

**European Migration Network
Romanian National Contact Point**

**THE ORGANISATION OF ASYLUM AND MIGRATION
POLICIES IN ROMANIA**

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This report does not reflect the opinions and views of any institution, or of the EMN National Contact Point, as it was written after a research of the information publicly available.

Executive Summary

This EMN Report provides an overall insight into organization of immigration and asylum policies in Romania.

The report has been produced by National Contact Point of the European Migration Network (EMN) after a research of the information publicly available.

A general overview of organizational how the political, legislative and institutional framework is organised in Romania highlights the importance of immigration and asylum (Chapter 2).

The development of asylum and migration system was highlighted in Chapter 3, presenting the main institutions active in these areas, as well as a brief, historical overview of these has evolved in Romania.

A presentation of the main legal framework regulating migration and asylum, as well as the policies in these areas was included in Chapter 4. Details on migration and asylum legal framework and procedures were given in Section 4.1. Issues such as entry (subsections 4.1.1.), admission conditions (subsection 4.1.2.), and residence subsection 4.1.3.), access to labour market (subsections 4.1.4.) and return (subsection 4.1.5.) were detailed. Also, a presentation of the links between migration and asylum and other policy areas were introduced in Section 4.2.

Chapter 5 presents an analysis of asylum and migration system, stressing out the two main characteristics of the system in Romania: institutional specialization and inter-institutional cooperation. This part provides an analysis of lessons learned in the development of asylum and migration systems in Romania, including how improvements were done.

1. INTRODUCTION: PURPOSE AND METHODOLOGY FOLLOWED

The purpose of this study is the introduction of institutional context, basic laws and regulations, which ministries are involved, which organisations deal with immigrants in Romania.

The study can be a “legislative and institutional map” in the area of migration and asylum in Romania.

This overview can then be used as a reference to find information on the current organisation of migration and asylum policies in Romania.

This study was based on recent and current information available in the areas of migration and asylum in Romania.

The study was realized by the National Contact Point for EMN with contribution of certain institutions participating into the national network and following a desk analysis of current publications, as well as the internet, press and other media documents.

The institutions within the national network which contributed to this study were: National Agency for Employment, Labour Inspection, Directorate of Management and Labor Force Mobility, Schengen Directorate, Romanian Border Police and Romanian National Council for Refugees.

2. OVERVIEW OF ORGANISATION OF POLITICAL, LEGISLATIVE AND INSTITUTIONAL FRAMEWORK IN ROMANIA

Politics of Romania takes place in a framework of a parliamentary representative democratic republic, whereby the Prime Minister of Romania is the head of government, and of a multi-party system. Executive power is exercised by the government. Legislative power is vested in both the government and the two chambers of parliament, the Chamber of Deputies and the Senate. The judiciary is independent of the executive and the legislature. Romania's 1991 constitution, amended in 2003 proclaims Romania a democratic and social republic, deriving its sovereignty from the people. It also states that "*human dignity, civic rights and freedoms, the unhindered development of human personality, justice, and political pluralism are supreme and guaranteed values*".

The country's entry into the European Union in 2007 has been a significant influence on its domestic policy. As part of the process, Romania has instituted reforms including judicial reform, increased judicial cooperation with other member states, and measures to combat corruption.

The Government of Romania is the executive branch of the country. It is headed by the Prime-Minister, and consists of the Ministries, the institutions subordinated to it, and the 42 Prefectures (the representative of the Government in the territory).

Ministry of Administration and Interior (MAI) is one of the 18 ministries of the Government of Romania.

MAI is the one responsible for migration and asylum.

The law on organization and functionalities of MAI provides for that the ministry exercises its attributions in the field of juridical regime of aliens, asylum seekers and persons who were granted a form of protection in Romania.

Also, as main attributions, the ministry secures respect of the juridical regime of aliens in Romania and implements the Romania's policies in the field of asylum.

The National Agency for Employment (NAE) as public body with legal statute under the authority of Ministry of Labour, Family and Social Protection (MLFSP), enforces the policies and strategies on labour employment and vocational training of the jobseekers, worked-out by MLFSP. Moreover, MLFSP is in charge with drafting policies in the field of labour force management and mobility.

Beginning with 2007, NAE has earned responsibilities concerning the placement abroad of the labour force.

On one hand, NAE, as the public employment service, has become member of the EURES network. This network comprises the public employment services from the EU member states or of the EEA and other institutions involved on the labour market (trade unions, employers organizations), and this network is coordinated by the European Commission with a view to facilitating the free movement of workers within the European Economic Area and Switzerland. Practically, the transparency of job vacancies is ensured at European level through a uniform exchange of information between the institutions involved, made in compliance with certain quality standards, and by completely free of charge services.

On the other hand, through measures of institutional reorganization, NAE has taken over the activities of the Labour Force Migration Office in the field of labour recruitment and placement abroad and implementation of bilateral agreements signed between Romania and other states (Member States of EU and EEA especially) regarding labour force exchange and activity of Directorate for Records and Monitoring from the Department of Working Abroad as regards the field of labour migration and bilateral agreements on labour exchange monitoring.

Therefore, the NAE responsibilities, according to Law No.202/2006 on the organization and functioning of NAE, with its further amendments and complements, in the field of labour force migration, relates to:

- labour recruitment and placement abroad, both in states where Romania has concluded with bilateral agreements in the labour field, and the states where Romania has not concluded with such agreements;
- cooperation with competent institutions in Romania and outside the country in order to ensure and protect the rights and freedoms of the Romanian citizens working abroad;
- counselling for labour litigations and conflicts, with the aim to observe the rights of the Romanian citizens working abroad, according to legislation in force in the respective country;
- monitoring and coordination of the implementation of the legal bilateral agreements concluded by Romania with other states, as well as the records on labour force circulation;
- carrying-out information actions concerning the rights and obligations of the Romanian citizens working abroad;
- submission of proposals to the MLFSP to amend and, accordingly, complement the national legislation in the field of protection the Romanian citizens working abroad;
- submission to MLFSP, for endorsement, of legal documents drafts on regulations in the labour migration field, the protection of Romanian citizens working outside the country, the amendment and complementing the legislation, as the case may be;

- promotion of the measures to ensure and protect the rights and freedoms of the Romanian citizens working abroad, in collaboration with the other competent institutions;
- information and counselling services for people who want to work in the EU member states and in the signatory states of the Economic European Area Agreement, as well as in the countries with whom Romania has concluded treaties, agreements, conventions and understandings;
- ensuring the provision of the unemployment benefits established in the EU member states and in the signatory countries of the EEA agreement;
- Collaboration with the public employment services from the European Services for Employment network (EURES);
- Cooperation with other competent institutions with a view to ensuring the foreign citizens' chances to take-up employment in Romania, according to the law.

As it may be noticed, these responsibilities of NAE envisage mainly the European dimension of the migration. But, during the latest period, the European Commission takes more and more under consideration the opening of EURES services also to non-EU citizens, debates being already initiated. Until February 2009, EURES managers from UE/EEA member states have the task to initiate debates within the European employment services about the challenges and consequences of the EURES opening to non-EU citizens.

Also, the area of migration and asylum in Romania enjoy the attention of the civil society represented by NGOs which have as main competencies implementation of activities in this area.

An active NGO in the area of migration and asylum is the Foundation Romanian National Council for Refugees (RNCR).

RNCR is a non-governmental organization of public utility aimed mainly to protect and promote through all legal means the refugee's rights. With the support of networks of lawyers, students and volunteers, it develops legal and social counselling/assistance, as well as training and research activities mainly in the benefit of refugee-related cases. RNCR has gain solid respect and reliance in cooperating with local authorities, international organizations, academic institutions and other non-governmental organizations.

RNCR was set up in 1998 on the basis of Refugee Counselling and Assistance Centre structure, on a platform supported among others by the Save the Children Romania. The main focus was on asylum-seekers and refugees, RNCR being the main implementing partner for UNHCR programmes in Romania since then. In 2003, the foundation was recognized as being of public utility.

