

CONSIDERATIONS REGARDING THE LEGAL REGIME AND THEORY OF ILLEGAL MIGRATION IN ROMANIA

Ioan Lazăr¹

ABSTRACT

In the global political and economic context, the problem of migration is of special importance. Romania is one of the European countries situated at the confluence of several migration paths. This study provides a comprehensive overview of the basic migration related issues in Romania, encompassing fundamental concepts, the specific challenges confronting the nation with regard to illegal migration, and the existing international, European, and national regulations governing this domain. It further outlines the key principles applied by competent national authorities when addressing migration concerns and offers a concise presentation of the rights and responsibilities held by migrants within Romania. Through this exploration, the paper highlights the multifaceted landscape of migration in Romania, underlining its significance in domestic and global contexts.

KEYWORDS

*migration
refugee regime
asylum legislation
refugee's rights and obligations*

1. Introduction

According to Art. 2 of the Protocol no. 4 of the European Convention of Human Rights², freedom of movement is one of the most important fundamental rights guaranteed at an international level. Any person legally present in the territory of a state has the fundamental freedom to leave the territory of any

1 | Associate Professor, 1 Decembrie 1918' University of Alba Iulia, Alba Iulia, Romania; avocat_lazar@yahoo.com

2 | See for the text of the given Protocol and practical explanations related to the text [Online]. Available at: https://www.echr.coe.int/documents/d/echr/Guide_Art_2_Protocol_4_ENG#:~:text=1.,Article%20%20of%20Protocol%20No.,out%20in%20the%20second%20paragraph (Accessed: 8 September 2023).



country, including their country of origin, freedom of movement, and the right to establish, by choosing their residence within a state's territory. The condition of being legally present in a state's territory expresses the state's discretionary power to regulate the entry and residence of foreigners on the state's territory, considering that the conditions of legal residence are mentioned in national law. Here, we find a controversy because even if international conventions and European laws guarantee the freedom of movement of persons, the conditions for exercising the right are mentioned in national laws and are implemented under the discretionary power of national institutions³. The power of the state to define and apply a certain legal regime regarding migration is part of its internal sovereignty, defined by Max Weber as the monopoly of the state to exercise organized coercive power⁴.

The freedom of movement can be limited to exceptional situations. Restrictions⁵ need to be legally regulated, necessary, and proportional to protect public security, public order, public health, the fundamental rights and freedoms of others, and to prevent criminality in a democratic society⁶.

The overly restrictive conditions applied by some countries in terms of the rules and conditions of entry to state territory make exercising the international right to free movement extremely difficult⁷ and create a context for illegal migration.

According to the general theory of migration, national governments can apply one of the following five international regimes⁸ to legislate the statutes of foreigners in their countries:

1. The national regime is a form of legal protection granted to foreigners which implies that the state grants the same level of protection to foreigners as its citizens, with the exception of rights (e.g., the right to occupy public functions which involve the exercise of public power), and obligations (e.g., the obligation to defend the country, mandatory military service, loyalty to the country) granted exclusively to its citizens. This type of regime expresses the universal character of the fundamental rights and freedoms protected at the international level⁹.
2. The special regime granted to foreigners implies a set of privileges based on the provisions of international treaties and agreements.

3 | Renucci, 2009, p. 228.

4 | The internal sovereignty of a country refers to its competence to adopt laws, regulations, to establish its internal policies in an independent manner and to exercise the state's coercive power inside the state's territory via police forces and its national army. See Dănișor, 2007, p. 75.

5 | See Art. 2 Para. 4 of the Protocol No. 4 of ECHR Convention.

6 | The measures representing a limitation of the freedom of movement needs to have an exceptional character. Please see ECHR Decision, 22nd of February 1994, *Raimondo c. Italy*, Paras. 39, 40.

7 | Dănișor, 2007, p. 196.

8 | *Ibid.*, p. 195.

9 | Gîrleşteanu, 2012, p. 29.

3. The regime of the most favoured nation implies that foreigners will benefit, at least from the set of rights and freedoms accorded to the most favoured third country nationals.
4. The regime of mutually recognized minimum level of protection is based on multilateral or bilateral agreements and involves the allocation of a certain set of rights granted by the signatory states of the named convention on a mutual basis.
5. The mixt regime implies a combination of the characteristics of the aforementioned regimes.

In the case of illegal migration, national governments can opt for formal or informal pushback operations, extradition, and expulsion to end illegal situations.

In the following sections, the study presents the basic concepts related to migration, the challenges faced by Romania in the context of illegal migration, international, European, and national regulations regarding migration, the presentation of basic principles applied in the context of migration by competent national authorities, and a short presentation of the rights and obligations of migrants in Romania.

2. Concepts related to migration in Romania

The international migration law does not have a universal definition of migration-related terms and concepts and certain expressions and terms have different meanings in different legal systems. Therefore, the meaning of these terms in Romanian law and regulations need to be clarified. The meaning of Romanian legislation and the legal doctrine of certain terms are clarified below.

Refugees/asylees are persons who are fleeing from their countries because of armed conflicts or persecutions, seeking political protection. As such, in Romanian legal doctrine, the 'refugee' is a political concept that refers to persons which are unable, or unwilling to return to their countries, because of a well-founded fear of prosecution, due reasons related to race, religion, nationality, being part of a certain social group, or by expressing a certain political opinion¹⁰. On the international stage, the legal statute of refugees was governed by the UN Convention of 1951¹¹ and the protocol adopted in 1967. One of the principles of international law regarding refugees is the principle of non-refoulement¹², which guarantees that

10 | United Nations - Human Rights: Differentiation between migrants and refugees [Online]. Available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/MigrantsAndRefugees.pdf> (Accessed: 3 September 2023); Kălin et al., 2004, p. 179.

11 | Convention and Protocol Relating to the Status of Refugees [Online]. Available at: <https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees> (Accessed: 3 September 2023).

12 | For more information regarding the principle, please see: Hamdan, 2016.

refugees will not be returned to their home countries or countries of origin if their lives or liberties are endangered. Thus, the basic obligation of the host countries is to offer them protection and asylum.

A concept related to refugees is that of asylum seekers, which are persons claiming to be a refugee and which have applied for asylum, but whose claims are under analysis at competent national authorities. In the absence of a legal definition, from the analysis of Romanian legal doctrine, we can deduce that asylum seekers are foreigners who in their home country are subject to prosecution for their political, democratic, or humanitarian activities and seek a safe place in the territory of another state¹³. Therefore, any refugee is an asylum seeker before he/she earns the refugee statute. From a legal perspective, the concept of asylum seekers includes first-time applicants in Romania. Those who gain this statute after an initial refusal decision is not considered in statistical data asylum seekers¹⁴.

The term migrant is considered an umbrella term in public international law¹⁵ without a clear legal definition. Migrants are persons living in their home country for a variety of reasons, usually choosing to move to another country to enhance their living standards or benefit from education. The national provisions of host countries define legal statutes applicable to immigrants.

The difference between a 'refugee' and an 'immigrant' is based on the forced character of displacement in the case of first. A 'refugee' is not only someone who flees their country to escape war or persecution, but one for whom it is dangerous to return to their country and it is for this reason that they may appeal for help and protection¹⁶. To enter the state territory, immigrants need to possess valid documents which can prove their identity, reliable documents which can justify the reason for their stay and their financial resources, proof that they do not belong to the category of undesired persons or to the category of persons whose access to the state territory has been prohibited, are not mentioned in the Schengen Information System for forbidden entrance in the EU, and are not representing a threat to national security¹⁷.

A special category of migrants are the economic migrants¹⁸, defined as individuals searching for better jobs and economic security. If refugees and migrants lack the ability or willingness to return to their home countries, they are free from constraints and can return to their home countries whenever they want. Moreover, for many economic immigrants, the purpose of their stay is simply to earn money and then return home to buy land, build a house, support immediate and extended

13 | Drăganu, 1998, p. 153.

14 | Asylum Information Database, Country Report: Romania, 2021, p. 9 [Online]. Available at: https://asylumineurope.org/wp-content/uploads/2022/05/AIDA-RO_2021update.pdf (Accessed: 23 August 2023) (hereinafter referred to as 'AIDA Report, 2021').

