means, including sufficient competent staff, to conduct its tasks. Respectively, the State is obliged to provide the necessary training to employees, including general, specific or thematic training activities on asylum knowledge and skills, to include but not be limited to the national asylum regulatory framework; international human rights and asylum standards; the EU asylum *acquis*; relevant legal and case law issues; issues related to the examination of asylum applications; issues related to minors, in particular unaccompanied minors, in terms of the assessment of the best interests of the child, specific procedural safeguards such as respect for the right of the child to be heard and other child protection issues, age determination techniques and reception conditions in case of children and families; issues related to applicants with special needs and applicants in a vulnerable situation, with particular attention to victims of torture, victims of trafficking in human beings and gender-sensitive issues; interviewing techniques and assessment of evidence; use of forensic reports in asylum procedures; issues related to the drawing up and use of information regarding the country of origin; issues related to interpretation and cultural mediation; issues related to the decision regarding the fulfilment or non-fulfilment by the applicant of the conditions required for qualifying for international protection and related to the rights of beneficiaries of international protection; resilience and stress management skills.

In this respect, ensuring and internally evaluating the asylum procedure, in particular the quality of the personal interview regarding the substance of the application and the quality of the decision on the asylum application, essentially contributes to the correct recognition of persons in need of international protection.

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124 See: Guidance on membership of a particular social group https://euaa.europa.eu/publications/guidance-membership-particular-social-group

125 See: Guidelines on International Protection No. 2:„Membership of a Particular Social group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (HCR/GIP/02/02) https://www.unhcr.org/media/guidelines-international-protection-no-2-membership-particular-social-group-within-context

126 See: Survey on Sexual Orientation and Gender Identity https://euaa.europa.eu/publications/survey-sexual-orientation-and-gender-identity

127 See: Practical guide: Personal interview https://euaa.europa.eu/ro/publications/ghid-practic-interviul-personal

The "Occupational Standards for Asylum and Reception Officers"[128] and the "Educational Standards for Asylum and Reception Officers",[129] which are part of the European Sectoral Qualifications Framework for Asylum Officers, aimed at improving the quality of performance of asylum and reception officers, provide a mapping of the specific tasks of the position and set out the knowledge required to perform these tasks, taking into account the level of complexity. These tools could be taken up and adapted for use at national level to ensure the quality of the asylum procedure.

In particular, the EASO (now EUAA) Quality Assurance Tool "Examining an application for international protection. Module 1: Personal interview. Module 2: First instance decision",[130] developed by the European Union Agency for Asylum, which provides a common framework for internal quality assessment and quality assurance. The tool is sufficiently flexible and can bring clarity and consistency to the assessment of the quality of the asylum procedure. The two modules of the tool can be used together for a broader assessment of the overall quality of the process of examining applications for international protection, or separately if it is necessary to focus on one of the two aspects. The tool can be used for various purposes such as performance assessment, periodic quality checks at individual or process level, thematic audits.

The tool and its two modules are based on common standards agreed in other practical guidelines and should be interpreted with them: EASO Practical Guide: Personal interview;[131] EASO Practical Guide: Evidence assessment;[132] EASO Practical Guide: Conditions for obtaining international protection status;[133] EASO Practical Guide: Exclusion.[134] These practical guidelines are guidance documents and useful self-assessment tools for case managers. Although these guidelines reflect common standards, they leave room for national variations in terms of legislation, guidance and practice. Each national authority may incorporate relevant legislative acts and guidance in designated spaces into the guidelines, in order to provide case officers in the respective country with a single guidance for the personal interview.

The tool comprises several distinct elements, as shown below:

Standards and indicators	The tool sets out the standards and indicators applicable to the personal interview and the decision on the substance of the application for international protection
Assessment	Guidance is provided on how to assess these standards and indicators in practice
Feedback and reporting	The tool provides guidance and highlights good practices related to the provision of individual feedback and general quality reporting with the aim of improving the system
Assessment forms	The tool includes complementary assessment forms in Excel format, which can be used directly in individual performance assessment, as well as PDF versions of the forms, which can be printed out to make hand-written notes during the assessment
Additional guidance for quality assessment (examples)	As additional guidance for quality assessment, the tool also presents examples of situations where indicators can be assessed as representing minor errors, significant errors or "Not applicable".
Quality assurance tool - technical solution	In parallel, a technical solution for this quality assurance tool has been developed to provide states with an integrated and user-friendly quality assurance tool, in order to simplify and streamline the internal quality assurance process.

For ensuring the quality of the asylum procedure, performance evaluation and providing internal managerial control, the GIM could adapt the tools presented to the institutional needs, taking into account the national regulatory framework in the field of asylum, human resources and quality management, as well as the core

128 Occupational standards for asylum and reception officials https://euaa.europa.eu/sites/default/files/publications/2022-05/ESQF_Occupational_Standards_RO.pdf

129 https://euaa.europa.eu/sites/default/files/publications/2022-05/ESQF_Educational_Standards_RO.pdf

130 https://euaa.europa.eu/sites/default/files/publications/EASO-Quality-assurance-tool-RO.pdf

131 https://euaa.europa.eu/sites/default/files/Practical%20Tools-EASO-%20Practical%20-Guide-on%20-Personal%20Interview-RO.PDF

132 https://euaa.europa.eu/sites/default/files/Practical-Guide-Evidence-Assessment-RO.pdf

133 https://euaa.europa.eu/sites/default/files/EASO-Practical-Guide-for-international-protection_RO.pdf

134 https://euaa.europa.eu/sites/default/files/EASO-Practical-Guide-Exclusion-RO.PDF

functions, tasks, organisation and functioning of the inspectorate. Support from development partners, by providing the necessary expertise, could greatly facilitate this process.

For the efficient improvement of asylum procedures and the development of capable processes that can cope with sudden increases in new asylum applications, the digitisation of asylum processes could be essential The COVID-19 pandemic has stimulated interest in digital tools globally and has generated their increased use in asylum procedures, representing a reality for the asylum system.[135] New technologies can play a crucial role in ensuring the continuity and functionality of the national asylum system. Digitisation is also seen as a way to modernise and improve the efficiency of the asylum system.

At European level, pilot projects have been launched in recent years and various digital tools have been developed to speed up the examination of applications for international protection, to manage a larger number of applications and to ensure the rapid delivery of certain services.[136] They are used for different purposes, such as:

Ensuring access to the asylum procedure: some countries have started to introduce pilot systems to manage the identification of asylum seekers, such as self-registration systems, through which applicants can provide personal data in electronic format. These developments and innovations are closely monitored by experts, civil society organisations and authorities in the field of asylum.

Management of asylum applications by the decision-making authority: some countries have automated procedures to allow applicants to make an appointment, to check the examination stage of the application, to submit the relevant documents or be notified online with regards to the decision issued. Also, in some countries the option of conducting personal interviews through videoconference has been implemented and digital tools for language analysis have been developed. There is a perception that the new e-services are effective in limiting the physical presence of asylum seekers during the asylum procedure and in ensuring continuity of communication with applicants. At the same time, digitisation allows timely notification of decisions and facilitates the right to an effective remedy. Nevertheless, civil society organisations warn that some applicants find it difficult to use online tools and contact authorities by email.

Management of asylum applications in the appeals procedure: court systems are provided with electronic tools for the remote lodging of appeals and the attachment of relevant documents. In certain countries, courts of law use electronic signatures to sign the decisions issued. However, the technical assistance, the training of judges and registrars on how to conduct remote hearings represents a challenge in many countries.

Reception of applicants for international protection: reception management systems include comprehensive information from the applicant's file, including information on special needs, so as to improve the process of assigning/allocating accommodation and providing specific support. They often include an entry-exit system, which enhances security in reception units. At the same time, these systems can be associated with data protection issues and have been shown to be vulnerable to data leaks. In some countries, the COVID-19 pandemic has spurred reception centres to make more investments in purchasing computers and improving wi-fi connections, especially for providing online education. However, it is considered that support services for the most vulnerable applicants should continue to be provided by staff and not online.

Ensuring access to information: many countries are strengthening and adapting their practices to ensure effective access to information for asylum seekers and procedural fairness through the use of new technologies, the establishment of alternative channels of information dissemination and raising awareness through electronic communication tools such as online platforms and hubs, mobile apps and social media channels.

Providing interpretation services: due to the implementation of new technologies, secure ways of conducting online interviews with the participation of the interpreter are being implemented and are becoming the norm in several countries.

Return of former asylum seekers: to provide information on return procedures and counselling on reintegration issues, remote communication is being developed. New systems are also being put in place to allow voluntary return applicants to submit an online application. Online communication tools are used to maintain communication with third countries regarding identification procedures for returned persons and for issuing travel documents. While the provision of digital information is a successful alternative, communication should be tailored to the needs of applicants without necessary digital skills. In addition, digital tools do not replace human contact and interaction, which are essential to ensure the best interests of the child and the

135 https://euaa.europa.eu/asylum-report-2022/447-efforts-further-digitalise-asylum-procedure

136 For more information see: www.oecd.org/migration/mig/EMN-OECD-INFORM-FEB-2022-The-use-of-Digitalisation-and-AI-in-Migration-Management.pdf

interests of the applicant with special needs.