In the field of assistance RNCR benefits from its lawyer's network and its growing network of young volunteers. The network of lawyers evolved into a legal community who donate their time and expertise to assist asylum seekers, refugees and migrants on fees much below lawyers' regular fees. Young volunteers can successfully

contribute to the enhancement of civil society, cross culturally orientation and generally contributing to a wider developed range of activities, with considerable learning benefits for the young volunteers and the potential to increase their awareness on European Union legislation.

The partners are seeing RNCR as a transparent and professional organization and this entrusted a very good collaboration with governmental and non-governmental institutions.

RNCR ensures assistance and counselling in the following areas:

- Promoting gender equality;
- The specific situation of children;
- Older refugees;
- Persons with HIV/AIDS.

3. DEVELOPMENT OF ASYLUM AND MIGRATION SYSTEMS

After January 1st 2007, when Romania has become fully EU Member State, accession to Schengen area has become an essential objective for Romanian authorities.

The preparations for accession to Schengen area represent a set of measures which have to be taken and applied in a coordinated, unitary and planned mode by the institutions/structures responsible in the field.

Thus, the setting up of Schengen Department at the end 2007 has responded to the need of setting a single platform of coordination at national level, of underlying the efforts made up to that moment and last, but not least, offering to European partners a single partner for dialogue in this field.

According to the provisions of Government Decision no. 1317/2007 on amending and updating the Government Decision no. 416/2007 regarding the organizational structure and personnel of Ministry of Administration and Interior, from 06.11.2007 it has been set up the **Schengen Department**, composed of Schengen General Directorate.

Schengen Department is the national authority in the field which coordinates and monitors the fulfilment of all the necessary conditions for fully implementation of Schengen Acquis.

In the field of inter-institutional cooperation, Schengen Department has the following tasks:

- Coordination and checking all Ministry of Administration and Interior's structures in the field of competencies related to accession to Schengen area;
- Monitoring, coordination and checking the activities carried out by all the institutions and national authorities with tasks in the field of accession to Schengen area.

At national level, the Department coordinates the structures from Ministry of Administration and Interior, which have tasks in the field of adopting and implementing the Schengen Acquis, the similar structures of institutions from the field of defence, public order and national security capable to carry out activities in the field, cooperates with other institutions from the central public administration and with non-governmental organizations and independent experts from several sectors of activity.

On international level, the Department establishes and maintains contacts necessary for fulfilment its tasks with similar institutions from counterpart structures of EU Member States and with specialized institutions of European Union, in the field of competence.

Schengen Department' main tasks are:

- Ensuring single and coherent character of strategies and politics in the field;
- Identification and prioritization of actions necessary for the full implementation of Schengen Acquis;
- Monitoring the activities carried out by the institutions and authorities with tasks in the field of implementation the National Strategy for Accession to Schengen Area, Schengen Action Plan and National Strategy for Romanian Integrated State Border Management;
- Coordination and monitoring the actions carried out by competent authorities according to Indicative Plan for Schengen Facility

The main institution having competencies in the field of migration and asylum is the **Romanian Immigration Office** (RIO), set in 2007.

Before the set up of the RIO, the Authority for Aliens and The National Refugee Office, within the Ministry of Administration and Interior, were the main authorities in Romania responsible for the management of migration and asylum, each of them having strictly defined competences, in the field of control of migration and countering illegal migration and, in the field of asylum, respectively.

During the last years, in the framework of Romania's progressive approach to EU, a number of needs to be addressed aroused in the process of managing migration and asylum, as it follows:

- need for an emergent ascertain of a strengthened institutional capacity in order to perform a proper management of migration and asylum, able to assure an optimum balance between the benefits of migration and the possible risks or threatens to public order or national security, as Romania is increasingly becoming a target country
- need for setting up a unique Registry for aliens, regardless of the statute they have in Romania (immigrants or persons in need of international protection)
- need for an unitary and adequate implementation of some EU Regulations directly applicable at national level in both fields (e.g. participating in Dublin

mechanism and to EURODAC system, putting forth of equable resident permits, of biometrical passports for aliens, participating to EU VIS systems and SIS, etc)

- necessity of a simplified procedure for obtaining the legal right of staying on the territory for employment
- need for a coordination of the national policies and programmes in these fields.

As inter-dependencies between migration and asylum increased, the necessity of a unitary approach of the aspects related became more obviously in the light of assuring a proper management of these phenomena. The express recommendations made by EU experts in this regard, within the framework of the projects for building and strengthening institutional capacity which the two bodies benefited from, as well as the need for approximation of the EU standards (requirement of the EU accession process), underlined the decision of creating a unique authority, with competencies in both fields, following the practice of most Member States.

Thus, on June 26, 2007, the Government Emergency Decision no. 55 and the Government Decision no. 369 set up the RIO, through the reorganization of the National Refugee Office and the Authority for Aliens, which have been eliminated. The new created institution also undertake all the rights and obligations the Office for Labour Migration had in the field of granting the document that certifies aliens' legal right for labour.

The RIO is the specialized body, with legal entity, within the Ministry of Administration and Interior, with competencies, granted by law, for the implementation of Romania's policies in the fields of migration, asylum and social integration of aliens, as well as of the relevant legislation.

Among the medium and long time objectives of the RIO are:

- developing an asylum system of protection based on criteria of efficient and qualitative procedures in the field, so as the continuous approximation of the EU Acquis (including the provisions of "Priorities of the Solidarity and Management of the Migration Flows Programme for 2007-2013") by permanently ensuring the observance of the fundamental human rights, as well as preventing and countering illegal migration within the EU;
- maintaining the Romanian capacity to commit its responsibilities and obligations as EU Member State;
- to maximize the positive aspects of immigration and to limit the negative ones for our country and, subsequently, for Romanian citizens. For that reason the Office will act to clear establish the categories of migrants who can be admitted and can stay on the national territory, according to the national interests but in correlation with the policies and programmatic documents adopted at European Union level, as well as guarantying the migrants' rights;
- to decrease the contribution of the illegal factor within the migratory phenomenon by preventing the immigration of those categories of persons who don't

satisfy the conditions stipulated by law, as well as combating illegal stay, illegal work and migrants trafficking;

- to secure free access to the national asylum procedure while respecting the principle of *non-refoulement* according to international standards enforced and ratified by Romania through the treaties and conventions to which is party;
- to back up for an active involvement of aliens residing or having legal stay on the Romanian soil to the country's economic, social and cultural life preserving in the same time their cultural identity;
- to prepare in the view of the accession to Schengen area;
- to take on an active role for regional and international cooperation in the field of migration and asylum and to promote the development of effective asylum and migration systems in Eastern and South-Eastern Europe.

Another institution having competencies in the field of migration is the **Romanian Border Police (RBP)**.

The RBP is part of the Ministry of Administration and Interior and is the specialized state institution which carries out the attributions appertaining to it and referring to the surveillance and control of the crossing of the state border, the prevention and fight against illegal migration and against acts specific to cross-border criminality carried out in its area of competence, to the compliance with the judicial regime of the state border, passports and foreigners, the ensuring of the interests of the Romanian state at the lower Danube and the *Macin* and *Sulina* Canals located outside the border area, in the contiguous area and in the economic area located in the exclusive economic area, the keeping of public order and peace in its area of competence under the conditions of the law.

Organized in a way similar to the model of the institutions in the states of the European Union, the RBP makes important efforts in the field of prevention and fight against the cross-border criminal phenomena and to carry out and comply with the internal and international legislation in force so that at the borders of Romania, its specific activities would match the international standards.