15 | Chetail, 2019, p. 9.

16 | See for details Onghena, 2015 [Online]. Available at: <https://www.cidob.org> (Accessed: 4 September 2023).

17 | Art. 6 of the *Government Emergency Ordinance no. 194/2002* (hereinafter EO no. 194/2002), published in the *Official Gazette No. 421* from 5.06.2008.

18 | See for more details related to economic immigrants and the differences between them and refugees: Cortes, 2004, p. 3; Glossary, p. 61.

family members, and retire to their homeland. A second observable difference concerns the fewer social contacts which refugees and migrants have with their home countries through return visits, whereas economic immigrants maintain strong relations with family members, relatives, and friends who remain in their home countries. Another difference is the capacity of migrants to integrate into their home country. Refugees can stay in their home country for a longer period and have a better capacity to integrate themselves into the population of their home countries by making efforts to create social contacts, learn language skills, and so on.

Another category of migrants is environmental migrants, who live in their home countries due to sudden or progressive changes in the environment that adversely affect their lives or living conditions¹⁹.

A related concept which must be clarified is that of foreign citizen. According to Romanian legislation²⁰, a foreign citizen is a person who does not hold Romanian citizenship, or the citizenship of one of the EU Member States, the citizenship of the Swiss Confederation, or that of the Member States of the European Economic Area or is a stateless person. According to Art. 4 of Law no. 21/1991,²¹ Romanian citizenship can be acquired through birth, adoption, or release based on request. Romanian legal doctrine defines citizenship as a permanent political and juridical relationship between an individual and a state²². According to Art. 1 of Law no. 21/1991 on citizenship²³, citizenship is defined as the connection and belonging of a person to the Romanian State.

Another concept which needs to be clarified is that of child. According to national legal standards and relevant European and international legislation, the concept is defined as any human under the age of 18²⁴. Even if there is uncertainty about the claimed age of an individual who presents themselves as a child, that person should be treated as a child and referred to as the appropriate authority responsible for determining the age. In Romanian legislation, children are considered inherently vulnerable, particularly when they are unaccompanied or separated from their families. Therefore, special attention and sensitivity must be given to specific needs and protection. This includes appointing a representative as soon as possible to ensure that rights and interests are protected.

From the perspective of the territorial dimension of migration, we can differentiate between the concept of country of origin (or home country, referring to the country of nationality or the country of habitual residence of a migrant person), country of destination (or host country), and country of transit (where a migrant person decides to pass on to during their journey to the country of destination)²⁵.

19 | For more details: Ivanov and Bekhyashev, 2016.

20 | Art. 2 Para. 1 a) of EO No. 194/2002.

21 | Published in the *Official Gazette* No. 576 from 13.08.2010.

22 | Muraru and Tănăsescu, 2005, p. 114.

23 | Republished in the *Official Gazette* No. 576 from 13.08.2010.

24 | See Art. 1 of the UN Convention on the Right of the Child.

25 | International Organization for Migration, 2019, p. 39.

The term migrant crisis²⁶ in international law usually refers to large-scale migration flows, and mobility patterns caused by political, economic, or environmental crises with a sudden or slow onset.

The concept of right of asylum²⁷ can be defined from two perspectives. From the perspective of the state, which refers to the decision adopted by competent national authorities regarding the granting or refusal of asylum rights as a manifestation of the state's discretionary power. From the perspective of the asylum seeker, this represents a fundamental right, defined in Art. 14 of the Universal Declaration of Human Rights and by Resolution no. 2312/XXII of the UN General Assembly from the 14th of December 1967.

The concept of illegal migration refers to noncompliant, unauthorised, or undocumented forms of migration. In the doctrine, the adjective 'illegal' refers to the irregular character of migration and is not necessary to the criminal law connotation of the term. The objective of national strategies for tackling illegal migration is to identify temporary or durable solutions for immigration, where the situation of refugees can be satisfactorily and permanently resolved, enabling them to live as normal lives as possible under given conditions²⁸.

Additional important concepts are 'safe countries of origin' and 'safe third countries' used by Romanian legislators in the Asylum Act²⁹.

According to Art. 77, Para. 1 of the Asylum Act,³⁰ 'safe countries of origin' are countries that meet certain criteria, which include the following: observance of human rights and fundamental freedoms as guaranteed by the European Convention on Human Rights (ECHR), the International Covenant on Civil and Political Rights, and the Convention against Torture; functioning on democratic principles, political pluralism, and free elections, along with functional democratic institutions, ensuring the guarantee and respect of fundamental human rights; effective mechanisms for reporting violations of human rights and fundamental freedoms; compliance with the principle of non-refoulement, as defined by the provisions of the Geneva Convention; existence of political stability factors.

The list of safe countries of origin was established by the Ministry of Internal Affairs, based on a proposal from the Inspectorate General for Immigration (IGI), and considers information from various sources, including other EU member states, European Asylum Support Office (EASO), United Nations High Commissioner for Refugees (UNHCR), the Council of Europe, and other international organisations. Periodic reviews have been conducted to update the list.

When an asylum applicant comes from a country designated as safe country of origin, their application is usually rejected as unfounded. However, if the applicant can provide evidence or demonstrate a well-founded fear of persecution or serious harm, they are given access to regular asylum procedures.

26 | *Ibid.*, p. 139.

27 | See for details: Corlăţean et al., 2017, p. 275.

28 | *Ibid.*, p. 59.

29 | See for a detailed presentation: AIDA Report, 2021, pp. 78–83.

30 | Law No. 122/2006 on Asylum in Romania, published in *Official Gazette* No. 156 in 25 August 2006 (hereinafter cited as the Asylum Act).

However, according to Art. 97, Para. 1 of the Asylum Act, a safe third country is a country in respect of which there are sufficient guarantees that the rights of an applicant for international protection are respected on its territory. The following principles are considered when determining whether a country qualifies as a safe third country: life and freedom are not threatened by race, religion, citizenship, membership in a particular social group, or political opinion; the principle of non-refoulement, in accordance with the Refugee Convention, is respected; the prohibition of expulsion to a state where a person may be subjected to torture or cruel, inhuman, or degrading treatment is respected; there is a possibility to request refugee status, and, if granted, to benefit from protection in accordance with the Refugee Convention.

When the criteria for a safe third country are applicable, and the third country agrees to readmit the applicant, the General Inspectorate for Immigration – Directorate for Asylum and Integration (GII-DAI) can reject the asylum application as inadmissible. However, it is essential to consider whether there is a link between the applicant and a third country indicating that the country is safe for the applicant’s personal situation.

The law requires a list of safe third countries to be published in the Official Gazette; however, such a list is not available or has not yet been published. Non-governmental organizations (NGOs) and the UNHCR confirm that there is no list of safe third countries and that this concept has not yet been applied in practice.

Another important difference, which needs to be done from a theoretical point of view is the difference between the term ‘push-back operation’ and ‘readmission’³¹.

Push-backs³² refer to the illegal actions of state actors (and sometimes non-state actors) of forcibly returning people, often protection seekers and refugees, back over state borders to the territory of another country without allowing them to apply for asylum or seek international protection. This practice usually involves physical force, violence, and inhumane or degrading treatment applied by the police. Push-backs typically occur at unofficial border crossing points, known as ‘green borders’ to avoid detection by authorities.

Key points about push-backs³³ are the following: conducted by state authorities or border police; occur at unofficial border crossing points to evade detection; violate various fundamental human rights, including the prohibition of torture; usually happen without any administrative procedures or official documentation.

Readmission³⁴ is an administrative procedure that allows countries to return individuals to their previous country or country of origin based on bilateral or multilateral agreements. These agreements outline the scope and specific procedures for the return of individuals. When the returning country wants to initiate

31 | For more details about the characteristics of the two concepts, please consult: Giuffré, 2020, p. 36.

32 | Tazzioli, 2019, p. 267.

33 | Vaughan-Williams, 2015, p. 60.