With the exception of EU-wide information systems such as Eurodac, Eurostat or eu-LISA, which are regulated in EU secondary legislation, the EU asylum *acquis* does not contain clear rules on the use of digital tools in the asylum procedure, which gives Member States flexibility in their application in national asylum procedures on the one hand, and creates uncertainty and complex legal issues on the interaction between refugee protection, data protection and digitisation, on the other.

In practice, the use of digital tools and remote working methods is very disparate and remains an exception in Europe. They are mainly seen as a temporary, alternative or substitute solution to issues related to administrative capacity in specific circumstances. However, digital tools can have profound consequences for the right to asylum. For asylum seekers, these can be difficult to navigate or use and can have a negative effect on the procedure for the determination of refugee status. Some tools are neither appropriate nor suited to the individual circumstances and specific needs of the applicants. In addition, these may create obstacles to accessing the asylum procedure due to information technology illiteracy, complexity of digital connectivity or lack of appropriate equipment, but also raise major concerns with regards to data protection and the rights to privacy. The use of digital tools that are not specifically designed for the determination of refugee status can undermine the right to asylum when they create additional and unnecessary obstacles that prevent asylum seekers from effectively exercising their rights.

For national authorities, digital tools require significant human and financial resources, a significant IT infrastructure and ongoing maintenance to ensure that the equipment is appropriate and tailored to the individual circumstances of the applicant, as well as adequate training of relevant staff, in order to avoid technical problems.[137]

With a view to enhancing the effectiveness of the European asylum system and supporting EU+ countries in the process of digital transformation of the asylum procedures, the European Union Agency for Asylum developed and published, in September 2023, the Strategy on Digital Innovation in Asylum Procedures and Reception Systems.[138] The Strategy aims to contribute to creating synergy and bridging the gap between EU+ countries at different stages of digitisation of internal asylum processes, as well as to developing common standards and methodologies by channelling its expertise in the field of digital innovation.

At the same time, the European Council on Refugees and Exiles (ECRE) highlighted the risks and benefits of digitising asylum procedures in a comparative study published in January 2022. The study provides an overview of the use of digital tools and remote working methods in asylum processes in 23 European countries, focusing on the use of digital tools in asylum procedures from a procedural perspective and analyses their potential impact on the right to asylum. It calls into question the risks and benefits of such use and highlights several fundamental safeguards and procedural safeguards that need to be applied to ensure that standards in force are not violated.

Based on the findings of the study, ECRE has formulated some key conclusions and recommendations, including:

- the need to develop a clear regulatory framework regulating and limiting the use of digital tools in asylum procedures so as to ensure respect for human rights;
- the development of an adequate technical infrastructure and sufficient resources, ensuring compliance with personal data protection and privacy standards, so that the asylum procedure is conducted in a secure, confidential and appropriate environment;
- providing technical support to applicants for international protection when digital tools are applied and providing training in the field of digital tools for decision-making authorities, courts of law and other staff;
- using digital tools in asylum procedures only in exceptional circumstances, within the limits of the regulatory framework, by compliance with the principle of non-discrimination and proportionality, taking into account the specific and individual characteristics of each case;
- avoiding the use of digital tools in the context of asylum procedures at the border, in detention or in relation to vulnerable applicants or applicants with special needs;

137 4.4.7. Efforts to further digitalise the asylum procedure https://euaa.europa.eu/asylum-report-2022/447-efforts-further-digitalise-asylum-procedure

138 EUAA Strategy on Digital Innovation in Asylum Procedures and Reception Systems September 2023 https://euaa.europa.eu/sites/default/files/publications/2023-10/2023_EUAA-Strategy-on-Digital-Innovation-in-Asylum-Procedures-and-Reception-Systems_EN.pdf

- the need to request the informed consent of applicants for international protection with regards to the use of digital tools in the asylum procedure and to provide the possibility to choose between remote and face-to-face procedures, with the possibility to submit the documents relevant to the asylum procedure, in both electronic and physical format.

The experience gained by the GIM in the process of development and implementation of the electronic platform for pre-registration of displaced applicants for temporary protection from Ukraine, the analysis of the shortcomings found in the process of using this digital tool, together with the recommendations and guidelines developed at European level and the practice of other states, could be considered for taking further decisions on the digitisation of other internal processes and procedures within the national asylum system. However, the implementation of clear and optimal procedures for the provision of services to asylum seekers, by re-engineering and digitising them and providing them in an electronic format, must be conducted in compliance with human rights and asylum standards.

RECOMMENDATIONS

- Strengthening of procedural safeguards in the examination procedure of the asylum application by the rules contained in Law 270/2008 to the EU asylum directives.
- Explicitly regulating in the legislation, the requirement for the eligibility counsellor to have the appropriate knowledge so as to ensure the issuing of a fair and correct decision and the obligation of the state to provide the appropriate training.
- Providing training for eligibility counsellors in accordance with the training needs related to the specific tasks of the position and their degree of complexity.
- Developing/revising internal tools in order to ensure monitoring and quality control of the asylum procedure.
- Conducting an analysis of the relevance of digitising asylum procedures, together with an assessment of the risks and benefits.

3.3. PROCEDURAL SAFEGUARDS IN THE FRAMEWORK OF THE ASYLUM PROCEDURE. APPEALS AGAINST DECISIONS IN THE ASYLUM PROCEDURE

Key principles of the 1951 Convention include non-discrimination, non-sanctions for irregular entry or stay, as well as the enjoyment of fundamental human rights. Neither the Convention nor the 1967 Protocol establish actual procedures for determining refugee status. However, it is universally recognised that fair and effective procedures are an essential element in the full and comprehensive application of the 1951 Convention. Given the nature of the risks involved and the serious consequences of an erroneous determination of refugee status, it is essential that asylum seekers are afforded full protection and procedural safeguards at all stages of the asylum procedure.

The need to ensure fair and efficient refugee status determination procedures in the context of a national asylum system derives from the right to seek and enjoy asylum guaranteed under Art. 14 of the Universal Declaration of Human Rights, as well as from the responsibilities of States arising from the 1951 Convention, international and regional human rights instruments and the relevant conclusions of the UNHCR Executive Committee.

Facilitating effective access to international protection is achieved not only by proactively identifying those who may be in need of protection, by providing them with the relevant information on their right to seek asylum, by directing them to the appropriate procedures, but also by other forms of assistance, including procedural safeguards afforded for such persons. A fair and effective asylum procedure requires procedural safeguards that protect the rights of asylum seekers by ensuring the proper assessment of asylum applications in the framework of a streamlined and shorter procedure.

Procedural safeguards are specific support measures put in place in order to create the necessary conditions so that asylum seekers have effective access to procedures and to present the necessary elements to substantiate their claim for international protection.

In the interests of the fair recognition of persons in need of protection as refugees within the meaning of Art. 1 of the 1951 Convention, every applicant for asylum should have effective access to the procedure, the opportunity to properly cooperate and communicate with the responsible authorities so that he/she can present the relevant facts of his/her case, as well sufficient procedural safeguards to be able to support his/her case at all stages of the procedure.

The EU asylum *acquis* provides applicants for international protection with certain procedural safeguards to help them overcome the difficult situation of being in a foreign environment, language and cultural barriers, as well as psychological and other obstacles. Regardless of the age of the applicant, the main procedural safeguards include:

- the applicant's right to remain in the territory until a final decision has been taken on his/her application in order to ensure compliance with the principle of non-refoulement;
- access to the services of an interpreter to present his/her case if interviewed by the authorities;
- safeguards for the personal interview, which must be conducted in the applicant's preferred language or in another language that the applicant understands and in which he/she can communicate clearly;
- the right to information: Member States must provide general information on the asylum procedure as soon as possible;
- free legal and procedural information tailored to the needs of the applicant;
- free legal assistance at the request of the applicant and free representation in appeal procedures;
- the right to an effective remedy before a court of law;
- the right to proper notification of a decision and a reasoning of the respective decision, in law and in fact;
- the possibility to communicate with the United Nations High Commissioner for Refugees (UNHCR) at all stages of the procedure, as well as with other organisations providing legal advice or counselling to applicants for international protection.

Directive 2013/32/EU sets out special procedural safeguards for certain applicants on the basis of, *inter alia*, age, sex, sexual orientation, sexual identity, disability, serious illness, mental illness or disorder, or as a result of torture, rape or other serious forms of psychological, physical or sexual violence. The document also provides the definition of the term "applicant requiring special procedural safeguards", which means an applicant whose capacity to enjoy the rights and fulfil the obligations under the Directive is limited due to individual circumstances.