The RBP has as main tasks in the area of migration and asylum:

- prevents and controls the illegal migration and the trans-border criminality in the competence area as well as any kind of infringement of the juridical regime of the state border;
- achieves the control of the documents necessary for crossing the state border in the passing locations opened to the international traffic, at the entrance and out from the free areas, in the points of small traffic and simplifying or in another locations, after case, according to the law;
- provides the fluent, correct and civilized unroll of the travellers and goods traffic through the passing locations of the state border, together with the other authorities which have judicious control over crossing the state border, according to the law;

- provides the application of the stipulations of the treaties, agreements, conventions and protocols concerning the state frontier and the control of crossing the border, concluded by Romania and the neighbouring states, with other states, with international or regional organizations;
- organizes and accomplished the co-operation, in the specific domains of activity, with similar institutions of the neighbouring states, of another countries or state communities, according to the bilateral or multilateral agreements of Romania;
- organizes actions in order to discover and identify the persons who have broken the law or intend to break the rules of the juridical regime of the state border as well as another legal stipulations established in competence;
- co-ordinates the activities of the other institutions staff or of the economical agents which, according to the law, are developing their activity in the crossing point of the state border, concerning the passing state border, and it prosecutes the law's observance by the entire staff in the crossing point;
- collects, stocks, transforms, reevaluates and makes data and information exchange, in the circumstances proved by the law, with the purpose of exercising the legal prerogatives with the public interested authorities, on the basis of protocol and also with similar authorities from another countries, on the basis of Romania's agreements;
- implements and exploits data in/from the National System of Information concerning the persons and goods traffic through the border (S.I.B.), with the end in view and in the terms stipulated by the law.

An institution which exerts attribution connected to migration and asylum is the **National Agency against Trafficking in Persons** (NAATIP). The NAATIP was set up through the Government Decision no. 1584 of December 8, 2005, republished.

The NAATIP is a specialized body of the central public administration, with judicial status, under the coordination of the Ministry of Administration and Interior. The purpose of the Agency is to coordinate, evaluate and monitor, at the national level, the implementation of policies in the field of trafficking in persons by the public institutions, as well as those in the field of protection and assistance provided to its victims.

The NAATIP cooperates with governmental and non-governmental organizations within the country and abroad, as well as with inter-governmental organizations with the view of raising the public awareness on the phenomenon and its consequences.

The NAATIP has the following main attributions:

- to draft, based on the proposals submitted by the institutions with responsibilities in the field the National Strategy against Trafficking in Persons and the National Action Plans, which are sent to the Romanian Government for approval;
- to monitor and evaluate the activities developed by the public institutions with attributions in the field of trafficking in persons, in pursuant the achievement of the objectives stipulated in the National Action Plans and the National Strategies;

- to coordinate the collaboration activities carried out by the public institutions together with the NGOs for achieving the objectives of the National Strategy;
- to draw up the national standards in the field together with the involved public institutions and NGOs, which are submitted for approval to the Government, in accordance with the law;
- to establish the indicators and evaluation criteria of the trafficking in persons phenomenon;
- to collect, store, process and analyse statistical data and information in its area of responsibility;
- to carry out studies and research on the diagnosis and evolution of the trafficking in persons phenomenon;
- to facilitate statistical data and information exchange between the institutions with attributions in the field, within the country and abroad;
- to submit proposals for the amendment and completion of the legislation in its field of activity;
- to disseminate, within the legal framework, official data and information in its field of activity;
- to draw up the answers to the questionnaires, as well as the country reports in the field of trafficking in persons;
- to develop its own programs to carry out the activities for preventing the trafficking in persons and for providing assistance to the victims of trafficking and to provide other institutions with needed support in running programs, on request;
- to draw up, in collaboration with the other structures of the Ministry of Administration and Interior, based on the data supplied by the public institutions with attributions in the field, the yearly report on the evolution and level of trafficking in persons which is sent to the Romanian Government for approval;
- to draw up national interest programs on preventing trafficking in persons and assistance provided to the victims of trafficking with the view of their social reintegration;
- to manage, or if the case, to monitor, the management of funds allocated for financing the programs in its field of activity;
- to support the human rights information activity for the victims of trafficking in persons, both within the country and abroad;
- to support, on demand, the public institutions for acquiring the necessary resources for the development of specific activities and to supply, on demand, statistical data necessary for planning their own activities for reducing the trafficking in persons phenomenon;

- to develop international cooperation activities in the field and to monitor and evaluate the international cooperation activities carried out by the public institutions in the field of expertise;

- to have representatives in the specialized groups or structures of the European Union, as well as in the international organizations in the field of competency.

4. ORGANISATION OF POLICY

Migration was transformed during the years from a regional process – determined by economical, social, natural or political factors, into a global phenomenon, presently being quantified up to 3% out of the total population. None of the countries is not outside the international migration fluxes, having the “quality” of either country of origin or transit or destination country, or all three simultaneously.

International migration – voluntarily or forced, has become an important part of the present global existence. Thus, a conclusion has been raised that through an efficient management migration can play a key role in development and reduction of poverty. It can have clear advantages that could be increased and disadvantages that could be minimized.

For the host countries the benefits appear, especially, on the labour markets by:

- the contribution of the migrants to reduce the deficit of labour force, either regarding highly qualified jobs, or labour force for very specialized jobs or regarding jobs which require a low qualification for which the national labour force is reluctant;
- contributions to an increased productivity, including the export of the “adoption” countries including the export into their countries of origin;

but also regarding the inter-cultural exchanges, the mitigation of demographic aging process.

In Romania, the general framework in the field of immigration and asylum is formed by the following acts:

- Emergency Government Ordinance no. 194/2002 on regime of aliens in Romania further added and modified in 2004, 2005 and 2007
- Law no. 122/2006 on asylum in Romania further added and modified in 2008;
- Emergency Government Ordinance no. 105/2001 on the Romanian state border;
- Government Decision no. 445/2002 for ratifying the methodological application Rules of Emergency Government Ordinance no. 105/2001 concerning the Romanian border;
- National Immigration Strategy 2007-2010;
- The National Strategy of Integrated Management of the Romanian State Border for the period 2007 – 2010.

Emergency Government Ordinance 194/2002 on regime of aliens in Romania represents the legal framework applicable in the field of immigration. It provides for the regulations regarding

- a. Admission;
- b. Stay;
- c. Removal from the territory;

The legal act provides also for the rights and obligations of aliens.

Law 122/2006 on asylum in Romania further added and modified in 2007 set the juridical regime of the aliens who request a form of protection in Romania, the juridical regime of the aliens who are beneficiaries of a form of protection in Romania, the granting and annulling procedure of a form of protection as well as the procedure regarding the responsible member state.

The law on asylum comprises regulations on issues, such as:

- a. Principles and procedural safeguards;
- b. Acces to the asylum procedure;
- c. Non-discrimination and non-refoulment principles;
- d. Family unity ;
- e. Rights and obligations of the asylum seekers;
- f. Rights and obligations of the beneficiaries of a form of protection;
- g. The asylum procedure;
- h. Accelerated procedure;
- i. Unaccompanied minors;
- j. Procedure on responsible Member State.

Emergency Government Ordinance no. 105/2001 on the Romanian border, the crossing of the state border of Romania by persons, means of transport, goods and other merchandise is made through the checkpoints of the state border open to the international traffic. The Romanian state border can be crossed in other places as well, under the provisions set by mutual agreement in bilateral documents between Romania and the neighbouring states.

The ordinance set as well as:

- a. The procedure for the border crossing control;
- b. The access, movement and other activities run in the border area and in the border crossing check points;

c. Creation and functioning of the National Information System on movement of persons and goods over the borders.

Government Decision no. 445/2002 for ratifying the methodological application Rules of Emergency Government Ordinance no. 105/2001 concerning the Romanian border details the implementation procedures of the Emergency Government Ordinance no. 105/2001 on the Romanian border.

In order to make the management of the immigration more efficient and fully in line with the EU policies and to set the concrete activities' guidelines in this area, the **National Immigration Strategy 2007-2010** was adopted by the Government (Government Decision 1122/2007). This document represents Romania's position toward the migration phenomenon and it is intended to be a continuation of the efforts to align to international standards.

Comparing to the former National Migration Strategy adopted in 2004, the National Immigration Strategy 2007-2010 refers to a defined period of time (4 years) and sets a new policy in the area which includes both the duties Romania has assumed as a Member State, and the necessary measures for a proper management of immigration.

When drafting the strategy the following EU documents were kept in mind:

- a. The Hague Programme : strengthening freedom, security and justice in the European Union;
- b. Council and Commission Action Plan implementing the Hague Programme on strengthening freedom, security and justice in the European Union;
- c. Communication from the Commission on a policy plan on legal migration;
- d. European Parliament resolution on the links between legal and illegal migration and integration of migrants;
- e. Communication from the Commission to the Council and the European Parliament - Priority actions for responding to the challenges of migration.