34 | See for more details: Cygan et al., 2004, p. 208.

readmission, it sends an official request to the receiving country. The return of the individual takes place through official border-crossing points and is facilitated by proper state-issued documentation.

Key points about readmission procedure are the following: conducted based on bilateral or multilateral agreements between countries; involves official requests and acceptance by the receiving country; requires administrative procedures and proper documentation; often used for regular migration control purposes.

Pushbacks are generally more common than readmissions because of their simplicity and effectiveness. Pushbacks can occur swiftly without the need for administrative processes, making them the preferred method for state actors seeking to control migration. However, these pushbacks are illegal and violate human rights, including the principle of non-refoulement, which prohibits returning individuals to places where their lives or freedom may be at risk.

Readmission procedures are conducted in compliance with international and bilateral agreements to ensure a more formal and regulated process for returning individuals. While readmissions may be considered legitimate and lawful, they can be time-consuming and require cooperation between the concerned countries.

It is essential to recognise the human rights implications of both pushbacks and readmission procedures to ensure that any actions taken in migration control adhere to international law and protect the rights of individuals seeking refuge or asylum.

Finally, the differences between *expulsion* and *extradition* must be clarified.

Expulsion³⁵ is the legal institution referring to measures adopted by public authorities of a state to oblige a migrant to leave the territory of a country in cases of illegal stay. It is a safety measure adopted to avoid danger, protect the legal, economical, and social order of a state and national security.

Extradition³⁶ is another measure adopted to oblige a person to leave the territory of the country, but at the origin it is the request from another country. It is a measure of interstate assistance in criminal matters with the objective of ensuring the transfer of an individual who is criminally prosecuted or convicted. Extraditions are based on the provisions of an international convention, based on reciprocity, and the decisions taken by national courts.

3. Challenges faced by Romania regarding Illegal Migration

From a geographical perspective, Romania is at the intersections of several routes of migration, which originated until the Russian invasion of Ukraine from the Middle East, South-East Asia, and Africa. Romania is considered a transit

35 | Dănişor, 2007, p. 197.

36 | Ibid., p. 198.

country and a country of temporal establishment for migrants³⁷, regardless of their origin. As an EU Member State, Romania is involved in collective European efforts to efficiently control, coordinate and monitor the immigration crisis in Europe. Romania represents one of the European countries with an essential input in the European Border and Coast Guard Agency (Frontex) missions besides Germany, Greece, Italy, and Hungary.

According to the most recent statistical data³⁸ from the General Inspectorate for Immigration (GII), via the Directorate General for Asylum and Integration (DAI) a total number of 12,368 applications for asylum were made in 2022. Refugee status was granted to 467 applicants, subsidiary protection measures were granted to 546 applicants, 2,934 requests were rejected and 1,288 were pending at the end of the year. The rejection rate of applications was significant (74.33 %). These asylum seekers were from Ukraine, India, Bangladesh, Syria, Pakistan, Afghanistan, Turkey, Somalia, Nepal, and Sri Lanka, with most applicants being men.

The phenomenon of illegal migration represents a form of manifestation of organized crime³⁹ which, due to its dimensions, affects the national economies of transit and destination countries and their social security systems.

The causes of illegal migration include political instabilities, armed conflicts, poor living standards, and the ingenuity of criminal organisations interested in substantial profits, discovering rapid and functional solutions to the restrictions and repressive actions of authorities.

The challenges generated by illegal migration⁴⁰ are diverse and complex and are reflected at the social, economic, political, and security levels. Among the social challenges of illegal migration, the implications of low-income-earning nationals in illegal migration activities from the proximity of borders needs to be emphasised. such as the instigation of violence, political and religious extremism, and the potential proliferation of different types of illnesses.

The economic and political challenges of illegal migration refer to the management of costs related to the refugee crisis in important host countries, increased duration of transport of goods due to extensive control mechanisms at borders, proliferation of illegal work mechanisms due to the presence of a cheap workforce in host countries, increase in the unemployment rate, and worsening of living conditions in the national population.

From the perspective of security challenges, illegal migration can increase the rate of criminality in host countries, contribute to the infiltration of terrorist groups and members of extremist groups in the national population and the diverse forms of aggression which can appear in refugee centres.

The adoption of national policies tolerant of illegal migration can cause serious problems in host countries, such as social conflicts, xenophobia, ethnic segregation, an increase in population dissatisfaction related to unfair competition

37 | Möhle, Huth and Becker, 2017, p. 34.

38 | See for details regarding statistical data Asylum Information Database: Nica, 2022, p. 8.

39 | De Ruyver et al., 2002, p. 368.

40 | See e.g. LeMay, 2006, p. 107.

represented by the illegal workforce, and an increase in criminal phenomena (tax evasion, drug trafficking, forms of physical violence, etc.).

In Romania, the following issues and challenges related to migration, asylum, and integration⁴¹ have been identified:

1. legal and illegal pressure exerted by migration poses challenges to the capacity of the Immigration Management Commission in efficiently managing the immigration phenomenon. The need for clear national policies, integration measures, and an efficient system for the return of illegal immigrants has been highlighted;
2. despite the efforts of competent institutions, there is a labour shortage in Romania. The country needs to identify solutions to integrate foreign workers into the labour market through information campaigns, projects, and facilities to accept and accommodate qualified foreigners;
3. economic and democratic disparities between Europe and neighbouring areas, along with armed conflicts and crises, may lead to refugee challenges for European asylum systems. Romania must strengthen its asylum system to ensure the protection of fundamental rights and liberties for people seeking international protection;
4. there is a need to inform and raise awareness among Romanian citizens about various aspects of immigration. A lack of public understanding may lead to social tension, and transparent and timely information from the authorities can counteract misinformation and prevent social unrest;
5. migration flows may include individuals with past or potential terrorist connections. Owing to the lack of proper documentation, verifying their identities and backgrounds in countries facing insecurity and terrorism is challenging. This poses security risks, including potential support for terrorist organizations within Romania, radicalization, and involvement in violent or terrorist acts.

In response to these challenges, there is a real need for a well-managed immigration system that considers both the benefits of legal immigration and the security implications associated with illegal migration and the implementation of integration measures, strengthening the asylum system, promoting public awareness, and addressing security concerns related to illegal migration flows.

41 | See also information: European Parliament: Migration and asylum in Central and Eastern Europe [Online]. Available at: https://www.europarl.europa.eu/workingpapers/libe/104/romania_en.htm (Accessed: 20 August 2023).

4. International, European and National Legislation regarding Migration

| 4.1. *International Regulations*

The global standards⁴² for international migration include agreements related to the human rights of migrants, rights of migrant workers, refugee protection, and measures to combat migrant smuggling and human trafficking. These agreements have been accepted by various member states to varying extents.

At the heart of the international framework for safeguarding refugees are the 1951 UN Convention relating to the status of refugees⁴³ and the 1967 UN Protocol relating to the status of refugees⁴⁴. The 1951 Convention serves as the foundation for the international refugee protection regime by providing a definition for the term ‘refugee’; outlining the rights afforded to refugees, and establishing the legal responsibility of States to protect refugees. This Convention expressly forbids the expulsion or involuntary repatriation of individuals granted refugee status, emphasizing the principle of non-refoulement, which ensures that no refugee is returned to a country or territory where their life or freedom would be in jeopardy.

In what regards the protection of migrant workers the International Labour Organization (ILO) has adopted three legally binding instruments that are relevant for the protection of migrant workers. These instruments include the Convention Concerning Migration for Employment, Convention Concerning Migration in Abusive Conditions, Promotion of Equality of Opportunity and Treatment of Migrant Workers, and the 2011 Convention Concerning Decent Work for Domestic Workers. Additionally, non-binding recommendations complement these conventions.

The 1949 Convention concerning Migration for Employment⁴⁵ primarily addresses the recruitment and working conditions of migrant workers. It establishes the principle of equal treatment for migrant workers and nationals concerning living and working conditions, remuneration, social security, employment taxes, and access to justice.

The 1975 Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers⁴⁶ was

42 | See for more information, available at: https://www.un.org/en/development/desa/population/publications/pdf/migration/migrationreport2013/Full_Document_final.pdf (Accessed: 3 September 2023).