Member States must endeavour to identify applicants in need of special procedural safeguards prior to a first instance decision being taken. Such applicants should be provided with the appropriate support, including sufficient time, to create the necessary conditions for them to have effective access to procedures and to present the necessary elements to substantiate their application for international protection. Where an applicant with special procedural needs cannot be given appropriate support in accelerated or border procedures, such applicant will be excluded from these procedures.

In order to reduce the overall length of the procedure in certain cases, EU Member States have the flexibility, in accordance with their national needs, to give priority to the examination of any application by examining it before other applications made earlier, without derogating from the time limits, principles and procedural safeguards normally applicable.

At the same time, procedural safeguards are ensured in border and accelerated procedures, in the process of examination of subsequent applications and in the case of withdrawal of international protection.

Law No 270/2008 establishes a set of safeguards similar to those laid down in Directive 2013/32/EU, including for persons with special needs, such as unaccompanied minors, victims of torture or violence, persons with mental disorders (mental illness or mental disabilities).

However, there is a need for more detailed regulation of procedural safeguards offered to persons with special needs, extending the categories of applicants who need special procedural safeguards, express statutory regulation of the right to state-guaranteed legal aid. No less important is the revision of the structure of Law 270/2008, so as to provide greater clarity on the procedural safeguards enjoyed by asylum seekers.

In accordance with the provisions of the European Convention on Human Rights, all persons whose access to the territory or to asylum procedures involves rights guaranteed in accordance with the provisions of the

Convention must, in accordance with Article 13 of the same Convention, have access to an effective remedy before a national authority. The right to an effective remedy before a court of law is one of the procedural safeguards enjoyed by applicants for international protection under Directive 2013/32/EU.

In accordance with the fundamental principles of Union law, decisions taken on an application for international protection, decisions on the refusal to reopen the examination of an application after its closure and decisions on the withdrawal of refugee status or subsidiary protection are subject to an effective remedy before a court of law. Decisions by which an application is deemed to be unfounded in terms of refugee status but the applicant is recognised as eligible for subsidiary protection can also be challenged.

In order to ensure the effectiveness of the procedure, the appeal must be lodged by the applicant within a set time limit, and in order for the applicant to be able to comply with this time limit and in order to ensure the effective access to a judicial remedy, he/she must have the opportunity to be assisted by an interpreter and to receive free legal assistance and representation in court.

Member States allow applicants to remain in the territory until the expiry of the limitation period relating to the exercise of the right to an effective remedy and, if that right has been exercised within that period, until the remedy has been determined, subject to certain exceptions.

According to Law No 270/208, the decisions of the Asylum and Integration Directorate on asylum applications may be appealed against through administrative litigation without complying with any prior procedure. Asylum seekers have the right to be informed about the possibility and time limits for appealing decisions rejecting their applications.

Where an application for asylum is rejected, the decision must be reasoned and must mandatorily include the factual and legal situation, as well as information on the appeal procedure, the deadline for lodging the complaint and the body to which the complaint against the rejection decision is to be lodged. The applicant is not informed of the reasons for granting a form of protection on the territory of the Republic of Moldova.

In the case of an application for asylum that has been rejected under the accelerated procedure by an irrevocable decision, the foreigner is obliged to leave the territory of the Republic of Moldova on the day on which the decision was communicated to him/her.

According to the current regulations of Law 270/2008 and the Administrative Code, asylum seekers have the right to appeal against decisions of the Asylum and Integration Directorate through administrative litigation.

RECOMMENDATIONS

- Revising the structure of Law 270/2008 so as to provide greater clarity on the procedural safeguards enjoyed by asylum seekers.
- Regulating in more detail the procedural safeguards offered to persons with special needs.
- Extending the categories of persons who need special procedural safeguards.
- Providing a definition of the notion of "persons with special needs".
- Express regulation in law of the right to state-guaranteed legal aid.

3.4. RIGHTS OF ASYLUM SEEKERS AND BENEFICIARIES OF INTERNATIONAL PROTECTION VERSUS THE RIGHTS OF FOREIGNERS WITH PERMANENT RESIDENCE

The economic and social rights of refugees are protected by several international instruments in the field of human rights, the main ones being the 1951 Convention and the International Covenant on Economic, Social and Cultural Rights.

According to the provisions of the 1951 Convention, in the exercise of rights such as access to primary education, respect for certain aspects of labour law and the right to social security, refugees enjoy the same treatment as citizens. At the same time, in the exercise of other rights, such as access to paid employment, the right to exercise free professions, access to housing and access to other forms of education, recognition of certificates of education, diplomas and university degrees issued abroad, refugees enjoy the same treatment as foreign citizens.

The UNHCR Executive Committee has recognized that the range of economic, social and cultural rights contained in the Convention are essential to establish the self-reliance of refugees and to enable them to contribute to, rather than depend on, the asylum state.[139]

In the Council of Europe system, the ECtHR has dealt with a number of cases concerning the economic and social rights of migrants, asylum seekers and refugees, primarily in the light of Article 14 ECHR (prohibition of discrimination), given that when a Contracting State decides to grant social benefits, it must do so in a manner that is in compliance with Article 14. In this regard, the Court has found that a State may have legitimate reasons for restricting the use of resource-intensive public services - such as social assistance programmes, public benefits and health care - by short-term and irregular immigrants, who do not usually contribute to their funding, and that it may also, in certain circumstances, justifiably differentiate between different categories of foreigners residing on its territory.[140]

At the level of the European Union, the rights of applicants for and beneficiaries of international protection are regulated by secondary EU law, which includes a number of directives.

Directive 2013/33/EU on reception conditions and Directive 2011/95/EU on minimum standards establish access to a range of rights and integration measures for asylum seekers and beneficiaries of international protection, respectively. These rights include, among others, access to housing, access to employment, access to education, social protection, social benefits, medical assistance.

As a rule, beneficiaries of international protection enjoy more favourable treatment than asylum seekers, on an equal footing with nationals of Member States, and have access to a wider range of rights, respectively. Member States recognise that in order to enhance the effective exercise of rights and the effective use of benefits by beneficiaries of international protection, it is necessary to take into account their individual needs and the specific difficulties they face in the integration process. This should not result in a more favourable treatment than that afforded to their own nationals, without prejudice to the possibility for Member States to adopt or maintain more favourable standards. In this context, States should endeavour to address, in particular, problems preventing beneficiaries of international protection from having effective access to vocational training opportunities and vocational training actions, *inter alia*, those related to financial constraints.

According to Directive 2013/33/EU, Member States shall grant asylum seekers ***effective access to the labour market*** no later than nine months from the date of lodging the application for international protection and shall decide the conditions under which access to the labour market is granted, in accordance with national law. Taking into account labour market policies, Member States may give priority to EU citizens and third-country nationals with legal residence.

The right of beneficiaries of international protection to engage in paid employment or self-employed activity immediately after being granted protection is recognised by the provisions of Directive 2011/95/EU (Article

139 https://www.refworld.org/docid/3bb1c6cc4.html

140 ECtHR, Guide on the case-law of the European Convention on Human Rights – Immigration, p. 45, available at: https://www.echr.coe.int/documents/d/echr/Guide_Immigration_ENG (Ponomaryovi v. Bulgaria, § 54)

26). Access to occupational and vocational training is granted under conditions equivalent to those applicable to own nationals. Equal treatment is also ensured in procedures for the recognition of foreign diplomas, certificates or other official qualification titles.

Access to the state ***education system*** for minor applicant children and minor children of applicants is granted under conditions similar to those established for own citizens, even if the minors have reached the age of majority. Access to the education system may not be postponed for more than three months from the date of lodging the application for international protection by or on behalf of the minor. In case of necessity, minors may benefit from preparatory courses and language study courses. Education can be provided in the accommodation centres themselves.

Minors who are beneficiaries of international protection enjoy equal treatment with citizens of EU Member States in terms of access to the education system. At the same time, adults benefit from access to the general education system, further training or retraining under the conditions applied to third-country nationals with legal residence in the territory of the State concerned.

States guarantee refugees the right of ***access to medical assistance***, physical and mental health care, under the same conditions as for its own citizens. At the same time, asylum-seekers and illegally staying immigrants, whose removal has been postponed are entitled to emergency care and primary medical treatment, as well as medical assistance in the case of persons with special needs. Directive 2008/115/EC on return also obliges states to pay particular attention to the special needs of vulnerable persons pending their voluntary return or removal.