In this context, the Romania's policy in the area of immigration is guided by the following statement: "Migration is a process to be managed not a problem to be solved".

Among the priorities set by the National Immigration Strategy for the period 2007-2010 refers to:

- a. Managed/controlled migration;
- b. Prevention and combating illegal immigration;
- c. Asylum;
- d. Social integration of aliens.

In the field of international protection and asylum the main objectives set by the National Immigration Strategy 2007-2010 are:

- a. To secure the un-railed access to the asylum procedure and respect of non-refoulement principle;
- b. To develop the asylum system based on efficient and qualitative procedures and to adapt policies and practices in order to prevent, discourage and sanction the abuses;
- c. To maintain the Romania's capacities, as Member State of the EU, to assume the responsibilities and obligations in the field of asylum;
- d. To assume an active role within international and regional cooperation in the field of asylum and to contribute to the development of functional asylum systems in the eastern and south-eastern part of Europe;
- e. To improve the reception conditions for the asylum seekers;
- f. To improve the researches on country of origin information.

In the field of control and monitoring the migration the main objectives set by the National Immigration Strategy 2007-2010 are:

- a. To make the necessary preparation in view of Romania's accession to the Schengen area;
- b. To intensify the cooperation with similar institutions in the Member States and in countries of transit and origin.

In the field of legal migration the main objectives set by the National Immigration Strategy 2007-2010 are:

- a. To ensure the necessary administrative framework for the free movement of the EU citizens;
- b. To promote admission of third country national for employment, according to the needs of the Romanian labour market;
- c. To promote admission for the purpose of trade activities for relevant categories of aliens;
- d. To promote an efficient selection system for admission of third country national for study;
- e. To design, develop and administer efficient IT systems for management of immigration.

In the field of integration the main objectives set by the National Immigration Strategy 2007-2010 are:

- a. To support the active participation of legally residing aliens to the economic, social and cultural life, and, in the mean time, to respect their cultural identity;
- b. To assure that the relevant categories of aliens make all efforts to sufficiently integrate into the Romanian society;

c. To aware all stakeholders and Romanian citizens and aliens regarding the importance of supporting the integration process.

In the field of illegal immigration the main objectives set by the National Immigration Strategy 2007-2010 are:

a. To efficiently inform the potential immigrants on the legal framework on admission and stay and the measures taken by the Romanian authorities to combat illegal immigration;

b. To strengthen the cooperation in the field of combating illegal immigration and illegal work.

In the field of return migration the main objectives set by the National Immigration Strategy 2007-2010 are:

a. To intensify the measures regarding the removal from the territory of the aliens who entered Romania illegally or entered the country legally, but later their stay became illegal;

b. To develop the cooperation with other Member States, especially by participating to the return joint flights.

Approximation/transposition of the EU Acquis in the field of migration and asylum continued to be one of the priorities of the Romanian authorities.

The latest pieces of Acquis which were fully transposed into national legislation in the field of immigration were:

a. Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification;

b. Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents;

c. Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air;

d. Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service;

e. Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research.

In the field of asylum the national legislation transposed the following pieces of Acquis:

a. Council Directive 2001/55/EC of 20 July 2001 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;

b. Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers;

c. Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted;

d. Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

Also, to implement a more efficient management of immigration the Romanian Government adopted the Decision 324/2007 for approval of **The National Strategy of Integrated Management of the Romanian State Border for the period 2007 – 2010.**

The National Strategy of Integrated Management of the Romanian State Border for the period 2007 - 2010 provides that as a consequence of the fact that Romania had become a Member State of the European Union, since 1st of January 2007 and in order to become a part of the area of freedom, security and justice, Romania has to implement the Community's policies in the field of integrated management of the state border, so that to reach an appropriate security level of its borders.

The Romanian Interdepartmental Group for the Integrated Management of the State Border (GIRMIFS), settles the general conception and provides the unitary coordination, on the basis of the National Strategy of Integrated Management of the Romanian state border, from now on called the National Strategy of the actions and measures for the accomplishment of the management of the state border, carried out by the public authorities and institutions with attributions in the field.

The purpose of the National Strategy is to establish policies, principles and objectives for a common, coherent and efficient management of the Romanian state border, complying the Community's requests, which will provide the increase of the security of the citizens, respecting their fundamental rights and freedoms, to fuse off the legal traffic of the persons and goods at the border and to fulfil, as soon as possible, the conditions necessary for the implementation of the Schengen Acquis and the accession to this area.

The General objective settled by this strategic document is to improve the capacity of the Romanian State to achieve a high level of control at the external border of the European Union, by adopting and implementing its common policies in the field of integrated border management, in the same time with countering the Romania's status of country of origin, transit and destination for the victims of the trafficking in human beings and to fight against illegal migration, in the context of the foreseen increase of the migration flux at the external border once Romania has acceded the European Union. This will be accomplished through a complex of measures aiming at the adoption and the and the implementation of the relevant Community's Acquis, the institutional building and investments for works of civil constructions meant to modernize and to develop the infrastructure at the border, as well as to develop and make efficient the functions of surveillance and control at the borders, in an integrated concept, as it is defined by the national strategy.

In order to attain the general objective, GIRMIFS settled a set of specific objectives which aim, on one side, to apply a high management of the state border, and on the other side, to achieve and implement an Integrated System for the security of the state border.

The National Strategy is based on the following general principles:

a. subsidiarity principle, according to which the most appropriate level for the implementation of the National Strategy is that of each authority/institution represented in GIRMIFS. The interdepartmental group interferes only subsidiarily, in matters which can be solved at its level, or;

b. the continuity and coordination principle - the actions adopted for the achieving of the objectives of the National Strategy continue the measures taken to implement the National Strategy of Integrated Border Management of the Romanian state border for the period 2004 - 2006, these being coordinated unitarily by GIRMIFS;

c. the cooperation and coherence principle - the public authorities/ institutions with attributions in the field of integrated management of the state border will be open to cooperate with other institutions, as well as with other organization of the civil society interested or affected by a certain action carried out within the implementation of this strategy, providing thus a coherent conception on the objectives that should be fulfilled and on the measures that should be taken;

d. responsibility principle - the accountability for the implementation of the National Strategy belongs to each of the public authorities / institutions with attributions in the field, in the parts that concerns them.

From the perspective of action time and place for countering the cross-bordering criminality, especially of illegal immigration, the integrated border management includes four complementary levels/filters:

a. activities carried out in third countries, especially in the origin and transit countries;

b. the international cooperation regarding the border;

c. the control and the surveillance of the Romanian state border;

d. activities carried out on the national territory.

For each of these levels/filters the National Strategy sets both specific objectives and the responsible institutions which are to implement the necessary activities to achieve the objectives.

4.1 Asylum and Migration

4.1.1 Entry Procedures

4.1.1.1 Asylum

The national legislation does not provide for special entry procedures for persons seeking international protection.

However, for humanitarian reasons or in order to implement international agreements or understandings to which Romania is a party, entry into the territory without complying the legal conditions may be permitted.

The exception can be established, unilaterally, by Romanian Government, by decision.

4.1.1.2 Migration

Entry to the territory of Romania may be permitted to aliens who fulfil the conditions set by the Government Emergency Ordinance 194/2002 on aliens' regime, republished. Those conditions refer mainly to:

- possession of a valid travel document, which is accepted by the Romanian state;
- possession of a Romanian visa or, as the case may be, possession of a valid residence permit, if not regulated otherwise through international agreements;
- justification of the scope and conditions for stay and proofs of the existence of necessary means of subsistence for the duration of stay, as well as for return to the country of origin;
- presentation of guarantees proving the acceptance to enter the territory of the state of final destination;
- not falling under the category of aliens against whom a measure of interdiction to enter the territory of Romania has been decided or who have been declared as undesirable;
- not previously infringed, in an unjustified manner, the purpose of travel which was declared;
- no alert into the Schengen Informatic System for the purpose of being refused entry;
- not representing a danger to the national defence and security, or public order, health or ethics.

By exception, the Romanian Government may establish, by decision, the unilateral exemption of certain categories of aliens from visa obligation.

The Government Emergency Ordinance 105/2002 on Romanian state border provides that the entry to the territory of Romania can be done through any border checking point opened to international traffic.