43 | The 1951 Refugee Convention [Online]. Available at: <https://www.unhcr.org/about-unhcr/who-we-are/1951-refugee-convention> (Accessed: 7 September 2023).

44 | 5. Protocol relating to the status of refugees [Online]. Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=V-5&chapter=5 (Accessed: 7 September 2023).

45 | Migration for Employment Convention, 1949 [Online]. Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:CON,en,C097,/Document (Accessed: 8 September 2023).

46 | Migrant Workers (Supplementary Provisions) Convention, 1975 [Online]. Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::p12100_instrument_id:312288 (Accessed: 8 September 2023).

the first multinational effort to tackle irregular migration and advocate sanctions against human traffickers. This emphasises that Member States must uphold the basic human rights of all migrant workers, including irregular migrants. Additionally, it stipulates that lawfully present migrant workers and their families should receive equal treatment and have equal opportunities, such as access to employment, trade union rights, cultural rights, and individual and collective freedoms.

The 2011 Convention concerning Decent Work for Domestic Workers⁴⁷, which became effective in 2013, was the first multinational instrument to establish global labour standards for domestic workers, guaranteeing them the same basic rights as other workers. This convention ensures that domestic workers, regardless of their migration status, enjoy fundamental labour rights, including reasonable working hours, limitations on in-kind payments, clear employment terms, and respect for core labour principles and rights, such as freedom of association and the right to collective bargaining.

Regarding the regulation of smuggling and international human trafficking, there are two protocols aimed at addressing irregular migration, focusing on human trafficking and migrant smuggling, which complement the United Nations Convention against Transnational Organized Crime⁴⁸. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2000, became effective in 2003 and received ratification from 157 United Nations Member States. The Protocol defines human trafficking as the illicit acquisition of people through improper means such as force, fraud, or deception, with the intent to exploit them. Its objectives include preventing and combating trafficking in persons, protecting and assisting victims of such trafficking, particularly women and children, prosecuting those responsible for these crimes, and promoting cooperation among the States Parties to address this issue. According to the provisions outlined in the Protocol, migrant smuggling entails facilitating, for financial or other material gain, the unlawful entry of an individual into a state in which that person is not a national or permanent resident. The Protocol serves as a potent instrument in the fight against and prevention of the illicit smuggling of individuals, often referred to as 'human cargo'.

Although the ECHR does not explicitly grant a specific right to asylum, it contains provisions that safeguard individuals from being turned away or exposed to the risk of torture or other forms of inhuman or degrading treatment or punishment. This prohibition is based on the principle of non-refoulement. To ensure protection from arbitrary removal, individuals must have access to fair and efficient asylum procedures. They must also receive adequate information about the relevant procedures in a language that they can understand and have the right to seek legal advice. Additionally, the European Court of Human Rights (ECtHR)

47 | Domestic Workers Convention, 2011 [Online]. Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189 (Accessed: 8 September 2023).

48 | United Nations Convention against Transnational Organized Crime and Protocols Thereto [Online]. Available at: <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html> (Accessed: 8 September 2023).

has emphasised the significance of interpretation services in guaranteeing access to asylum procedures for those in need of protection.

Under the ECHR, Arts. 2 (which guarantees the right to life) and 3 (which prohibits torture, inhuman, or degrading treatment or punishment) prohibit the return or deportation of an individual to a situation where they would be exposed to a genuine risk of treatment that contradicts the principles outlined in these articles. In such cases, states are held accountable for violations of their obligations as defined by the ECHR. This underscores the commitment to prevent actions that could lead to loss of life or infliction of inhumane or degrading treatment, even if the ECHR does not explicitly grant a specific right to asylum.

Under Art. 5 (Right to Liberty and Security) of the ECHR, the detention of migrants and asylum applicants must adhere to specific principles and criteria. Detention in such cases must be provided for by national law, conducted in good faith, and closely connected to the legitimate aims pursued. These principles and criteria aim to ensure that any detention of migrants or asylum seekers is lawful, nonarbitrary, and conducted with appropriate safeguards to protect their rights under the ECHR.

Collective expulsion is prohibited under Art. 4 of Protocol No. 4 to the ECHR. This article explicitly prohibits the collective expulsion of migrants. It emphasises that no one should be arbitrarily expelled and that each case must be examined individually to ensure that rights and protections under the ECHR are upheld.

Under Art. 15 of the ECHR, states have the possibility of derogating certain provisions of the ECHR in exceptional circumstances, such as during times of public emergency that threaten the life of the nation.

| **4.2. Some of the most relevant EU Legislation**

At the EU level, fundamental treaties do not mention or regulate rights to asylum. However, Art. 18 of the EU Charter of Fundamental Rights⁴⁹ establishes a qualified right to asylum, and Art. 19 includes important principles such as non-refoulement and the prohibition of collective expulsion. The Charter also provides an autonomous right to an effective remedy and fair trial principles offering broader protection than the ECHR. The EU can apply a more generous interpretation of rights than the ECHR, thus demonstrating its commitment to upholding fundamental rights in the context of migration and asylum. Art. 47 of the Charter grants individuals an autonomous right to an effective remedy and lays down principles related to fair trials. Art. 52 specifies that the minimum level of protection provided by the Charter provisions is that which is guaranteed by the ECHR. However, the EU has the flexibility to apply a more generous interpretation of rights than proposed by the ECtHR. Thus, the EU can provide a higher level of protection for individual rights.

EU law establishes the following common rules and mechanisms to manage external borders:

1. Common Rules for Short-Term Visas: EU Member States have common rules governing the issuance of short-term visas. Short-term visas are typically

- granted for purposes such as tourism, business, and family visits, and these rules ensure a consistent approach across EU countries;
2. Implementation of Border Controls: The EU has established common rules for the implementation of external border controls. These rules are in place to ensure the security and integrity of the Schengen Area, which allows for passport-free travel among participating EU countries;
 3. Preventing Irregular Entry: EU Member States work collectively to prevent irregular entry into the Schengen Area. Irregular entry refers to the unauthorised or illegal crossing of borders. The aim is to maintain the security and order of the border areas;
 4. Frontex – European Border and Coast Guard Agency: Frontex is responsible for supporting EU Member States in managing their external borders. It provides technical and operational support through various means, including joint operations, rapid border interventions, and the deployment of experts to assist Member States facing disproportionate migratory challenges;
 5. European Border Surveillance System (Eurosur), which serves as an information exchange system between EU Member States and Frontex. It facilitates the sharing of real-time information on border-related issues and enhances coordination and situational awareness;
 6. Frontex Standing Corps: By 2027, Frontex is expected to have a standing corps of 10,000 operational staff dedicated to supporting EU Member States in border control and return tasks. These standing corps will contribute to a more coordinated and effective response to border management challenges.

Under EU law, the Schengen Borders Code – Regulation (EU) No. 2016/399⁵⁰ establishes rules for crossing EU external borders at designated points, requires Member States to maintain effective border surveillance to prevent unauthorised entry, and emphasises the importance of conducting these activities while fully respecting fundamental rights. This framework aims to strike a balance between security and the protection of individual rights at external EU borders.

The Schengen Information System (SIS) ruled by Regulation (EU) No. 2018/1861⁵¹ is a critical tool for managing entry bans and alerts to prevent individuals from re-entering the Schengen Area through other Member States. It ensures the enforcement of entry restrictions, while providing mechanisms for individuals to challenge entry bans that they believe are unjust. This system helps maintain security and order within the Schengen Zone.

The local border traffic regime, governed by Regulation (EC) No. 1931/2006⁵², represents a specific exception or derogation from the general rules governing border controls for individuals crossing the external borders of EU Member States. This regime is designed to facilitate and streamline border crossings for residents living in border areas of neighbouring third countries.

50 | Published in the OJ series L No. 77 from 23 March 2016, pp. 1–52.

51 | Published in the OJ series L No. 312 from 7 December 2018, pp. 14–55.

52 | Published in OJ series L No. 405 from 30 December 2006, pp. 1–22.

Under EU law, specifically Art. 4(4) of the Return Directive (Directive 2008/115/EC), certain minimum rights and principles apply to persons who have been apprehended or intercepted in connection with irregular border crossing.