Asylum seekers do not have specific rights of ***access to social assistance*** within the meaning of Directive 2013/33/EU. However, Art. 17 lays down general rules on material reception conditions ensuring a standard of living that guarantees their health and subsistence and indicates how the amount of financial allowances or vouchers is determined. With regard to beneficiaries of international protection, States recognise that, in order to avoid social hardship, they should be provided with adequate social protection and means of subsistence, without discrimination in terms of social assistance. They enjoy the same necessary social assistance that is provided for the citizens of the Member State concerned, which may, however, be limited to basic benefits in the case of subsidiary protection. The possibility of limiting social protection to basic benefits means the provision of at least a guaranteed minimum income, for assistance in the event of sickness or pregnancy and assistance with child-rearing, insofar as those benefits are granted to nationals under national law.

According to Directive 2011/95/EU, in order to facilitate the integration of beneficiaries of international protection into society, Member States shall ensure access to integration programmes they deem necessary or create preconditions ensuring access to such programmes. In integration programmes, Member States shall, as far as possible, take into account the needs and particularities of the situation of refugees and, where appropriate, provide language training and information on the individual rights and obligations related to their protection status in the State concerned.

In the application of both Directives, account must be taken of the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of trafficking in human beings, persons with mental health problems and persons who have been subjected to torture, rape or other serious forms of psychological, mental or sexual violence.

In national legislation, the rights of asylum seekers and beneficiaries of international protection are regulated by Law No 270/2008 and Law 274/2011 on the integration of foreigners in the Republic of Moldova, which partially transposes Directive 2011/95/EU.

Thus, an asylum seeker, in addition to the rights guaranteed under the procedure for the examination of the asylum application, enjoys a number of economic and social rights, such as:

- the right to work, granted temporarily, upon request, if he/she lacks the necessary means of subsistence;
- the right of access to compulsory education for minor asylum seekers under the same conditions as minors who are citizens of the Republic of Moldova;
- the right to benefit, in the case of a family with children, as well as of an unaccompanied minor, from all social assistance measures granted to children who are citizens of the Republic of Moldova;
- the right to primary and emergency medical care at the pre-hospital stage in case of acute life-threatening conditions, according to the legislation in force. Asylum seekers are also guaranteed the right to free medical examination (under conditions of anonymity) for early detection of HIV and AIDS. Minor asylum seekers have access to health care under the same conditions as minors who are citizens of the Republic of Moldova.

International protection confers on the beneficiary the rights provided by law for foreign nationals and for stateless persons, as well as a number of special rights, including:

- the right to choose the place of residence and to move freely under the conditions established by law;
- the right to be enrolled in compulsory education, but also in other forms of education under the conditions laid down by law for citizens of the Republic of Moldova;
- the right to benefit, in the case of minors, from a free introductory course in Romanian, throughout the duration of one school year;
- the right to benefit, in the case of families with children and unaccompanied minors, from all social assistance measures granted by law to children who are citizens of the Republic of Moldova;
- the right to be employed, to exercise free professions, to conduct entrepreneurial activity, to benefit from all material rights deriving from the activities conducted;
- the right to social insurance in accordance with the legislation in force;
- the right to enjoy, within the framework of the compulsory health insurance system, the same rights as the citizens of the Republic of Moldova under the conditions established by law;
- the right to apply for integration measures in accordance with the legislation in force;
- the right to be treated in the same way as citizens of the Republic of Moldova as regards freedom to practise their religion and to provide religious education for their children.

It should be noted that the Republic of Moldova acceded to the 1951 Convention relating to the Status of Refugees and its Protocol[141] with a number of declarations and reservations. On the one hand, the Republic of Moldova has declared that it will apply the provisions of the Convention without any discrimination in general, but not only with regard to race, religion or country of origin, as provided for in Art. 3 of the Convention. On the other hand, the reservations concern, *inter alia*, the right to work and social protection, the granting of the most favourable treatment to foreigners in gainful employment, the right to housing.

Despite the reservations expressed, the Republic of Moldova has succeeded in transposing the international standards on refugee rights set out in the Convention into its national legislation, offering beneficiaries of international protection more favourable treatment in terms of safeguards for access to paid employment and access to all forms of education, equal to the safeguards established for citizens of the Republic of Moldova.

Law 274/2011 establishes measures to facilitate the integration of foreigners in the Republic of Moldova, which imply an active participation of foreigners who have obtained international protection in the economic, social and cultural life of Moldovan society, whereby they are empowered to contribute to and valorise their full potential as members of this society, to realise their rights and fulfil their obligations without discrimination or social exclusion for their own benefit and for the benefit of the state. The process of integration of foreigners in the Republic of Moldova is conducted according to the individual needs of the beneficiary, by complying with the principle of non-discrimination, the best interests of the child and equal treatment, by assessing each case individually. Integration measures include:

- specialised information sessions;
- socio-cultural accommodation sessions;
- free Romanian language courses;
- employment measures;
- information/advice on obtaining citizenship in the Republic of Moldova;
- specialised integration plans/programmes.

At the same time, Art. 6 of the law contains an extended list of categories of foreigners who have obtained international protection or political asylum in the Republic of Moldova, who enjoy special attention: unaccompanied minors, single-parent families with children, families with three or more dependent children, persons with disabilities, pregnant women, victims of trafficking in human beings, persons with intellectual and mental health problems, as well as persons who have been subjected to torture, rape or other serious forms of psychological, mental or sexual violence, persons who have reached retirement age and, at the same

141 See: Law No 677-XV of 23 November 2001

time, have reduced potential for self-support, conditioned by factors of an objective nature and beyond their control. Persons in these special situations enjoy equal and fair access to assistance as citizens of the Republic of Moldova, in accordance with the law. It should be noted that the law does not provide sufficient clarity on the types of assistance offered.

Beneficiaries of international protection are included in integration programmes on the basis of individual applications and according to an integration commitment concluded between the applicant of the integration programme and the competent authority for foreigners. Beneficiaries of international protection who do not participate in integration programmes take responsibility for their own integration.

In order to benefit from integration measures, persons can apply to integration centres from the moment they obtain international protection. The mechanism for including foreigners in integration measures is established in Government Decision 553/2017 on the establishment of integration centres for foreigners.

Arising from the provisions of the Regulation on integration centres for foreigners, there is a lack of clarity regarding the measures taken by the authorities after the preparation of the individual integration needs assessment sheet, which should result in the development of an individual plan of measures for integration. This should include the objectives set for the applicant, the activities necessary to achieve the objectives, the institutions responsible. No deadlines for the implementation of the integration measures/programme are provided.

All services provided for foreigners by the GIM officials working in the centres are free of charge. However, the regulatory framework does not specify whether the services provided by other entities are also free of charge or against payment.

The Regulation does not expressly lay down the obligation regarding the compliance with the principle of confidentiality of data and information obtained in the integration process and the protection of personal data. However, the processing of personal data must be conducted in accordance with Law 133/2011 on the protection of personal data.

The implementation and strengthening of the mechanism for the integration of foreigners is one of the general objectives of the Programme for the management of migration flow, asylum and integration of foreigners for the years 2022-2025, approved by Government Decision No 808 of 23.11.2022. As a result of the implementation of this objective it is expected to optimize the mechanism of integration of foreigners, taking into account gender sensitive aspects, by including the field of integration of foreigners in sectoral policy documents, to ensure the holistic approach, at national level, of the integration process, ensuring the functionality of Integration Centres (North, South, Centre) with human resources, logistics. The implementation actions are to be oriented towards ensuring access to basic services, through the development of the cultural mediator service, in ensuring interaction between foreigners and state authorities, inclusion of foreigners in state policies on labour market integration, family reunification, education, non-discrimination and health, including by promoting the partnership principle.

In conclusion, analysing national legislation in terms of the economic and social rights of asylum seekers and beneficiaries of international protection, it can be said that it is in line with international standards, set out in the 1951 Convention and European Union standards. The regulatory framework for the integration of foreigners is also largely harmonised. At the same time, the need is to continue efforts to strengthen the mechanism for the integration of foreigners and to diversify and improve integration services.

RECOMMENDATION

- Allocating adequate funds to ensure the achievement of the objectives and to implement the measures set out in the Program on management of the migration flow, asylum and integration of foreigners for 2022-2025, including in the part related to the integration of foreigners.

3.5. DOCUMENTATION OF PERSONS IN THE NATIONAL ASYLUM SYSTEM

The need to document persons is a constant of everyday life in modern society. Depending on the regulatory framework in place, personal identification can be essential for a wide range of activities and services, including for registering births and deaths, getting married, obtaining employment, housing, health care, receiving social benefits, gaining access to educational institutions or applying for official documents and permits. To meet these needs, as well as for reasons of public order, states have established a system of national identity documents. These documents, in addition to identifying the holder, can also serve as proof of marital status and legal status. In most countries, legally residing foreigners are also issued with some type of residence permit which can also serve as an identity document.