The control for crossing the border is done in a common team consisting of representatives of the authorities competent in that matter. The coordination of the team belongs to the representatives of the RBP.

The control of the passports and other travel documents issued by Romanian authorities or accepted by Romania is done by RBP. When entering Romania the aliens shall prove the compliance with the above mentioned entry and stay conditions.

4.1.2 Admission Conditions

4.1.2.1 Asylum

However, for humanitarian reasons or in order to implement international agreements or understandings to which Romania is a party, entry into the territory without complying the legal conditions may be permitted.

The exception can be established, unilaterally, by Romanian Government, by decision.

Thus, an exception was set by special legislation for the refugees who are to be relocated in Romania¹.

The pre-selected refugees in need of relocation are interviewed by the representatives of the RIO. The interview shall take place into the country of refuge. The interview is meant to evaluate the situation of the refugees in need of relocation, the integration potential as well as the medical situation of the persons concerned. The results of the interview are recorded into a personal report.

The selection procedure is finalized through a Decision of acceptance of refugees in need of relocation issued by the RIO for the persons who fulfil the selection criteria. Decision may be communicated to the country of refuge or UNHCR, as the case may be.

In order to entry the Romanian territory refugees in need of relocation and issued the necessary decisions of acceptance are exempted from the visa obligations. Those persons are allowed to entry Romania based on the decisions of acceptance accompanied by the travel documents accepted by Romania. Also, the entry to Romania for this category may be allowed upon presentation of the following travel documents:

- the refugee certificate issued by UNHCR;
- the travel document issued by the International Red Cross Committee;
- the travel document issued by the RIO.

After the transfer details are set, but not less that 24 hours prior, the RIO inform the RBP on the following details:

- date and time foreseen for the transfer;
- mean of transportation and border check point that shall be used;
- identification information of the refugees in need of relocation who are going to be transferred.

4.1.2.2 Migration

Depending on the purpose for which they are issued, visas may be:

- a. visa for airport transit;

¹ Government Decision 1596/2008 on relocation of refugees in Romania

- b. transit visa;
- c. short stay visa;
- d. long-term stay visa, with the following sub-categories:
 - carrying out economic activities;
 - carrying out professional activities;
 - carrying out commercial activities;
 - employment;
 - study;
 - family reunification;
 - religious or humanitarian activities;
 - scientific research activities;
 - diplomatic and official visa;
 - other purposes.

The Romanian entry visa shall be granted by the diplomatic missions and consular offices of Romania.

The Romanian visa may be granted to aliens upon their request, under the conditions and for the purposes provided for by the legislation in force. The visa is issued only if on the date of issuance the prerequisites for its approval are still valid.

The Romanian visa shall be granted only if:

- conditions set for entering Romania are met;
- none of the reasons for non-permission of entry to the territory of Romania exist;
 - there is no alert in the name of the applicant for refusal of granting a visa entered in the integrated information system for migration, asylum and visas;
 - there is no notification with regard to non-permission of entry issued for the name of the applicant by representatives of EU or EEA member states, as well as of the states who are parties to the Schengen Agreement, in the field of consular cooperation;
 - there are no reasons to consider that the visa is requested for the purpose of illegal immigration;
 - the applicant has not been irrevocably sentenced for offences committed abroad, which are incompatible with the purpose for which the visa is requested;

- the general conditions provided by the law are met, as well as the special conditions for granting a visa according to the purpose for which it has been applied for.

The visa application must be accompanied by a valid travel document, by documents to justify the purpose and conditions of travel, as well as by proof of means of subsistence during the stay in Romania as well as for departure from the territory of Romania.

When applying for a Romanian visa, the applicant must be present in person before the competent authorities who issue the visa. Also the applicant is usually invited to an interview.

The short-term visa shall be granted by the diplomatic missions and consular offices of Romania as follows:

- without previous approval of the National Visa Centre (NVC) within the Ministry of Foreign Affairs, for aliens who originate from the countries included on the list of the countries whose citizens need a visa in order to be admitted on Romanian territory, but for whom the invitation procedure is not required. The list of states whose citizens need a visa to enter the territory of Romania is that provided in Annex I to the Council Regulation (CE) No. 539/2001 for the establishment of the list of third countries whose residents require a visa for crossing external borders and the list of third countries whose residents are exempt from this obligation;

- upon previous approval of the NVC, for aliens originating from the states included in the list of the countries whose citizens need an invitation in order to be granted an entry visa.

In order to approve short-term visas, the NVC must request the agreement of the RIO only in such cases which are established by a protocol approved by common order of the Minister of Foreign Affairs and the Minister of Administration and Interior. The agreement of the RIO, determines the fulfilment of the conditions to be granted a visa.

The long-term stay visa shall be granted by diplomatic missions and consular offices of Romania upon approval of the NVC, only after obtaining the agreement of the RIO. The agreement ascertains the fulfilment of the general conditions as well as of the special conditions for each type of visa. The Government Emergency Ordinance 194/2002 on aliens' regime in Romania provides for special conditions for issuing long stay visas according to each purpose.

The short-term and transit visas may be also granted, as an exception, by RBP, in the border checking points, according to the provisions of the Council Regulation (CE) No. 415/2003 on the issue of visas at the border, including to seamen in transit, and of the Regulation of the European Parliament and of the Council (CE) No. 562/2006 on the creation of a Community Code on the rules which govern the free movement of persons across the borders (Schengen Border Code).

4.1.3 Legal Residence

4.1.3.1 Asylum

The RIO ensures any alien and stateless person, stationed on Romanian's territory or at the border, the access to the asylum procedure. Access is granted since the moment of expressing her/his will, either orally or in writing, from which shall result that she/he applies for Romania's protection.

The provisions of the law on asylum are implemented without discrimination, indistinctively of race, nationality, ethnic group, language, religion, social category, principles, sex, sexual orientation, age, disability, non-contagious chronic disease, VIH infection or affiliation to a disadvantaged category, financial position, status at birth or achieved, or any other distinction.

During the asylum procedure, aliens who apply for being granted a form of protection have the right to remain in Romania, until expiring the 15 days term since the conclusion of the asylum procedure. Exceptions are the cases when the asylum application has been rejected after an accelerated procedure or in the procedure at the Border Check Points. In these events the rejected asylum seeker must leave the territory of Romania as soon as the asylum procedure concludes.

In the case of the procedure of determination of the Member State responsible for examining the asylum application, the right to remain on the Romanian territory ceases since the date of communication of the rejection decision to have access to the asylum procedure issued by the RIO.

The asylum seeker has also the right to be issued a temporary identity document which is periodically extended by the RIO. In the lack of some documents that certify the applicant's identity, the temporary identity document shall mention the declared identity. Exceptions from the above mentioned situation are:

- aliens who have applied for asylum at the Border Check Point in order to cross the border, as far as they have not been granted the access to the territory by a RIO decision;
- aliens in public custody for national security and public order reasons who apply for asylum, as far as this measure is maintained.

Recognising the refugee status or granting the subsidiary protection confer the beneficiary the rights to remain on the territory of Romania and to obtain adequate documents for proving identity and for crossing the borders. They also have the right to choose freely a place of residence and to circulate freely, in the conditions established by law on aliens' regime.

4.1.3.2 Migration

Aliens who legally and temporarily reside in Romania may remain on the territory of the Romania only up to the date when the right to remain set by means of a visa or of a residence permit ceases. In the cases when international conventions which unilaterally abolish the visa obligation do not specify the duration for which visas are being abolished, aliens who are not liable to obtain a visa for entry to Romania shall be allowed to enter and to remain on the territory for a period of up to 90 days within 6 months, starting with the day of the first entry.

Aliens who have entered Romania based on a long-term visa as well as those who are exempt from the obligation to obtain a long-term visa may be extended the right to temporary residence by the RIO or its territorial units.