The EU asylum acquis, including the Asylum Procedures Directive, applies once an individual arrives at the border, including territorial waters and transit zones. Thus, rules and procedures for seeking asylum in the EU come into play when a person reaches the external borders of an EU Member State.

| 4.3. Relevant National Legislation

The major legislative act regulating asylum rights and related procedures in Romania is the Asylum Act – Law No. 122 from the 4th of May 2006 on Asylum in Romania⁵³. The Act mentioned above has several implementing decrees, guidelines, and regulations on asylum procedures, reception conditions, and detention as follows:

- | The Asylum Decree: Government Decree No. 1251 of 13 September 2006 regarding the Methodological Norms for Applying Act 122/2006⁵⁴;
- | The Aliens Ordinance: Government Emergency Ordinance No. 194 of 12 December 2002 regarding the regime for foreigners in Romania⁵⁵;
- | Integration Ordinance: Government Ordinance No. 44 of 29 January 2004 regarding the social integration of foreigners granted international protection or a right of residence in Romania, and the citizens of the Member States of the European Union, the European Economic Area and citizens of the Swiss Confederation⁵⁶;
- | The Integration Decree: Governmental Decision No. 945 of November 5 2020 for the approval of the Methodological Norms for the application of the Government Ordinance No. 44/2004 regarding social integration⁵⁷;
- | Order No. 441 of 4 April 2008 for determining the attributions of the authorities responsible for implementing the data in the Eurodac system and for establishing the practical methodology of cooperation in the application of European regulations, with amendments and additions⁵⁸;
- | Public Custody Centres Regulation: Regulation of Internal Order in the Regional Centres of Accommodation and Procedures for Asylum Seekers of 25 August 2016⁵⁹;
- | Regulation of Centres for Aliens Taken into Public Custody of 30 July 2014;⁶⁰
- | Government Decision No. 1.596 of 4 December 2008 regarding the resettlement of refugees in Romania⁶¹;

53 | Published in the *Official Gazette* No. 428 from 18 May 2006.

54 | Republished in the *Official Gazette* No. 421 from 5 June 2008.

55 | Republished in the *Official Gazette* No. 421 of from 5 June 2008.

56 | Published in the *Official Gazette* No. 93 from 31 January 2004.

57 | Published in the *Official Gazette* No. 1070 from 12 November 2020.

58 | See ORDIN nr. 441 din 4 aprilie 2008 (*actualizat*) [Online]. Available at: <https://legislatie.just.ro/Public/DetaliuDocument/168995> (Accessed: 23 September 2023).

59 | Published in the *Official Gazette* No. 680 from 2 November 2016.

60 | Published in the *Official Gazette* No. 590 from 7 August 2014.

61 | Published in the *Official Gazette* No. 831 from 10 December 2008.

| Emergency Ordinance No. 15 of 27 February 2022 regarding the provision of humanitarian support and assistance by the Romanian state to foreign citizens or stateless persons in special situations, coming from the area of the armed conflict in Ukraine⁶².

5. Important Principles Applicable in Asylum Related Matters in Romania

A national immigration⁶³ strategy is built upon a set of general principles⁶⁴ that guide its implementation and objectives⁶⁵. The principles are as follows:

1. Principle of legality: all activities conducted to achieve the strategic objectives of the National Strategy are fully compliant with the law;
2. Principle of responsibility: each authority and institution responsible for immigration is responsible for implementing the National Strategy in their respective areas of competence;
3. Principle of sovereignty: reflects the right of the Romanian state to establish policies related to the admission, residence, and return of third-country nationals to promote its political, economic, social, cultural, and humanitarian interests while adhering to obligations under international treaties and agreements with other states;
4. Principle of cooperation and coherence: involve active cooperation in drafting and implementing a common immigration policy within the European Union and aligning the National Strategy with measures and policies established in other member states;
5. Principle of respect for fundamental human rights and freedoms: all activities conducted by the authorities and institutions responsible for immigration must comply with provisions from international conventions and treaties on fundamental human rights and freedoms that Romania is a party to;
6. Principle of unitary action: aims to implement the state policy and legal provisions in the field of immigration in a unified manner with concerted efforts at all levels.

62 | Published in the *Official Gazette* No. 193 from 27 October 2022.

63 | National Strategy on Immigration 2021-2024 [Online]. Available at: <https://igi.mai.gov.ro/wp-content/uploads/2022/01/National-Strategy-on-Immigration-2021-%E2%80%932024.pdf> (Accessed: 25 September 2023).

64 | The general principles applicable to immigration policy in EU Member States can be found in Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A common immigration policy for Europe: Principles, actions and tools {SEC(2008) 2026} {SEC(2008) 2027} (presented by the Commission) /* COM/2008/0359 final */ [Online]. Available at: <https://eur-lex.europa.eu/RO/legal-content/summary/a-common-immigration-policy-for-europe.html> (Accessed on: 8 September 2023).

65 | AIDA Report, 2021, pp. 19–20.

7. Principle of transparency: involves actively informing and consulting civil society about decisions and procedures related to immigration.
8. Principle of partnership: encourages active participation, involvement, and consultation with other relevant stakeholders, such as NGOs, international organisations, UN agencies, academia, and the private sector, to achieve the objectives of the National Strategy;
9. Principle of equal opportunities and treatment between women and men: demonstrates a commitment to implementing legal provisions and guidelines related to gender equality, non-discrimination, and accessibility, considering the positive impact of the strategy's objectives on these aspects;
10. Principle of multiculturalism: acknowledges and embraces the coexistence of diverse individual characteristics, beliefs, ideologies, and habits in a relatively limited area, reflecting a multicultural approach to immigration and integration.

These principles provide a comprehensive framework for guiding actions and policies related to immigration in Romania with a focus on upholding human rights, transparency, cooperation, and responsibility among the various stakeholders involved in managing the migration phenomenon.

In addition to the principles mentioned above, the concept of non-refoulement is a principle of international law that prohibits the expulsion, return, or deportation of individuals to a country or territory where they may face persecution, torture, inhuman or degrading treatment, or other serious human rights violations⁶⁶. The obligation of non-refoulement is primarily placed on the Member States of international conventions and treaties related to asylum and refugee protection. This is specifically outlined in the 1951 Refugee Convention and its 1967 Protocol. These instruments provide a legal framework for refugee protection and establish the principle of non-refoulement as a fundamental safeguard for those seeking international protection.

This obligation is not limited to a specific branch or agency of a state, instead, it applies to all organs of the state, including the government, immigration authorities, border officials, law enforcement, and any other person or entity acting on its behalf. This implies that all relevant authorities within a country are bound by the principle of non-refoulement and must comply with its provisions.

The principle of non-refoulement applies to any form of forced removal or return, including but not limited to deportation, expulsion, extradition, unofficial transfer, and 'handovers' of individuals to other countries. It also encompasses rejections at the border, where there is a risk of persecution or serious harm if the person is returned to their country of origin or another territory.

Moreover, the principle also covers indirect returns, which means returning a person to a third country where there is a risk that they will be sent back to a place of persecution or harm. In such cases, a thorough assessment of the risk of indirect return must be conducted before any action is taken, and a person's safety and protection must be ensured. Asylum seekers should not be returned to a third

66 | See for more details on definition: Lülfi, 2015, pp. 167–187.

country to process their applications if there is insufficient guarantee that they will not face refoulement.

These guarantees include assurances that the person will be readmitted to the respective country, provided with effective protection against return, allowed to apply for and benefit from asylum procedures, and treated in accordance with accepted international standards on human rights and refugee protection.

6. Asylum Seekers' Rights and Obligations in Romania⁶⁷

In Romania, asylum seekers who seek international protection because of fear of persecution or serious harm in their home country are granted certain rights⁶⁸ and expected to fulfil specific obligations⁶⁹ as part of the asylum process.

These rights and obligations are aimed at ensuring a fair and transparent process while maintaining the integrity of the asylum system and can be grouped according to their object, as follows:

| **6.1. Rights and obligations related to the asylum procedure:**

1. Right to be assisted by a lawyer during the asylum procedure: Asylum seekers have the right to legal representation to help them understand and navigate the asylum process and to advocate for their rights.