For a refugee, the lack of identity documents can be much more than a source of inconvenience. In most countries a foreigner must be able to prove not only his/her identity but also the legality of his/her presence on the territory of the country concerned. In some countries, foreigners who do not have proper documentation are placed in detention and sometimes even deported. Such measures are particularly serious for a refugee, as they may also involve the risk of being returned to their country of origin. Even if the consequences of not having an identity document are less drastic, the refugee, in order to benefit from treatment in accordance with internationally accepted standards, must be able to prove not only his/her identity but also his/her refugee status.

Because of the circumstances in which they are sometimes forced to leave their country of origin, refugees are probably more likely than other foreigners not to carry identity documents. In addition, while other foreigners can turn to the authorities in their country of origin for help in obtaining documents, refugees do not have this option and are therefore dependent on the authorities of the country of asylum or the UNHCR for assistance in this regard.

Based on the general acceptance that the 1951 Convention should be read and interpreted in conjunction with the core human rights treaties, the possession of identity and travel documents ensures the realisation of a broad spectrum of human rights for refugees. These include the right to freedom of movement: the right of any person lawfully within the territory of a State to move freely within that State and to choose his/her residence and the right to leave any country, including one's own, i.e. to move between States.

In other words, documentation remains the essential means for securing the right to asylum, including access to rights and services, family reunification, identification of persons at risk, identification and assessment of needs and implementation of solutions.

The 1951 Convention provides a comprehensive approach to the issue of refugee documentation, both in terms of the travel document provided for in Art. 28 and the refugee identity document, in general.

Under Art. 28 of the Convention, Contracting States are obliged to issue travel documents to refugees who have their habitual place of resident in their territory, except where compelling reasons of national security or public order otherwise require. States are also allowed and they are even encouraged to issue travel documents to any refugee in their territory, who is unable to obtain such documents in his/her country of habitual residence. There are, however, circumstances in which refugees cannot be issued with travel documents under the 1951 Convention. In order to ensure that all refugees have identity documents, Art. 27 of the Convention obliges Contracting States to issue identity documents to all refugees in their territory who do not have valid travel documents. Thus, Contracting States must ensure that each refugee has been provided with an official document enabling the person to be identified: either a valid travel document under Art. 28 or an identity document issued under Art. 27, the form and content of which are left to the discretion of the State.

According to Art. 6 of Directive 2013/33/EU,[142] the applicant for international protection receives a document issued in his/her name attesting to his/her status as an applicant or attesting that he/she is authorised to remain on the territory of the State for the period during which his/her application is under examination. If the holder is not free to move in all or part of the territory of the State, the document will so stipulate. The document does not necessarily certify the identity of the latter.

Member States may exclude the application of Art. 6 when the applicant is in detention and during the examination of an application for international protection submitted at the border. In specific cases, during

142 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), available at: https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:32013L0033

the examination of the application for international protection, the applicant may be provided with another document equivalent to the above-mentioned document. The applicant for international protection may also request the issuance of a travel document when he/she needs to be present in another State for serious humanitarian reasons.

Directive 2011/95/EU[143] provides in Art. 24 that after international protection has been granted, the beneficiary of refugee status is issued with a residence permit which must be valid for a period of at least three years and with the possibility of renewal, unless there are compelling reasons of national security or public order. Family members of beneficiaries of refugee status may be issued with a residence permit which may be valid for a period of less than three years, with the possibility of renewal. Member States will also issue to beneficiaries of refugee status travel documents in the form set out in the Annex to the Geneva Convention, allowing them to travel outside their territory.

Regulations on the documentation of persons in the national asylum system can be found in several pieces of legislation: Law No 270 of 18.12.2008 on asylum in the Republic of Moldova, Law No. 273 of 09.11.1994 on identity card in the national passport system, Government Decision No. 522 on the models of identity documents in the national passport system, Government Decision No. 125 of 18.02.2013 approving the Regulation on issuance of identity documents and evidence of the inhabitants of the Republic of Moldova.

According to Art. 32 of Law No. 270/2008, the asylum seeker is issued with a temporary identity document, which certifies his/her status as asylum seekers, but not his/her real identity. The temporary asylum seeker identity document is valid for a period of 30 days, with the possibility to extend it for further periods of 30 days, until the final settlement of the application. Minors up to the age of 16 accompanied by their parents are included in the temporary asylum seeker identity document of each parent. Unaccompanied minors are also documented with a temporary asylum seeker identity document. A foreigner who has applied for asylum at a state border crossing point or at the police body, will be issued with a temporary certificate, which is valid for no more than 48 hours. The temporary certificate replaces the temporary identity document and allows the holder to travel to the General Inspectorate for Migration (Asylum and Statelessness Directorate). The temporary asylum seeker identity document is not issued to foreigners in detention as long as this measure is maintained.

Under Art. 22 of Law 270/2008, each beneficiary of temporary protection is issued with an identity document granting him/her permission to remain on the territory of the Republic of Moldova for the entire duration of the temporary protection.

With reference to Art. 37 of Law No. 270/2008, the beneficiary of international protection is issued with an identity card and, upon request, may obtain a travel document allowing him/her to travel outside the territory of the Republic of Moldova. Thus, in order to ensure the documentation of beneficiaries of international protection, the national passport system distinguishes the following types of identity documents:[144]

IDENTITY CARD FOR REFUGEES - identity document issued for a period of five years to persons who have been recognised the status of refugees, regardless of age, for use on the territory of the Republic of Moldova.

IDENTITY CARD FOR PERSONS RECEIVING HUMANITARIAN PROTECTION - identity card issued for a period of three years to persons granted humanitarian protection, regardless of age, for use on the territory of the Republic of Moldova.

TRAVEL DOCUMENT (CONVENTION RELATING TO THE STATUS OF REFUGEES OF 28 JULY 1951)

- identity card issued for a period of 5 years to persons who have been granted refugee status, regardless of age, in order to travel abroad.

TRAVEL DOCUMENT (HUMANITARIAN PROTECTION) - identity document issued for a period of 3 years to persons granted humanitarian protection, regardless of age, in order to travel abroad.

The travel document is proof of the holder's identity and his/her capacity as a refugee or beneficiary of humanitarian protection and entitles him/her to exit and enter the country through any state border crossing point open for international passenger traffic.

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143 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), available at: https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:32011L0095.

144 Law No. 273 of 09.11.1994 on identity card in the national passport system, available at: https://www.legis.md/cautare/getResults?doc_id=136504&lang=ro.

The procedure for issuing and the models of identity cards and travel documents are approved by the Government.[145]

In principle, the national regulatory framework regulating the field of identity and travel documents for refugees is in line with the 1951 Convention and, implicitly, with the main international human rights treaties to which the Republic of Moldova is a party: asylum seekers and beneficiaries of international protection are documented and are able to demonstrate the legality of their stay in the territory of the country; they have the possibility, where appropriate, to move within and outside the country, but also to benefit from certain rights.

For example, the Regulation on issuance of identity documents and evidence of the inhabitants of the Republic of Moldova, approved by Government Decision No. 125 of 18.02.2013, is the normative act that ensures the implementation of legal relations between individuals, legal persons and state institutions when issuing identity documents, keeping records at the residence or temporary residence, authorizing emigration of inhabitants of the Republic of Moldova and repatriation of citizens of the Republic of Moldova. Along with other conditions for issuing identity documents, the Regulation establishes the taking of facial image and fingerprinting. Thus, when taking the facial image, the applicant must not have his/her head covered, his/her eyes closed or wear glasses. By way of derogation from these requirements, the facial image may be taken with the head covered for religious reasons or medical prescriptions provided that the face of the holder, from the base of the chin to the forehead, is visible. By establishing this derogation, the Republic of Moldova has accepted the wearing of religious clothing in public, thus ensuring the realisation of the freedom of thought, conscience and religion guaranteed, implicitly to refugees, by the Constitution of the Republic of Moldova (Art. 31), the Geneva Convention (Art. 4), the International Covenant on Civil and Political Rights (Art. 18) and the European Convention on Human Rights (Art. 9).

But there are some aspects that could be improved. In particular, reiterating the types of identity documents valid in the national passport system, it should be noted that the designations "Identity card for refugees" and "Identity card for beneficiaries of humanitarian protection" could be subject to criticism from the perspective of the right to privacy[146] in the context of the protection of personal data regardless of nationality and residence. However, foreigners, in particular refugees and beneficiaries of humanitarian protection, can be subject to discrimination, can become victims of hate speech and hate crimes by virtue of their status.

At the same time, the principle of confidentiality must be taken into account when granting asylum. However, not all persons who are entitled to see/check the identity document of the person are also entitled to know the legal status of the holder (e.g. pre-school educator, teacher, postal clerk, etc.). The State, by providing asylum, is obliged to keep this fact confidential.

Although it is the prerogative of each State to draw up and approve the models of identity documents, including establishing their designation, a comparative analysis of genuine identity and travel documents[147] shows that an impressive number of States have avoided mentioning in the designation of the identity document the legal status of the person (e.g. citizen, refugee, beneficiary of humanitarian protection), but have agreed on two designations of identity documents "Identity card" - for the citizens of the State concerned and "Residence document" - for non-citizens legally residing in the territory of the State concerned.