The right to temporary residence may be successively extended for periods of up to one year, only if:

- the conditions imposed for entering Romania, continue to be fulfilled;
- during the stay in Romania, none of the reasons for non-permission of entry has incurred;
- the alien possesses a valid travel document, with the exception of cases when the travel document has expired after entering Romania and, for reasons which are independent of the alien's will, this could not be extended;
- the alien requests to be granted or extended the right to reside for the same purpose as that for which he has been granted a visa or extended the right to residence on the basis of which he/she finds himself/herself in Romania, with the exception of family members of Romanian citizens, if they request the extension of the right to residence for family reunification;
- the purpose for which the alien has been granted residence in Romania has been previously respected;
- the alien proves the legal basis for the place of accommodation declared as legal residence on the territory of Romania. In the case of aliens who have been granted a right to reside for the purpose of family reunification, the proof of legal accommodation may be made by the sponsor or Romanian citizen whose family members they are and with whom they cohabit;
- present proof of health insurance;
- present proof of payment of the fees related to the extension of the right to reside as well as of the cost of the document to be issued for this purpose;
- general conditions, as well as special conditions for the extension of the right to residence according to the purpose for which the extension has been requested are met.

The extension of the right to residence may be also granted for periods longer than one year under the conditions of the present emergency ordinance or on mutual basis.

The applications for extension of the right to temporary residence must be submitted by the applicants in person, at least 30 days prior to the expiry of the term for which their stay has been approved, to the territorial units of the RIO responsible for the place of residence. The request must be accompanied by the travel document, by a health certificate issued by a public or private medical institution, stating that the alien does not suffer from illnesses which might jeopardize public health, proof of legal accommodation in the place mentioned as residence, proof of social health insurance, of means of subsistence as well as of payment of fees related to the

extension of the right to residence and of the cost of the residence permit to be issued, as well as all other documents set by the special conditions, according to the purpose for which the approval of the stay on the territory of Romania is requested. If necessary, the applicant may be invited to an interview.

If at the date of application the general and special conditions imposed according to the purpose of the stay are not met at the same time, the application is rejected.

The aliens who hold a right of temporary residence may be granted the right of permanent residence, upon request, for an undetermined duration. The application must be submitted in person to the territorial unit of the RIO.

The right to permanent residence is not granted to following categories of persons:

- holders of a right to temporary residence for the study purposes;
- asylum seekers;
- beneficiaries of humanitarian temporary protection or of temporary protection;
- holders of a right to residence based on a diplomatic or official visa.

The right to permanent residence is granted to aliens if they fulfil the following conditions at the same time:

- the applicant can prove a continuous and legal stay on the territory of Romania during the last 5 years prior to submission of the request, as follows:
 - the applicant proves the availability of means of subsistence at a level of the minimum net wage. Exceptions are the aliens who are family members of Romanian citizens;
 - the applicant provides the social health insurance;
 - the applicant proves the legal tenancy of the place of accommodation, under legal conditions;
 - the applicant knows the Romanian language at a satisfactory level;
 - the applicant does not represent a danger to the public order and national safety.

The application is analysed by a special commission, and it is approved by the head of the RIO.

The holders of a right to permanent residence benefit, under legal conditions, by an equal treatment with Romanian citizens, with regard to:

- access to labour market, including with regard to employment and working conditions, to independent economic activities and to professional activities in condition that the activity carried out does not imply, even occasionally, the exercise of public functions;

- access to all forms and levels of education and vocational training, including to being granted scholarships;
- recognition of studies and diplomas, certificates, attestations of competence and professional qualifications, in conformity with valid regulations;
- social security, social assistance and protection;
- public health assistance;
- global income tax deductions and tax exemptions;
- access to public goods and services, including housing;
- freedom to association, affiliation and membership to a labour or professional organisation.

Aliens holding a permanent right to residence have the right to establish or move their residence on the territory of Romania under the same conditions as Romanian citizens.

Also Romania ensures conditions for the integration of aliens who have been granted a right to reside in Romania, into the economic, social and cultural life of the country. For the integration following activities may be organised and carried out:

- Romanian language courses;
- courses and other forms of further education and vocational training;
- ensuring information on the rights and obligations of aliens, as well as on the opportunities of integration into the Romanian society;
- courses on the history, culture, civilisation and state of justice in Romania;
- meetings on the occasion of different events, in which Romanian citizens should also take part, for the purpose of promoting common understanding.

4.1.4. Access to the Labour Market

4.1.4.1 Asylum

During 2008, the Ministries of Administration and Interior and of Labour, Family and Social Protection adopted regulations on asylum seekers access on the labour market from Romania. These normative acts' provisions are applying to asylum seekers that are in the determination procedure for a protection form after ending the one year period passed from the submitting date of the asylum application.

For undertaking employment on the Romanian territory, the asylum seekers that are in the situation mentioned above, have to present the documents provided by the legislation in force for employment in the respective position, exempting the identity documents, as well as:

- a receipt providing that one year period passed from the asylum application submission, and the asylum seeker is still under the procedure of determining a protection form;

- a valid identity temporary act, with the personal identification number, necessary for proving the identity of the asylum seeker being in the determination period for a protection form after ending one year period from the asylum application submission.

The persons granted the refugee status have the right to be employed by physical persons or legal entities, to perform activities free of charge, to practice liberal professions and to put into effect legal acts, according to the law; to perform commercial acts and deeds, including independent economic activities, under the same conditions the Romanian citizens have.

4.1.4.2 Migration

The present legal framework in Romania, that regulates the access on the labour market from Romania, mainly consists of:

- The Emergency Government Ordinance no 56/2007 on the employment and posting of foreigners on the Romanian territory, subsequently amended;
- The Government Emergency Ordinance no 194/2002 on the regime of foreigners in Romania, republished, subsequently amended;
- Law no.76/2002 on the unemployment insurance system and employment stimulation.

With the purpose of streamlining the activities regarding the employment of foreigners in our country, the Government Emergency Ordinance no. 56/2007 on the employment and posting of foreigners on the Romanian territory was adopted in 2007.

The normative act, initiated as a result of the establishment of the Romanian Immigration Office and of the fact that this institution took over, from the Office for the Labour Force Migration the competencies on issuing the documents that attest the foreigners' right to work in Romania, specifies the conditions that a foreigner must fulfil, in order to be employed in our country.

The main aspects stipulated by the emergency ordinance are:

- simplifying the administrative procedures regarding the employment and posting of foreigners in Romania;
- developing effective measures to solve the requests in the field of reference, by transferring the competences to a single institution – the Romanian Office for Immigration – and, thus, stopping the long and sinuous circulation of documents, reducing the large number of requested forms, cutting additional taxes, reducing the solving terms etc;
- issuing a work authorization to the foreigners that want to be employed or posted in Romania and, afterwards, issuing a single document that certifies both the residence right as well as the right to work on the Romanian territory;
- replacing the employer's obligations of assuring the monthly average wage to the employee with the insurance of the minimum wage;

- special procedures for the admission of highly skilled third country nationals in Romania;
- the development of an efficient and rapid flow of documents within the competent structure.

According to the provisions of this normative act on employment and posting of workers on the Romanian territory, the foreigners, nationals of third countries, can take employment under employers that function legally, with the cumulative fulfilling of the following conditions:

- if the vacancies cannot be occupied by Romanian nationals, other EU/EEA member states or permanent residents on the Romanian territory;
- if they fulfil the special professional training, experience, authorization requirements requested by the employer due to the in force legislation;
- prove that they are medically able to carry on the respective activity and they do not have criminal records inconsistent with the activity they are currently carrying on or the will carry it on the territory of Romania;
- are part of the annual quota approved through Government Decision;
- employers have paid on time the tax liabilities to the national budget;
- the employer has to effectively carry on the activity needed for the work authorization issue.

The EEA/EU member states nationals, in case of employment or in order to provide work for natural or legal persons from Romania, are exempted from obtaining, beforehand, a work authorization.

According to the same normative act, these provisions do not apply to foreigners that occupy the position of administrator in a legal person with foreign participation, in the situation where one single person is appointed in that position, if the foreigner performs the activity as a professional sportsman, in the conditions of the existence of a nominal work authorization, for cross-border workers, as well as for foreigners who own a residence right for studying purposes.