2. Right to information: The competent authorities responsible for processing asylum applications are required to inform immigrants of the possibility of submitting asylum requests. To improve access to accurate information on the asylum procedure, the Border Police distribute leaflets in several international languages, including rare languages such as Arabic, Kurdish, Pashto, and Farsi. These leaflets cover details about the rights and obligations of asylum seekers and information about the assistance provided by NGOs. For example, in the context of the war in Ukraine, the National Council for Refugees and Stateless Persons (CNRR), in collaboration with the UNHCR, identified information needs at the borders with Ukraine and Moldova and drafted and translated 10,000 leaflets about the asylum procedure into Ukrainian and distributed them at border-crossing points with Ukraine and the Republic of Moldova. In 2022, the CNRR distributed leaflets containing information on the DOPOMOHA⁷⁰ platform to people coming from

67 | Rights and duties of asylum-seekers [Online]. Available at: <https://help.unhcr.org/romania/rights-and-duties-of-asylum-seekers/> (Accessed: 4 September 2023).

68 | Art. 17 of Asylum Law.

69 | Art. 19 of Asylum Law.

70 | The platform's name, 'DOPOMOHA', meaning 'help' in Ukrainian, reflects its purpose of offering aid and support to those seeking refuge and assistance in Romania due to the conflict in Ukraine. DOPOMOHA is a web support and information platform aimed at assisting migrants fleeing the war in Ukraine. It serves as a valuable project created by Code for Romania in collaboration with various organizations, including the Department for Emergency Situations (DSU), The UN Refugee Agency (UNHCR), the International Organization for Migration (IOM), and the National Romanian Council for Refugees (CNRR). As

Ukraine. The leaflets provided official and secure information along with contact details for relevant Romanian authorities. While information leaflets have been distributed in several international languages, there is recognition that there is a need for updated information leaflets in other languages. Consequently, the CNRR has started working on a new leaflet that specifically addresses the right to seek asylum in Romania, which is expected to be disseminated in 2023. To display these leaflets at border-crossing points, approval from the authorities (Border Police) is required⁷¹.

In practice, the study published by AIDA has shown that, for example, at Moravița crossing point CNRR leaflets in English on the rights and obligations of foreigners taken into public custody, FRONTEX leaflets on access to the asylum procedure in English and French, and a booklet on the right to complain in several languages are available. FRONTEX leaflets are reported as the most widely used.

Any person detained at the border for illegal crossing or presenting themselves at a border-crossing point is informed of the right to make an asylum application. Authorities conduct interviews, hearings, and investigations with the help of interpreters. Border Police provide information about the right to make an asylum application, orally and in writing. The UNHCR made leaflets in English, French, Arabic, and various Arabic dialects available for this purpose.

NGO representatives have access to border-crossing points after third-country nationals submit their asylum applications. To be informed about a migrant's presence, NGOs require direct communication from the Border Police, UNHCR Romania, the migrant's family or friends, or the migrants themselves. A Memorandum of Understanding between the UNHCR and the General Inspectorate of the Border Police, enables mutual notification when immediate intervention is needed at border-crossing points or transit areas.

3. Access to an interpreter: According to Art. 45, Para. 2 of the Asylum Act, applicants have the right to request an interpreter during their personal interview. If necessary, to present all the reasons for their asylum application, the interview can be conducted with the support of an interpreter in the language indicated by the applicant or a language they understand and can communicate with clearly.

The remuneration for interpreters in the asylum process was increased from 23 RON/€4.6 per hour to 50 RON/€10 per hour. Regional Centres, including Timișoara, Rădăuți, Galați, and Giurgiu, reported challenges in finding interpreters for certain languages, particularly rare languages such as Somali, Tigrigna, and other languages from Ethiopia and Eritrea. Double interpretation, in which the interview is interpreted from one language to another and then into Romanian, was used in some cases; however, its usage varied between centres. It was not used in certain regions, and in other cases, it was used for languages such as Tamil

a web-based platform, DOPOMOHA offers various resources, including information about the asylum procedure, access to essential services, legal assistance, and general support for migrants in navigating their situation in a new country. The collaboration between the mentioned entities indicates a concerted effort to improve the support and integration of those seeking safety and protection in Romania. AIDA Report, 2021, p. 25.

71 | *Ibid.*, p. 24.

or Sinhala to English to Romanian, or Amharic to English to Romanian. In cases where no interpreter is available for a specific language, some centres resort to conducting interviews through videoconferencing with interpreters located elsewhere. Some centres did not recruit new interpreters in 2022, which could have contributed to the shortage of interpreters for certain languages. For example, the Regional Centre in Bucharest mentions that interpreters are available in various languages including Arabic, English, Pashto, Dari, Punjabi, Hindi, Urdu, Farsi, Turkish, Spanish, French, Somali, Kurdish, Sorani, Kurmanji, Persian, Russian, Ukrainian, Sinhala, Tigrinya, Tamil, Amharic, and Oromo.

Overall, the availability of interpreters in Romania's asylum system can be challenging, particularly in less common languages. However, efforts to utilise videoconferencing and double interpretation, in some cases, demonstrate an attempt to address the issue and ensure that applicants can effectively communicate their reasons for seeking asylum. The AIDA 2021 report noted a scarcity of female interpreters in some regional centres. Although efforts have been made to increase the number of female case officers by 2022, meeting the demand for interpreters of specific genders remains challenging in most cases. Problems regarding the quality and conduct of the interpreters were also identified. Some interpreters lacked sufficient training, leading to issues with impartiality. Specific complaints included interpreters engaging in private conversations with asylum seekers, providing summaries rather than full translations, and not reading the transcripts at the end of the interviews.

4. Right to contact and be assisted by an NGO or UNHCR: Asylum seekers have the right to seek assistance and support from NGOs and the UNHCR throughout the asylum procedure.

5. Right to be provided with a free of charge translator during the asylum procedure: Asylum seekers who do not speak Romanian or are not proficient in it have the right to receive interpretation services during interviews and other proceedings.

6. Right to receive information in a language that they understand: Asylum seekers have the right to be informed about their rights and the asylum process in a language they can understand.

7. Right to access their personal asylum file and request copies of it: Asylum seekers have the right to access and review documents related to their asylum case and to request copies of these documents.

- a) Obligation to accept being photographed and finger-printed: Asylum seekers are required to provide biometric data, including photographs and fingerprints, as part of the asylum application process.
- b) Obligation to give truthful and complete information regarding their identity and reasons for seeking protection: Asylum seekers are expected to provide honest and accurate information about their identity, nationality, and reasons for seeking asylum.
- c) Obligation to provide documents regarding their identity (including passport) if available: Asylum seekers should provide any relevant identity documents they possess, including passports.

- d) Obligation to hand over any other documents relevant to their asylum claim: Asylum seekers should submit any additional documentation or evidence that supports their asylum claim.
- e) Obligation to attend the asylum interview(s) and not leave the country irregularly: Asylum seekers are required to attend scheduled interviews and meetings related to their asylum applications. They should not leave the country without proper authorisation during the process.
- f) Obligation to abide by the laws in Romania: Asylum seekers are expected to respect and comply with Romanian laws and regulations while in the country.

8. Rights and duties of asylum seekers related to accommodation and residence: Accommodation in a Regional Reception Centre for asylum seekers lacking the financial resources to live independently: To ensure the provision of reception conditions, most asylum seekers are accommodated in Regional Centres for Accommodation and Procedures for Asylum Seekers. These centres are managed by the GII-DAI (See Table 1). The centres were established to provide appropriate living conditions and facilitate the processing of asylum applications. The overall aim of such reception facilities is to ensure that asylum seekers have a safe and supportive environment during the asylum process, which can be a challenging and uncertain period for them. Providing their basic needs allows them to focus on their asylum applications and ensures that they are treated with dignity and respect while their cases are being evaluated. It is essential for countries to provide basic allowances and support to asylum seekers during their stay to meet their essential needs and ensure their well-being⁷².