In view of the rapid technological progress and taking into account the fact that in the Republic of Moldova the "State Register of Population" was created - the only source of personal data for all information systems of public administration authorities that are using information on individuals[148] - the state has the possibility to keep records and automated control of all foreigners with the right of temporary or permanent residence on the territory of the Republic of Moldova, as well as the records of issued documents. In this context, it is appropriate to study international practice and review the naming of identity documents issued to persons enjoying international protection so that no machine-readable information is included in the document,

145 Government Decision No. 522 of 06.11.2019 on models of identity cards in the national passport system, available at: https://www.legis.md/cautare/getResults?doc_id=136007&lang=ro#.

146 Art. 28 of the Constitution of the Republic of Moldova, Art. 8 of the European Convention on Human Rights, Art. 17 of the International Covenant on Civil and Political Rights.

147 The Public Register of Authentic Identity and Travel Documents Online (PRADO) provides online access to images, technical descriptions and validity periods of the most commonly used travel and identity documents issued by most countries in the world, available at: https://www.consilium.europa.eu/prado/ro/prado-start-page.html

148 Government Decision no. 333 of 18.03.2022 approving the Concept of the automated information system "State Register of Population" and the Regulation on the State Register of Population, available at: https://www.legis.md/cautare/getResults?doc_id=134285&lang=ro#

including no indication of their status. Relevant in this respect is Council Regulation (EC) No. 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals.[149]

In another vein, it should be noted that the validity period of the temporary asylum seeker identity document may be subject to criticism from the perspective of the realisation of human rights, including the right of asylum seekers to work, to receive medical assistance, to have access to compulsory education, to benefit from social assistance measures, as appropriate. However, where the document is valid for a period of three months, with the possibility of extending it for further periods of 3 months, until the application is finally decided, the holders of the document are in an uncertain situation when they try to benefit from the mentioned rights. A viable solution in this respect would be to establish the validity of the temporary asylum seeker identity document for the duration of settling the asylum application or, following the model of other countries, without mentioning its validity.

RECOMMENDATIONS

- Revising the designation of the identity documents issued to persons enjoying international protection - "Identity card for refugees" and "Identity card for beneficiaries of humanitarian protection" - so as to avoid mentioning their status.
- Revising the period of validity of the temporary asylum seeker identity document, established in Art. 32 of Law no. 20/2008, in order to extend it for the duration of settling the asylum application or without mentioning its validity.

3.6. MANAGING MASS ARRIVALS AND ENSURING RELEVANT LEGAL SAFEGUARDS IN THE CONTEXT OF ASYLUM AND MIGRATION

Mass arrivals of displaced persons from Ukraine who have been forced to seek refuge and protection in countries in the region for the first time in the country's history have generated a considerable increase in asylum applications. This has put an enormous pressure on the national asylum system in a very short timeframe. The most effective mechanism for legalising the stay of persons displaced from Ukraine due to the armed conflict, on the territory of the Republic of Moldova, and granting access to a wide range of rights is the application for temporary protection, a form of protection provided for by Law No 270/2008 on asylum in the Republic of Moldova.

Temporary protection is an exceptional, immediate and temporary protection measure granted in case of mass and spontaneous arrivals of displaced persons who cannot return to their country of origin, if there is a risk that the asylum system cannot process this flow without adverse effects on its efficient functioning. Law No. 270/2008 lays down some aspects related to the procedure for granting temporary protection, registration and documentation of beneficiaries of temporary protection, submission of asylum applications by beneficiaries of temporary protection, safeguards for unaccompanied minors, grounds for exclusion from temporary protection and grounds for its termination. Temporary protection is granted by Government decision, on the proposal of the Ministry of Internal Affairs, on the basis of a report submitted by the GIM on the need for temporary protection. The measures and the period for which temporary protection is granted are determined by Government Decision.

Thus, pursuant to Art. 21 of Law No. 270/2008, Government Decision No. 21 of 18.01.2023 on granting temporary protection to displaced persons from Ukraine approved the conditions for granting temporary protection to displaced persons from Ukraine and the action plan for granting temporary protection. Government Decision No. 21/2023 transposes Art. 4 para. (1), 6, 8 para. (1), 9, 10, 12, 13, 14 para. (1) of Directive 2001/55/EC,[150] as well as Implementing Decision (EU) 2022/382.[151] Currently, Government Decision No 21/2023, together with Law

149 https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:02002R1030-20171121

150 Council Directive 2001/55/EC of 20 July 2001 on minimum standards for granting temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving these persons and bearing the consequences of such influx.

151 Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and having as effect the introduction of a temporary protection

No. 270/2008, constitutes the sole national regulatory framework for regulating the procedure and conditions for granting temporary protection, the rights and obligations of beneficiaries, the duties of implementing institutions in ensuring the realisation of the rights and benefits offered by the regulatory framework.

Government Decision No. 21/2023 establishes the conditions and categories of persons to whom temporary protection will apply, the period for which temporary protection is granted, regulates administrative aspects on the registration of beneficiaries of temporary protection and the issuing of identity documents and other administrative matters implementing the provisions of Art. 25 of Law No 270/2008, the rights of beneficiaries of temporary protection on the territory of the Republic of Moldova throughout the period of temporary protection, which derive from the provisions of Art. 21, 22, 25, 26, 39 of Law No. 270/2008, namely:

- the access of minors to education and training;
- the access to appropriate accommodation;
- the access to social assistance for families with children and unaccompanied minors;
- the integration of beneficiaries of temporary protection into employment;
- the access to primary medical assistance, with the exception of prescription of medication and medical devices and emergency medical assistance provided by medical services providers under the compulsory health insurance system.

At the same time, the Government Decision establishes the Inter-institutional Plan of Measures on granting temporary protection to displaced persons from Ukraine, with several general objectives: ensuring adequate information process on granting temporary protection; establishing the legal status - regulating the stay of displaced persons from Ukraine; establishing protection measures to ensure the realisation of the rights of displaced persons from Ukraine; establishing preventive measures in order to ensure public order and national security.

The mission to implement and enforce the temporary protection mechanism is the responsibility of the General Inspectorate for Migration. At the same time, the Ministry of Internal Affairs, the Ministry of Education and Research, the Ministry of Labour and Social Protection, the Ministry of Health and the National Health Insurance Company are responsible for planning and reporting on the use of financial means for the implementation of temporary protection.

At EU level, Directive 2001/55/EC aims to establish minimum standards for granting temporary protection in the event of a mass influx of displaced persons from third countries; it institutes immediate temporary protection for displaced persons; it promotes a balance of efforts between EU Member States in receiving persons, but does not impose the mandatory distribution of asylum seekers between Member States. The key issues of the Directive relate to the implementation of temporary protection, exclusion from temporary protection, the effects of temporary protection and the rights of beneficiaries of temporary protection, the submission of an asylum application by beneficiaries of temporary protection, the termination of temporary protection.

Following the war of aggression of the Russian Federation against Ukraine in February 2022, the Council adopted the Implementing Decision (EU) 2022/382, which finds the existence of a mass influx of displaced persons from Ukraine within the meaning of Directive 2001/55/EC, justifies the need for the introduction of temporary protection, specifies the categories of persons to which it applies and lays down the principles for cooperation between Member States as regards the monitoring of reception capacities. This is the first case where such a decision has been adopted in the context of Directive 2001/55/EC.

Although the national regulatory framework governing the temporary protection mechanism is mostly in line with EU legislation in this field, its implementation and application has revealed that the regulations provided by Law 270/2008 were not sufficient to quickly activate the temporary protection mechanism and that the authorities were not prepared for mass arrivals. Consequently, it is necessary to regulate in detail the minimum standards for granting temporary protection, the mechanism for its implementation, as well as the responsibilities of the authorities according to their areas of competence, either in a separate chapter of Law 270/2008 or in a separate normative act, and the implementation of temporary protection should be the responsibility of the executive, limited to establishing the circumstances justifying its establishment and specifying the group of persons who may benefit from temporary protection in relation to the circumstances established.

The immigration crisis caused by the war between the Russian Federation and Ukraine has highlighted obvious institutional shortcomings and a lack of human resources at national level. As a result, the need has arisen to strengthen the instruments for coordination and management of situations of increased influx of immigrants by the State authorities. And to avoid *ad hoc* reactions, a structured approach to crisis management is needed.

Currently, the Republic of Moldova does not have specific regulations that can effectively address the situation of mass displacement, providing for procedural rules and appropriate derogations to respond to emergency situations of such magnitude that the migration and asylum management and other systems become non-functional. In this regard, the Republic of Moldova is to strengthen its capacity to properly manage the flow of immigrants at the state border so as to ensure respect for all the rights of immigrants in vulnerable situations, access to quality services of first necessity and immediate, as well as the response capacity of State authorities involved in this process.