The work authorization can be issued, at the employer's request, by the Romanian Office for Immigration, to foreigners who fulfil the conditions stipulated in the Romanian legislation with regards to the foreigner's regime, the work classification and their relocation on the Romanian territory. In the same time, the work authorization will be issued as well to foreigners that:

- come from states that Romania has concluded agreements, conventions or arrangements with, by abolishing in this respect the cross-border visas or due to which Romania unilaterally abjured the visas compulsoriness;
- benefit from temporary residence rights for family reunification, granted according to the conditions stipulated in the legislation on foreigners regime in Romania;

- benefit from temporary residence rights for study purposes and requests employment on an individual work contract basis, with maximum 4 hours a day working time;
- are posted on the Romanian territory.

The request for issuing work authorizations is solved by the Romanian Office for Immigration within 30 days from the date of its registration. In the cases where, in order to ascertain the fulfilment of the conditions to obtain the work authorization, additional checking is necessary, the term can be extended with 15 days at most.

The work authorization is issued for a period of one year at most, with the exception of the cases specifically provided for by the law.

The work authorization is automatically extended for new periods up to one year in the situation of the continuation of the work relations with the same employer based on the individual work contract concluded for an undetermined period of time, through the extension of the residence right for work purposes and is certified through the residence permit which is issued in this purpose.

According to the provisions of the Emergency Government Ordinance no. 56/2007 on the employment and posting of foreigners on the Romanian territory, on the basis of Ministry of Labour, Family and Social Protection's proposal, in accordance with the policy on labour force migration and taking into account the labour market situation from Romania, the number of work authorizations that can be issued to foreigners that intend to take up employment or provide work in Romania is yearly establishing, through a Government Decision.

One of the documents necessary to be employed is a certificate on the availability of labour force for the vacancy notified by the employer, according to the provisions of the Law no.76/2002 on the unemployment insurance system and employment stimulation. The certificate is issued only by a territorial structure of National Agency for Employment, respectively the agency for employment within the area where the employer resides.

Basically, this certificate acknowledges the fact that in the records of the county/municipal agency for employment are registered or not Romanian jobseekers with occupations appropriate to the vacancies notified by the employer and who fulfil the employment requirements of the job, also specified by the employer, according to the legislation in force.

4.1.5 Return

4.1.5.1 Asylum

The national legislation provides that there cannot be taken measures of expulsion, extradition or forced return from the Romanian border against the asylum applicants. Exceptions are provided strictly by the law on prevention and fighting against terrorism². This legal act provides that the aliens and stateless persons, including asylum seekers and refugees, about whom there are data and evidences

² Law 535/2004 on prevention of and fighting against terrorism

they intend to undertake or to support terrorism can be declared undesirable persons for Romania.

The person recognized as refugee or who has been granted subsidiary protection is protected against expulsion, extradition or return to the country of origin or to other states where her/his life or freedom would be in danger or would be subject to tortures, inhuman or degrading treatments.

Exceptions are:

- the persons against whom there are serious reasons proving that she/he represents a danger for the Romanian security;
- the person, being convicted for a serious crime³ by definitive order, represents a danger for the Romanian public order.

4.1.5.2 Migration

Against aliens who have entered illegally, whose stay on the territory of Romania has become illegal, whose visa or right to stay has been cancelled or revoked, as well as those who have been refused extension of the temporary right to residence or whose right to permanent residence has ceased, and former asylum seekers, the RIO may decide the measure of removal from the territory of Romania. In case of aliens who have been declared undesirable, as well as against those against whom the instance has disposed the safety measure of expulsion, removal from the territory of Romania shall be made by enforcement of the provisions of the Court decision by which the measure has been imposed.

Removal can be implemented into two ways:

- granting a decision of return;
- implementing the escorted removal.

The decision of return is an administration act issued by the RIO or its territorial units. Based on the decision the aliens are obliged to leave the territory of Romania. The decision of return gives the alien the opportunity to leave the country unaccompanied in a specified period of time. The time limits are counted from the date on which the decision of return has been communicated to the interested person.

In cases aliens who have illegally crossed the border, as well as in cases of those who have stayed illegally and whose identity can not be established, a decision of escorted removal is be issued, alongside with transfer to public custody.

Escorted removal is carried out by specialised staff of the RIO, for the aliens who:

- did not voluntary leave the territory of Romania on expiry of the term provided by the decision of return;
- have illegally crossed the border;

³ The term “serious crime” means any crime for which the law provides a sentence with imprisonment with a special maximum that exceeds 5 years

- have been declared undesirable;
- were ordered a measure of expulsion.

Escorted removal can also be carried out in cases of aliens who have physical or mental disabilities or represent a danger to public health.

Removal is prohibited in following cases:

- the alien is underage, and his parents hold a right to residence in Romania;
- the alien is a parent of an underage Romanian citizen, if the minor is in his care or if there is the obligation to pay alimony, which is regularly fulfilled by the alien;
- the alien is married to a Romanian citizen, and the marriage is not one of convenience;
- the alien is aged over 80;
- there are justified fears that the alien's life is in danger or that he would be exposed to torture, inhuman or degrading treatments in the state he is going to be sent to;
- removal is prohibited by international documents Romania is a party of.

An exception from the above mentioned cases are the aliens who represent a danger to public order, national security or who suffer from a disease which endangers public health and refuse to be subject to treatment ordered by medical authorities.

Aliens who find themselves on the territory of Romania may request the assistance of the RIO, as well as of international and/or non-governmental organisations with competencies in the area of migration and asylum, for the purpose of assisted voluntary repatriation, if they do not possess financial means. The RIO, jointly with international organisations and NGOs with attributions in the field, can carry out common programmes for the identification of relevant means to support aliens with regard to their assisted voluntary repatriation for humanitarian purposes, as well as of financial resources necessary for this purpose.

Aliens may individually benefit only once from the support granted by the RIO, though the programmes for assisted voluntary repatriation for humanitarian purposes.

Against the alien who has committed a crime on the territory of Romania the Court can dispose the measure of expulsion in the conditions provided by the Penal Code and the Criminal Procedure Code. In that case the right of residence ceases *de iure* on the date on which the measure of expulsion has been decided.

An alien can not be expelled to a state where there are serious reasons to believe that his life shall be endangered or that he shall be subject to torture or inhumane or degrading treatments. Prohibition of expulsion is valid until the reasons on which it was based have ceased to exist.

In cases the aliens can not be removed under escort or in case the alien was declared undesirable or the court decided the measure of expulsion he/she can be put under public custody. Public custody is a measure of temporary restriction of the freedom of movement on the territory of the Romanian state, ordered by the magistrate.

The maximum duration for public custody for aliens against whom a return measure has been ordered may not exceed 6 months. In case of aliens against whom the measure of expulsion has been ordered the period of public custody is not exceeding two years.

4.2 Links with other Policy Areas

Basically the asylum and migration policies are inked with the main policy areas involving the presence of an alien: labour force market, social protection, integration, national security and public order etc.

As mentioned before, the MLFSP proposes the number of authorizations to work in Romania to be issued yearly to aliens who intend to take up employment or to provide work in Romania. The proposal is made according to the policy on labour force migration and the real situation of the labour market in Romania.

The work migration is also linked to the protection of national labour force. In this case the aliens can be issued an authorization to work only under the condition of a certificate proving the availability for the vacancy, acknowledging the fact that there are not registered Romanian jobseekers with occupations appropriate to the vacancies notified by the employer and who fulfil the employment requirements for that specific job.

One more fact that prove that migration is has a multidisciplinary approach is that the implementation of the National Immigration Strategy benefits from the support of a Coordination Board⁴. The Coordination Board is a consultative organism which functions next to the MAI, aiming at coordination, within an inter-institutional cooperation mechanism, of the implementation of the periodical strategically documents in the field of immigration. The Coordination Board is formed by the representatives of the state institutions having attributions in the field of migration and asylum.

The President of the Coordination Board is the Secretary of State in the MAI, head of the Department for Public Order and Security and the vice-president is the Director General of the RIO. Members of the Board are the representatives of the state institutions dealing with migration and asylum, covering all areas:

- Ministry of Administration and Interior (e.g. RIO, Romanian Border Police, Romanian Police, NAATIP etc.)
- Ministry of Foreign Affairs (e.g. Directorate General for Consular Affairs)
- Ministry of Labour, Family and Social Protection (e.g. NAE, Labour Inspection, National Authority for Protection of Children's Rights etc.)