Table 1. Names and capacities of Regional Reception Centres

Regional Reception Centre Location	Capacity	Asylum seekers accommodated during 2022
TIMIȘOARA	250	2,688
ȘOMCUTA MARE	100	1,627
RĂDĂUȚI	130	1,583
GALAȚI	200	803
BUCHAREST	10	256
GIURGIU	100	1,079
Total	790	8,036

Source: AIDA Report, 2021, p. 97.

72 | Art. 55, Para. 2, letters a-g of Asylum Decree, modified by Decision 277 of 27 February 2022.

- a) The right for special care for asylum seekers in vulnerable situations (children under 18 years old, with medical needs, or disabilities).
- b) Financial support from the GII, in situations where the capacity of Regional Reception Centres is exceeded, subject to available funds.
- c) The right to remain on Romanian territory throughout the entire asylum procedure.
- d) The right to receive a temporary identification document during the asylum process.
- e) The right to participate in cultural accommodation classes, to facilitate integration.
- f) The obligation to not leave the city/town of residence without the permission of the GII.
- g) Reporting any changes in residence status to the authorities within five days.
- h) Respecting the rules of the Regional Accommodation Centre where the asylum seeker has temporary residence⁷³.

9. Rights of asylum seekers related to financial assistance from state funds:

- a) Financial assistance for food and other expenses: Asylum seekers are entitled to a daily food allowance. As of 27 February 2022, the allowance has doubled from 10 RON / €2.08 per person to 20 RON / €4.08 per person.
- b) Financial assistance for adequate clothing⁷⁴: Asylum seekers can request a one-time clothing allowance to cover their clothing needs. During the summer of 2022, the allowance increased from 67 RON / €13.95 per person to 135 RON / €27.55 per person. In the winter, the allowance increased from 100 RON / €20.83 per person to 200 RON / €40.81 per person.
- c) Additional social assistance, depending on individual situation and needs.
- d) Pocket Money⁷⁵: Asylum seekers receive pocket money for other daily expenses. As of 27 February 2022, the allowance has doubled from 6 RON / €1.25 per day per person to 12 RON / €2.45 per day per person. This allowance is intended to cover expenses related to local transportation, cultural services, press, repair, maintenance services, and personal hygiene products.

These measures are designed to offer financial relief and support to individuals during the asylum process, especially if basic needs of asylum seekers are not met adequately. By providing such allowances, the Romanian government aims to ensure that asylum seekers have access to essential resources, adequate food, appropriate clothing, and the ability to cover their daily expenses.

Besides the rights mentioned above, Romania provides an allowance for all children⁷⁶, regardless of nationality, up to the age of 18. This financial allowance

73 | Failure to comply with the rules of the Regional Centre may result in sanctions, such as a temporary suspension of financial assistance (6 lei/day) for one to three months or temporary or permanent eviction from the Reception Centre.

74 | AIDA Report, 2021, p. 89.

75 | *Ibid.*

76 | See for details *Law No. 277/2010 on Family Allowance*, published in the *Official Gazette* No. 889 from 30 December 2010.

is meant to support families and children and is offered in addition to other forms of material support provided by the government. The state child allowance is determined by the Income and Social Support (ISR) and varies based on the age and circumstances of the child⁷⁷: for children up to the age of two or three in the case of a disabled child, the allowance amounts to 600 RON / €122; and for children between the ages of two and 18 years, the allowance amounts to 243 RON / €49.

The child allowance is an important measure to assist families in meeting the needs of their children and contributing to their wellbeing and development. By providing financial support to children, the State aims to ensure that all children have access to basic necessities and opportunities for growth irrespective of their nationality.

Governments must periodically review and adjust such allowances to account for changes in the cost of living and ensure that they remain effective in supporting families and children in need. Additionally, these measures demonstrate a commitment to promoting the welfare and rights of children within the country.

10. Rights and obligations of asylum seekers to receive medical assistance and treatment: Ensuring access to medical care is crucial for safeguarding the health and well-being of individuals seeking asylum, especially because they may have experienced challenging circumstances in their home country or during their journey to host countries. The legal provisions demonstrate Romania's commitment to providing humanitarian support to asylum seekers during their stay in the country. Legal provisions offer guarantees for the impossibility to suspend rights associated with medical care during the asylum proceedings. Right to medical assistance cannot be suspended: The entitlement to medical assistance cannot be suspended under any circumstances. This ensures that they continue to receive necessary medical care throughout the asylum process. The rights and obligations associated with medical assistance are as follows:

- a) Access to free basic medical assistance and treatment, covering essential medical services;
- b) Emergency medical assistance in a hospital for no costs;
- c) Free medical treatment for acute or chronic life-threatening illnesses, which pose an immediate risk to the life of the asylum seeker
- d) Proper medical care for special medical needs;
- e) Obligation to attend a medical examination after applying for asylum;
- f) Confidentiality of medical information, regarding the medical situation of the asylum seeker.

According to the provisions of *Government Emergency Ordinance No. 194/2002*⁷⁸ regarding the foreigner's regime in Romania, foreigners need to prove the existence of valid health insurance to request or extend their residence rights. As mentioned above, asylees and beneficiaries of other forms of international protection are

77 | Art. 1 of *Law No. 61/1993 on the State Child Allowance*, republished in the *Official Gazette* No. 767 from 14 November 2014.

78 | Republished in the *Official Gazette* No. 21 from 5 June 2008.

excluded from this rule; therefore, they are not obliged to provide annual proof of health insurance to the GII.

According to the provisions of Art. 10, letter b) of *Government Ordinance No. 137/2000*⁷⁹ any form of discrimination against a person, or group of persons on the grounds of belonging to a particular group, or based on race, nationality, religion, or other criteria, and the refusal to grant access to public health services, is considered a contravention. In discrimination related cases, the National Council for Discrimination, a national administrative-judicial authority specialising in discrimination matters, can be petitioned by an injured person.

11. Asylum seekers' rights related to education: Ensuring access to education for children seeking asylum is vital for their wellbeing and integration into society. The legal provisions in this domain highlight Romania's commitment to provide equal educational opportunities to all children, including those below the age of 18 who are seeking asylum. The authorities acknowledge the significance of education and recognise that children should receive education as soon as possible. Education provides knowledge and skills and plays a crucial role in supporting a child's emotional and social development.

Art. 2, Para. 4 of *Law. No. 1/2011 – National Law of Education*⁸⁰ guarantees that people who are benefitting from a form of international protection in Romania have equal rights of access to all levels and forms of pre-university and higher education systems and to lifelong learning projects, without any discrimination, according to *Law. No. 272/2004 on the protection and promotion of children's rights*⁸¹ and *Government Ordinance No. 137/2000*⁸², regarding discrimination. Asylum seekers have the following rights:

- a) Right to attend kindergarten and school for children below the age of 18 under the same conditions as Romanian children.
- b) Romanian language classes for integration meant to aid in the integration process into the national education system, organised by the Ministry of Education, Research, Youth, and Sports, in collaboration with the GII.
- c) The recognition of foreign diplomas and certificates by a request made to the National Centre for Recognition and Equivalence of Diplomas (CNRED), a governmental agency functioning under the coordination of the Ministry of Education. The recognition of diplomas and qualifications implies a written formal request, a transcript of the grades, proof of payment of administrative taxes, and a copy of an identification document.

Regional Reception Centres personnel and several NGOs are making efforts to ensure that children have access to education and provide guidance and support to help children enrol in schools, receive the education they need, and foster a sense of belonging within the country's educational system and society.

79 | Republished in the *Official Gazette* No. 166 from 7 March 2014.

80 | Published in the *Official Gazette* No. 18 from 10 January 2011.

81 | Republished in the *Official Gazette* No. 159 from 5 March 2014.

82 | Cited above.