In this context, it should be noted that, in the framework of the new Pact on Migration and Asylum, a proposal for a Regulation on addressing crisis and force majeure situations in the area of migration and asylum at EU level has been agreed.[152] The development of this framework was conditioned, in particular, by the need (i) for a more robust framework and tools to counter possible future crises, such as mass influx situations, COVID-19 pandemic, etc.; (ii) to achieve a higher degree of resilience of the migration management system through specific rules that can be applied in force majeure situations; (iii) for immediate measures, in order to cope with the extreme pressures resulting from such situations; (iv) for an approach based on preparedness and anticipation of crisis situations.

The overall objective of the proposed Regulation is to ensure the necessary adaptation of the rules on asylum and return procedures to ensure that Member States are able to address crisis and force majeure situations in the area of asylum and migration management in the EU. The proposal establishes the framework that would allow Member States to manage crisis situations or the risk of occurrence of such situations arising in the area of asylum and migration, namely situations of mass arrivals of third-country nationals or stateless persons arriving irregularly in a Member State and which threaten the functioning of the asylum, reception or return system of a Member State or which may have serious consequences for the functioning of the EU migration management system. The proposal also introduces specific rules on the application, in crisis situations, of the solidarity mechanism provided for in the proposal for a Regulation on asylum and migration management,[153] which provides for compulsory measures in the form of transfer or takeover of the return burden.

As regards asylum and return procedures, the proposed Regulation provides for a number of derogations, including from the border procedure, extension or suspension of certain procedural deadlines, such as, for example, the extension of the deadline for registering applications for international protection. Derogations from the asylum and return rules should ensure that Member States have sufficient time to conduct the relevant procedures in these areas.

The proposed Regulation provides for the granting of immediate protection status to displaced persons who, in their country of origin, face an exceptionally high risk of being subjected to generalised violence in a situation of armed conflict and who cannot return to the third country concerned. Immediate protection replaces temporary protection. In this respect, the proposed Regulation ensures that persons granted immediate protection enjoy economic and social rights equivalent to those applicable to beneficiaries of subsidiary protection. These rights include protection against forced return, information on rights and obligations related to their status, maintenance of family unity, the right to receive a residence permit, freedom of movement within the territory of the Member State, access to employment, access to education, access to procedures for recognition of qualifications and validation of competences, social security and social assistance, medical assistance, rights related to unaccompanied minors, access to housing, access to integration measures and repatriation assistance.

In summary, the specific provisions of the proposed Regulation relate to:

- definition of crisis;
- compulsory solidarity in a crisis situation and the scope of compulsory solidarity measures;
- return and asylum procedures in a crisis situation, including criteria and procedural provisions, asylum crisis management procedure, return crisis management procedure, derogations from the provisions on registration of applications for international protection;
- extension of deadlines;
- granting of immediate protection.

In addition to appropriate regulations and procedures, the management of an emergency situation requires the provision of adequate reception conditions, including appropriate accommodation that meets minimum

152 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020PC0613

153 This proposal reforms the Dublin Regulation

standards and is in accordance with human dignity. Thus, providing accommodation for applicants for international protection is an essential component of an asylum system. There are different models of reception facilities depending on changing needs and flows of new arrivals. In justified cases, States may exceptionally establish other forms of accommodation than the usual ones - accommodation at borders or transit zones, houses, apartments, private hotels or other adapted accommodation for applicants. The sudden increase in the number of applicants for international protection, insufficient reception facilities, isolation requirements during the COVID-19 pandemic has led reception authorities in many countries to establish a new reception mechanism - the use of temporary mobile structures (such as tents, containers and modular houses) and permanent facilities for a temporary period (hotel rooms, board and lodging, sports halls, schools and barracks). Three humanitarian emergencies that followed the COVID-19 pandemic - the Taliban takeover in Afghanistan, the instrumentalisation of migrants by Belarus and the war in Ukraine, have led to the overburden of national asylum and reception systems in most EU Member States. To cope with the significant increase in arrivals, countries urgently needed additional reception places. Some countries took advantage of already available resources, while others opened new temporary facilities to accommodate applicants for international protection and beneficiaries of temporary protection before transferring them to a more permanent reception or accommodation facility. In winter conditions, countries are forced to adapt their temporary reception systems to cope with harsh weather conditions and higher energy costs, which generate additional expenses.

Thus, in EU member countries there are different models for dealing with emergency situations faced by national reception systems. To improve reception capacity, several EU countries have set up temporary reception facilities, while other countries have managed to cope with increasing arrivals and shortages by using other temporary solutions or adopting more structured approaches. Despite the growing number of applicants for international protection, some countries - such as Latvia, Lithuania, Spain and Sweden - do not use temporary solutions in their reception systems. All asylum seekers or beneficiaries of temporary protection are accommodated in public or private facilities or centres in the regular reception system. However, some of these countries (Spain and Sweden) have reopened or set up new facilities as refugee flows have increased. However, several countries now use temporary reception facilities - containers (Belgium, Cyprus, Greece, Malta, Netherlands, Poland, Slovenia), tents (Austria, Cyprus and the Netherlands), army barracks and multi-purpose facilities (Switzerland). In Croatia, asylum seekers are temporarily accommodated in existing facilities such as hotels, motels, student hostels, sports halls. Especially for displaced persons from Ukraine, most EU authorities have used temporary facilities for shelter and first aid in the initial reception phase until a more suitable solution is found. In Italy, for example, applicants for international protection and beneficiaries of temporary protection are housed in so-called "extraordinary reception centres", which were set up in 2015 in response to the EU migration crisis. Since then, these reception centres, mainly consisting of houses and apartments, have become part of the common reception system. A similar practice exists in France, as well. Greece used a different approach, using mobile facilities as a long-term solution.

The authority responsible for setting up temporary facilities varies between EU countries, but can be divided into three main categories: reception authorities,[154] local authorities and civil protection authorities. In emergency situations, they can have a variety of roles. For example, different authorities may work in close coordination, with the support of civil society organisations, depending on the profile of the people accommodated and national policies. The responsible authority is usually different for applicants for international protection and beneficiaries of temporary protection. Receiving authorities take the lead in identifying temporary solutions for asylum seekers, while for beneficiaries of temporary protection the local authority is responsible, supported in some cases by civil protection authorities.

Most countries use temporary reception facilities to host both applicants for international protection and beneficiaries of temporary protection. Vulnerable persons can only be accommodated in temporary reception facilities in exceptional circumstances, if no other solution has been found.

The majority of temporary reception facilities are already equipped with heating and insulation systems. Where these are lacking, states have planned to equip facilities for winter by contracting private or public companies or with the support of international organisations or humanitarian agencies such as: UNHCR, IOM, UNICEF, Red Cross, Caritas. Only a small number of Member States have set up or plan to set up new winter facilities.[155]

The European Union Asylum Agency (EUAA) has developed standards and guidelines on the design and construction of reception centres in containers or modular accommodation units[156] and promotes a model EU reception centre, where services are conveniently located for residents without compromising efficiency and

154 In the case of the Republic of Moldova - General Inspectorate for Migration

155 See: https://euaa.europa.eu/publications/use-temporary-reception-structures-during-winter-season

156 See: https://euaa.europa.eu/publications/modular-approach-reception-container-site-designs

safe working conditions. The centre model is based on several design and operating principles. For example, the centre must be located in such a way as to ensure the effective geographical access to relevant services such as: public services, school, medical assistance, social and legal assistance, a shop, laundry and leisure activities. The centre must provide the following functions: first entry of residents and registration in the centre; medical control/screening, accommodation, services, continuous medical support, administrative area, outdoor space, safety and security. The reception process should be structured according to a standardised flow and should be organised according to the target groups. This is done to provide all residents with the necessary safeguards and access to services (provided either on or off-site) from the day of arrival at the centre until leaving. Persons with identified special reception needs and their families must be provided with appropriate accommodation and services by i) allocating specific accommodation areas (e.g. safe area for unaccompanied children, separate area for lone women, etc.) and the provision of specific services; ii) referral to external reception units and entities if the necessary safety measures cannot be achieved within the unit (e.g. specific shelters for victims of gender-based violence, specialised institutions providing medical assistance, independent living solutions for LGBTIQ+ persons, persons with reduced immunity, etc.); iii) encouraging the promotion of autonomy through independent or semi-independent living solutions, especially for specific profiles, with a view to their integration into society (lone women, persons with mental disorders with their families, etc.).

Based on respect for human rights and human dignity, the principle of respect for family unity and ensuring respect for the privacy of applicants in collective housing, the agency promotes conducive living conditions and privacy in reception units and encourages a move away from the model of large-scale reception points.