⁴ The National Immigration Strategy Coordination Board was set by the Government Decision 572 of 28 May 2008

- Ministry of Education, Research and Innovation
- Romanian Agency for Foreign Investments
- National Statistic Institute.

The inter-institutional cooperation mechanism in the field of immigration has a permanent character and it is the main element for an effective implementation of the strategies, policies and legislation in that area. For that the cooperation mechanism:

- coordinates the activities of the institutions having attributions in the field of immigration, aiming at implementation of the objectives set by the National Immigration Strategy;
- monitors the process of implementing the EU and international practices in the area;
- evaluates the state of play regarding the implementation of the programmes and policies set by the National Immigration Strategy;
- support the interoperability and the exchange of information for the decision making process.

5. ANALYSIS OF ASYLUM AND MIGRATION SYSTEMS

The main characteristic of the migration and asylum system in Romania is **institutional specialization** and inter-**institutional cooperation**.

All institutions dealing with migration and asylum matters have specialized competencies and attributions in certain areas.

Thus, for example, Ministry of Foreign Affairs (Directorate General for Consular Affairs and National Visa Centre) is the competent institution in granting the entry visas, both for short and long stay; Ministry of Administration and Interior (RIO, RBP, Romanian Police) is competent for granting the stay right (temporary or permanent), controlling the entry on the territory, controlling the legality of stay, asylum procedure, removal; Ministry of Labour, Family and Social Protection is competent for setting the national policy regarding the labour migration (quotas of work authorizations to be issued annually) and combating illegal employment of aliens; Ministry of Education, Research and Innovation is competent for issuing the documents necessary for aliens to be admitted and granted residence permits for study purposes.

But all the above mentioned institutions and other more do not action by themselves, but in close cooperation one to each other. So, inter-institutional cooperation is a characteristic for the processes within the immigration phenomenon. Almost all the decisions taken within the processes involve more that one institution.

When speaking about admission, in general, the Ministry of Foreign Affairs (Directorate General for Consular Affairs and National Visa Centre) and the Ministry of Administration and Interior (RIO) are involved.

Although, the decision of granting or not the visas belongs to the Ministry of Foreign Affairs (embassies and consular offices), the opinion of the RIO is a must for almost all types of visas, especially for those of long stay which allows the extension and being granted a residence permit.

More than that, for certain categories of visas, another state institution is contributing to the admission process. It is the Romanian Agency for Foreign Investments which issues, following the evaluation of a business plan, a certificate for the aliens who intend to enter Romania in order to pursue commercial activities.

Ministry of Labour, Family and Social Protection is also involved in the admission policy, especially as regards labour migration.

According to the provisions of the law, MLFSP is the one who set the annual quota regarding the number of work authorisations to be issued to aliens.

After granting the Romanian visas, the admission conditions are checked one more time by the Romanian Border Police when the alien shows him/herself to the border checking points.

As a conclusion the admission involves at least five institutions having attributions in the immigration area: Directorate General for Consular Affairs, the RIO, the Romanian Agency for Foreign Investments, the MLFSP, and the Romanian Border Police.

After the alien enters Romanian he/she has to apply for an extension of the stay right and for a residence permit.

Even the decision belongs to the RIO, it cooperates with other institutions before extending the stay right and granting the residence permit.

Depending the purpose the alien is applying for the extension of the stay right, other institutions are involved in that process, for example: Ministry of Education, Research and Innovation, for students or Ministry of Labour, Family and Social Protection, for employees.

When speaking about removal from the territory, many institutions from different ministries are involved.

The main one is RIO, but it cooperates with RBP, Romanian Police, and Directorate General for Consular Affairs, for example.

The image of this inter-institutional cooperation is given by the composition of the Coordinating Board of the National Strategy for Immigration⁵.

Thus, even if in theory immigration and asylum are mostly linked to home affairs area, participation of other institutions, not necessary from this area, prove the importance given by the national authorities to those two fields, and also prove that cooperation is one of the key elements in approaching immigration and asylum.

⁵ See 4.2

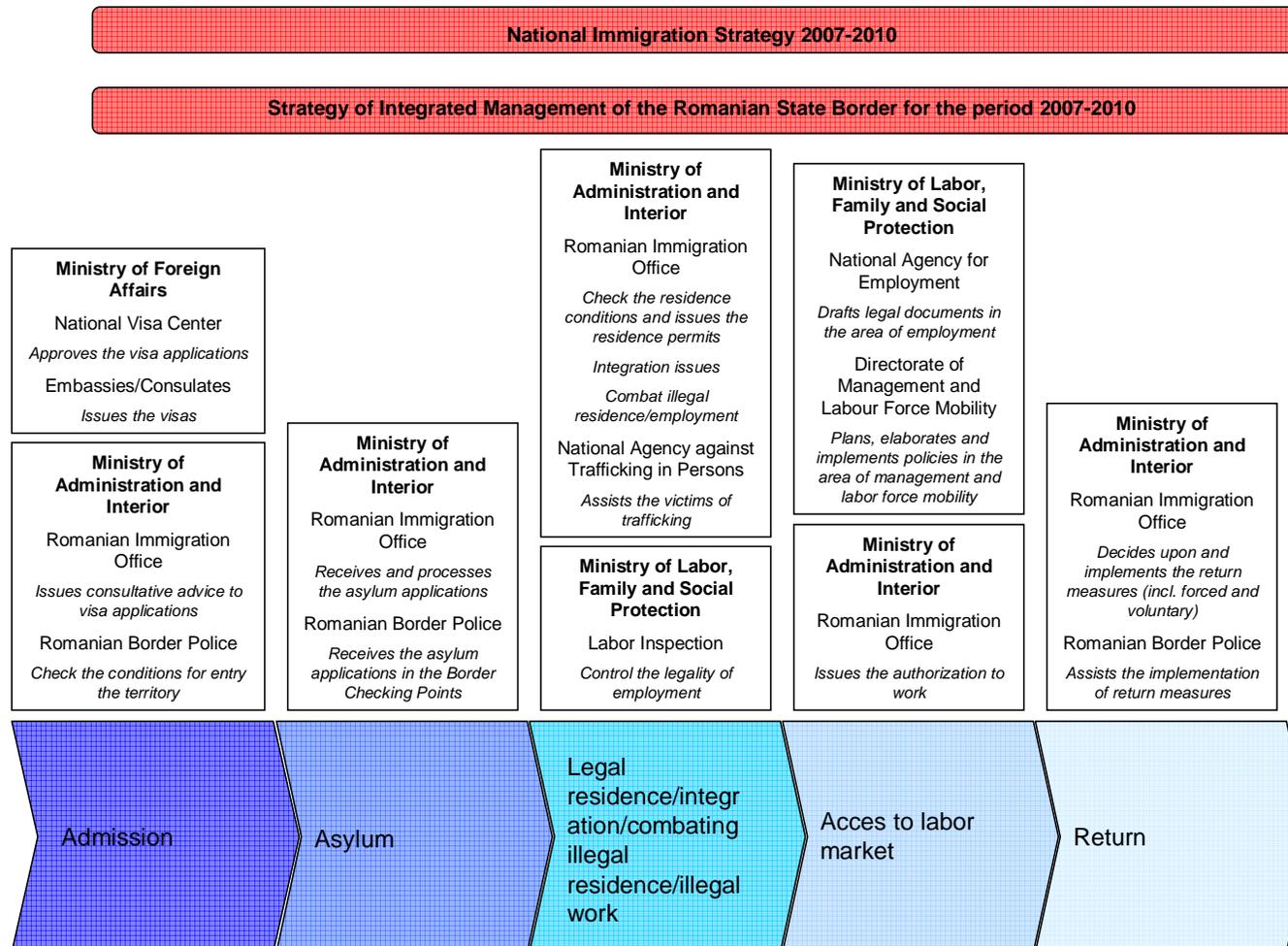
Annexes

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II. Romania – Institutional Framework for immigration and Asylum - processes -

Romania – Institutional Framework for immigration and Asylum
- processes -



III. Romania – Institutional Framework for immigration and Asylum - institutions -

Romania – Institutional Framework for immigration and Asylum

- main institutions -