12. Employment related rights of asylum seekers:⁸³

Legal provisions regarding the employment rights of asylum seekers aim to support their integration and self-sufficiency in Romania by allowing them to participate in the labour market on equal terms with Romanian citizens. By granting the right to work without a work permit, the country facilitates access to employment opportunities and promotes social and economic inclusion of individuals seeking asylum. The basic employment-related rights and obligations of asylum seekers are as follows:

- a) Right to work after 3 months of applying for asylum, permitting asylum seekers to find employment opportunities in the country under the same conditions as Romanian citizens and without the need to have a separate work permit. Beneficiaries of international protection have the same rights as Romanian citizens when it comes to accessing the labour market. However, certain professionals such as doctors may have restrictions on practice unless specific conditions are met, such as being married to a Romanian citizen or having Long-Term Residence permit.
- b) Continuation of work if residing and working legally, in the case of persons legally residing and working in Romania.
- c) Right to obtain a document certifying the right to work.

However, a lack of knowledge of Romanian (and sometimes English) can hinder beneficiaries' access to the labour market. Employers may be reluctant to hire foreigners who cannot communicate effectively. Additionally, many beneficiaries may not have diplomas or certificates that certify their studies, which limits their ability to apply for certain positions.

Access to the labour market can vary depending on the economic power of the city or region. Some areas may offer better job opportunities, leading beneficiaries to relocate to larger cities or other countries. The COVID-19 pandemic has also affected job opportunities for beneficiaries, particularly those working in the HORECA (Hotels, Restaurants, and Catering) sector. Some organisations, such as AIDRom and IOM Romania, provide support to beneficiaries in finding jobs and navigating the labour market.

Overall, while beneficiaries of international protection have the legal right to work in Romania, practical challenges such as language barriers, a lack of recognised qualifications, and regional differences can still impact their ability to access employment opportunities. Efforts by organisations and employers' awareness of the rights and qualifications of beneficiaries can help improve their integration into the labour market.

Other important rights of asylum seekers:

13. Right of association: Foreigners, stateless persons who have obtained refugee status, forms of subsidiary protection, or foreigners who have obtained long-term residence permits have the right to participate in any apolitical and non-lucrative association or professional organisation, and trade unions.

14. The right to acquire citizenship and acquisition and release of Romanian citizenship are not conditioned by the loss of citizenship in another state. Romania

83 | For more details see AIDA Report, 2021, pp. 103–104.

allows for double or multiple citizenship, that is, individuals can simultaneously hold Romanian and citizenship of another country.

Law No. 21/1991⁸⁴ governs the acquisition and release of Romanian citizenship. The means of acquiring Romanian citizenship, as stated in Arts. 1 and 2 of the law, include birth, adoption, and naturalisation through request. However, for migrants, only birth and adoption are relevant options.

Regarding adoption, Art. 6 specifies that a foreign child or stateless person can acquire Romanian citizenship through adoption by Romanian citizens. If the adoptee is of legal age, consent is required, and the law creates a fiction that presumes the child to be born into the adoptive family.

For individuals seeking to release their Romanian citizenship upon request, Art. 4 outlines specific criteria that must be met. These criteria include residence in Romanian territory for at least eight years (or five years, if married and living with a Romanian citizen), loyalty to the Romanian State, means for a decent life, good behaviour, knowledge of the Romanian language and culture, and familiarity with the Constitution and the National Anthem.

If the criteria are met, the request is submitted to the President of the National Authority for Citizenship, who makes the final decision. If the request is approved, the individual takes an oath and becomes a Romanian citizen. If the request is denied, the decision can be appealed at the Bucharest Court of Law and subsequently at the Bucharest Court of Appeal.

Additionally, Art. 10 of the Law allows for the granting of Romanian citizenship to individuals who have previously lost it, allowing them to maintain their foreign citizenship and residence abroad. These individuals must meet the same criteria, except for the first and last two criteria. However, the acquisition of Romanian citizenship and holding dual citizenship may have implications for individuals in other countries that do not recognise or allow dual citizenship. The Romanian State cannot guarantee the safety or recognition of another country's citizenship, and individuals should be aware of the potential consequences of holding dual citizenship according to the laws of their other country of citizenship.

15. Right for integration: Romanian integration of refugees is focused on providing them with access to economic, cultural, and social opportunities. The government has offered various support measures and initiatives to facilitate integration into Romanian society. Some of these measures include: a) Romanian language courses to help individuals learn the Romanian language, which is essential for effective communication and integration into the local community; b) professional skills enhancement courses, provided to help immigrants polish their professional abilities, making it easier for them to find suitable employment opportunities; c) information on rights and obligations; d) courses on history, culture, civilisation, and the Romanian legal system, to help immigrants better understand the country's culture and legal system, fostering a sense of belonging and understanding; and e) meetings with Romanian citizens, to encourage mutual understanding and promote social interaction, for a harmonious and inclusive society. To realise the aforementioned actions, Romanian authorities are

collaborating with international NGOs to provide additional support and resources for the integration of immigrants into Romanian social life.

16. Right to family reunification: Romanian legislation⁸⁵ makes no distinction between refugees and beneficiaries of subsidiary protection in terms of criteria and conditions for family reunification. Eligibility for family reunification is similar in both categories. The family members of a beneficiary of refugee status or subsidiary protection, provided they were in the country of origin at the time of the asylum application made by the sponsor, are the spouse and minor, unmarried children of the beneficiary or the spouse, regardless of whether they are born in marriage or out of wedlock or adopted in accordance with the national law of the country of origin. Legal provisions do not set a waiting period before a beneficiary of international protection (refugee or subsidiary protection) applies for family reunification. There is no prescribed deadline for submitting an application for family reunification. Beneficiaries of international protection can apply for the reunification of their family members as long as they are not present in Romania. Unlike other countries, Romanian legislation does not require beneficiaries of international protection to prove income, accommodation, or health insurance for family reunification. The main requirement is to demonstrate the family relationship with the intended family member or the fact that marriage was concluded before entering Romania.

Every Regional Centre in Romania can oversee family reunification applications. The beneficiary of international protection must submit an application along with original documents (such as birth certificates, marriage certificates, and identity cards) to prove family ties with the intended family members. If the original documents are unavailable, another document demonstrating family relationships must be provided. To gather additional data and information about family ties and clarify relevant aspects of the asylum application for family members, GII-DAI conducts an interview with the beneficiary of international protection. This process ensures that the necessary documentation is obtained to verify family ties and facilitates the family reunification process for beneficiaries of international protection in Romania.

In Giurgiu, ten family reunification applications were made, and all of them were admitted, indicating a 100% approval rate. In Timișoara, there were seven cases of family reunification in 2022, and all of them were admitted. In Galați, around 50 family reunification applications were made, with 40 of them being admitted and four rejected. Additionally, one application was made by an unaccompanied minor. In Rădăuți, 60 family reunification requests were lodged, and 52 of them were admitted, while eight were rejected. Bucharest reported 236 applications for family reunification. However, statistics on the number of admitted applications were not provided.⁸⁶

The International Organization for Migration reported providing support to 42 people during the family reunification procedure. By the end of 2021, 11 of these applications were admitted, but some were still pending. At the regional centre of

85 | Art. 71 of Asylum Act and Art. 30 of Asylum Decree.

86 | AIDA Report, 2021, pp. 146–148.

Șomcuta Mare, nine requests for family reunification were submitted in 2022, with six of them being admitted.

7. Conclusions

The problem of migration is highlighted as being of particular importance in global political and economic contexts. This suggests that migration is a critical issue with far-reaching implications. Romania's geographical location is emphasised, as it sits at the confluence of several migration paths. As such, Romania faces unique challenges.

This study provides a comprehensive overview of migration-related issues in Romania by thoroughly examining various aspects of migration, including its legal, regulatory, and practical dimensions. This study specifically addresses the challenges related to illegal migration, indicating that this is a significant concern for Romania because of the security and social implications.

The existence of international, European, and national regulations governing migration in Romania underscores the importance of legal frameworks to manage migration flows and ensure migrant rights. This paper outlines the key principles applied by national authorities when addressing migration concerns and provides information on the numerous rights and responsibilities of migrants within Romania.

Overall, the migration phenomenon in Romania can be described as multi-faceted, not one-dimensional, and involving legal, social, economic, and political dimensions. The challenge for authorities globally and in Romania is to find proper regulatory paths to maintain migration in legal limits.

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