A model EU reception centre also ensures, on a social level, an open environment with an unobstructed view of the constituting parts of the centre, thanks to the presence of staff in and around the accommodation areas. This helps prevent incidents and protect residents. Free movement within the areas should be privileged, unless the safety of certain groups is threatened.

Participation and accurate information empower people to access their rights and meet their obligations. Activities organised in a centre should take into account the perspective of residents and proactively respond to the individual communication and information needs of each resident, according to their particular needs and personal circumstances. Whether or not there is a mass influx situation, it is important to establish different levels of communication and to have a coherent communication strategy adapted to the different channels.

In conclusion, the principles underpinning the new Regulation on addressing crisis and force majeure situations in the area of migration and asylum, as well as the approaches related to reception/receipt standards, could form the basis for the development of a national mechanism providing viable approaches for the effective management of an exceptional crisis situation.

RECOMMENDATIONS

- Conducting an assessment of the response capacity of public authorities to mass arrivals of displaced persons in emergency situations.
- The detailed regulation of the minimum standards for granting temporary protection, the mechanism for its implementation, as well as the responsibilities of the authorities according to their areas of competence, either in a separate chapter of Law 270/2008 or in a separate normative act, and the implementation of temporary protection should be left to the executive, limited to the determination of the circumstances justifying its establishment and specifying the exact group of persons who may benefit from temporary protection in relation to the circumstances identified.
- The prior preparation and the unified and integrated management of actions taken in emergency situations by equipping the General Inspectorate for Migration with mobility equipment and means, and by improving the physical infrastructure for the management of emergency situations caused by mass arrivals of displaced persons, and by improving knowledge in the field of managing the situations concerned.
- Strengthen the inter-institutional cooperation mechanism from an operational perspective, in emergency situations caused by mass arrivals of foreigners.

SECTION IV. RECOMMENDATIONS

Access to the asylum procedure, on the territory and at the border: operational standards consistent with human rights:

Examining the relevance of regulating access to the asylum procedure based on the three-step approach: submission, registration and lodging of an asylum application;

Developing regulations, methodological instructions and operational standards in line with human rights principles and rights that provide support and guidance in order to ensure the effective and fair access to the asylum procedure;

Identifying training needs for staff of the competent authorities for the reception and registration of asylum applications, taking into account their role in the process of ensuring access to the asylum procedure by compliance with human rights and refugee protection standards.

Asylum applications at the border:

Reviewing the instructions on the procedure for receiving asylum applications and for cooperation with the GIM, bearing in mind that any measures taken at border crossing points and places of detention must be proportionate to the objectives pursued, non-discriminatory and fully respect human rights.

Carefully examining the relevance of introducing the admissibility procedure for asylum applications and the border procedure, bearing in mind that the latter does not exclude detention of asylum seekers and requires additional resources.

Ensuring independent and sustainable monitoring of border control activities, which is essential for stopping the denial of entry in the territory and the refoulement of asylum seekers at the border, by granting access to independent institutions and NGOs to all border areas and to all border surveillance material, and by effectively addressing and examining complaints from refused/refouled persons and NGO reports.

Criteria for granting international protection and the content of the protection

On the possible revision of certain provisions of Law 270/2008, legislators should take into account both the European Union legislation in force at the time and the new EU legislative framework in the field of asylum and migration.

Access of vulnerable groups and persons and groups and persons with special needs to the asylum procedure:

Providing a broad definition of vulnerable persons in need of special procedural and reception safeguards to better understand and respond to these needs and to comply with obligations arising under international law.

Extending the categories of persons with special needs in line with the EU asylum *acquis* and with international law.

Supplementing Law 270/2008 with regulations making it compulsory to identify the special needs of vulnerable persons asylum seekers.

Developing mechanisms for the rapid and efficient identification of vulnerable persons, assessment of their special needs in terms of the procedure, in order to provide relevant support, according to these special needs.

Strengthening procedural safeguards, as well as support measures granted to persons with special needs to ensure that asylum seekers with special needs have effective access to the asylum procedure and the capacity to exercise their asylum right and other rights.

Immigration detention of asylum seekers and alternatives to detention:

Amendment of Law 200/2010 by introducing regulations that would provide for more non-custodial alternatives to immigration detention.

Expressly establishing, in the text of Law 200/2010, the detention placement procedure only as a last resort, for the minimum possible period, subject to proportionality and necessity tests and only after due consideration of all non-custodial measures alternatives to immigration detention.

Avoiding abuse of the asylum procedure. Withdrawal of refugee status:

Approximation of the national regulations regarding the rapid/accelerated procedure for examining asylum applications and the rules contained in Directive 2013/32/EU.

Examination of the relevance and resources needed to introduce and regulate the inadmissibility procedure for manifestly unfounded asylum applications, which could also be operated at the border and in transit zones.

Introducing the concept of safe country in national legislation, with appropriate safeguards.

Regulation of additional procedural rules for the examination of the new asylum application (subsequent application).

Examination of the advisability of supplementing the national regulatory framework with provisions making the provision of material reception conditions conditional on the applicant's means of subsistence.

Separate regulation of the procedural safeguards available to the third-country national in case of examining the withdrawal of the protection granted.

Transposition of the EU provisions on withdrawal of international protection into Law 270/2008. Transposition of concepts and terminology used in EU legislation.

Application for asylum submitted by a person to whom international restrictive measures are applied, who has either been previously declared undesirable on the territory of the Republic of Moldova, is in international search, represents a threat to the security of the state or is in other similar situations

Examining the relevance and resources needed to introduce the asylum procedure at the border into the national asylum system.

The relevance of devolving the procedure for examining asylum applications through the regional directorates of the General Inspectorate for Migration.

Analysis of the benefits and risks of devolving decisions in the asylum procedure, taking into account the shortage of human, financial and technical resources.

Attracting consultancy in the field of organisational development and human resources management that would provide the necessary support in the optimisation of internal processes.

Taking the necessary steps with the Ministry of Finance for the allocation of the necessary financial sources in order to technically lift the moratorium on vacant positions.

Procedure for the examination of asylum applications: interview, quality standards, monitoring and quality control, digitisation of the asylum procedure:

Strengthening of procedural safeguards in the examination procedure of the asylum application by bringing the rules contained in Law No 270/2008 in line with the EU asylum directives.

Explicitly regulating in the legislation the requirement for the eligibility counsellor to have the appropriate knowledge so as to ensure the issuing of a fair and correct decision.

Providing training for eligibility counsellors in accordance with the training needs related to the specific tasks of the position and their degree of complexity.

Developing/revising internal tools in order to ensure monitoring and quality control of the asylum procedure.

Conducting an analysis of the relevance of digitising asylum procedures, together with an assessment of the risks and benefits.

Procedural safeguards in the asylum procedure. Appeals against decisions in the asylum procedure:

Revising the structure of Law 270/2008 so as to provide greater clarity on the procedural safeguards enjoyed by asylum seekers.

Regulating in more detail the procedural safeguards offered to persons with special needs. Extending the categories of persons who need special procedural safeguards.

Providing a definition of the notion of "persons with special needs". Express regulation in law of the right to state-guaranteed legal aid.

Rights of asylum seekers and beneficiaries of international protection versus rights of foreigners with permanent residence:

Allocating adequate funds to ensure the achievement of the objectives and to implement the measures set out in the Program on management of the migration flow, asylum and integration of foreigners for 2022-2025, including in the part related to the integration of foreigners.

Documentation of persons in the national asylum system:

Revising the designation of the identity documents issued to persons enjoying international protection

- "Identity card for refugees" and "Identity card for beneficiaries of humanitarian protection" - so as to avoid mentioning their status.

Revising the period of validity of the temporary asylum seeker identity document, established in Art. 32 of Law no. 20/2008, in order to extend it for the duration of settling the asylum application or without mentioning its validity.

Extension of the duration of residence documents for beneficiaries of international protection.

Managing mass arrivals and ensuring relevant legal safeguards in the context of asylum and migration:

Conducting an assessment of the response capacity of public authorities to mass arrivals of foreigners in emergency situations.

The detailed regulation of the minimum standards for granting temporary protection, the mechanism for its implementation, as well as the responsibilities of the authorities according to their areas of competence, either in a separate chapter of Law 270/2008 or in a separate normative act, and the implementation of temporary protection should be left to the executive, limited to the determination of the circumstances justifying its establishment and specifying the group of persons who may benefit from temporary protection in relation to the circumstances identified.

The prior preparation and the unified and integrated management of actions taken in crisis situations by equipping the General Inspectorate for Migration with mobility equipment and means, and by improving the physical infrastructure for the management of crisis situations caused by mass arrivals of displaced persons, and by improving knowledge in the field of managing the situations concerned.

Strengthening the inter-institutional cooperation mechanism from an operational point of view in crisis situations caused by mass arrivals of foreigners, among which members/applicants of terrorist organisations may hide.

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