Flygtningenævnets baggrundsmateriale

Bilagsnr.:	**60**
Land:	Moldova
Kilde:	Home Office
Titel:	”Operational guidance note Moldova ”
Udgivet:	3. april 2006
Optaget på bag-grundsmaterialet:	14. juni 2006

Home Office
Immigration and Nationality Directorate

OPERATIONAL GUIDANCE NOTE

MOLDOVA

CONTENTS

1. Introduction

1.1 This document summarises the general, political and human rights situation in Moldova and provides information on the nature and handling of claims frequently received from nationals/residents of that country. It must be read in conjunction with any COI Service Moldova Country of Origin Information at:

http://www.homeoffice.gov.uk/rds/country_reports.html

1.2 This document is intended to provide clear guidance on whether the main types of claim are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers should refer to the following Asylum Policy Instructions for further details of the policy on these areas:

API on Assessing the Claim
API on Humanitarian Protection
API on Discretionary Leave
API on the European Convention on Human Rights

1.3 Claims should be considered on an individual basis, but taking full account of the information set out below, in particular Part 3 on main categories of claims.

1.4 With effect from 1 April 2003, Moldova is a country listed in section 94 of the Nationality Immigration and Asylum Act 2002. Asylum and human rights claims must be considered on their individual merits. However if, following consideration, the claim from someone who is entitled to reside in Moldova is refused, caseworkers should certify the claim as clearly unfounded unless satisfied that it is not. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail. The information set out below contains relevant country information, the most common types of claim and guidance from the courts, including guidance on whether cases are likely to be clearly unfounded.

Source documents

1.5 A full list of source documents listed in footnotes is at the end of this note.

2. Country assessment

2.1 The Moldovan Government declared its independence from the USSR on 27 August 1991. July 2000 Constitutional amendments transformed Moldova into a parliamentary republic. The 1994 Constitution established a multiparty representative government with power divided between a president, cabinet, parliament and judiciary. The 1994 Constitution stipulates that Moldova is a sovereign, independent, unitary, and indivisible state. It does however, provide for a special autonomous status for Transnistria and Gagauzia within Moldova. General elections in December 2000 and March 2005 were won by the Communist Party of the Republic of Moldova (CPRM). The Communist leader Vladimir Voronin is the President.[1]

2.2 Gagauzia has since 1994 established its own Popular Parliament. The governor (bashkan) was elected in an election re-held on October 2002. The Gagauz complain that the central government does not abide by the terms of the special status agreement and that it enacts legislation which contradicts their autonomous status. The Transnistrian authorities do not recognise their "special status" and insist that Transnistria is a separate state.[2]

2.3 Following independence in 1991, fighting broke out in the Transnistrian region (Pridnestrovskaia Moldavskaia Respublika - 'DMR') between the ethnic Moldovan dominated Moldovan State and the ethnic Russian/Ukrainian dominated eastern region of Transnistria. Hundreds died in the fighting. The Transnistria region has declared itself independent of Moldova, although no country recognises its sovereignty, including Moldova.[3]

2.4 Russia still has a limited troop contingent in the area since the 1991-92 Transnistria conflict. In 1999, Russia agreed to withdraw all troops and military by the end of 2002 but this did not occur. The Organisation for Security and Co-operation in Europe (OSCE) has a mission in the capital, Chisinau, since 1993 to assist in resolving the conflict. In February 2004, Russia stated that it would complete withdrawal of its forces from Transnistria only when a solution to the conflict is reached. In July 2004, a dispute over closures of Moldovan-language schools in Transnistria resulted in the Government imposing economic sanctions on the region and pulling out of talks on its status.[4] In June 2005, the Moldovan Parliament backed a Ukrainian plan granting Trans-Dniester region autonomy within Moldova and called on Russia to withdraw troops. By the end of 2005, autonomy negotiations had not resolved the region's status and Russian troops remained. [5]

2.5 The government generally respected the human rights of its citizens in 2005; however, there were problems in some areas, and the human rights record of the Transnistrian authorities remained poor. There were reports of the following human rights problems in 2005: selective official harassment and intimidation of the political opposition; security force beatings, particularly of persons in police custody and Roma; incommunicado detention for extended periods; harsh prison conditions; arbitrary arrest and detention of Roma; judicial and police corruption; monitoring by security forces of political figures through unauthorised wiretaps and, at times, illegal searches; intimidation of journalists

[1] COIS Moldova Country Report March 2006 (paras. 4.01- 4.02 & 5.01 – 5.02)
[2] COIS Moldova CR March 2006 (paras. 4.14 – 4.15 & 5.01)
[3] COIS Moldova CR March 2006 (para. 4.15)
[4] COIS Moldova CR March 2006 (paras 4.15 – 4.20)
[5] COIS Moldova CR March 2006 (paras 4.20 – 4.24)

into practicing self-censorship; restrictions on freedom of assembly; obstacles to official registration by a few religious groups; persistent societal violence and discrimination against women and children; trafficking in women and girls; discrimination against Roma; some limits on workers' rights, and child labour.

2.6 For a country that is Europe's poorest nation, Moldova has achieved a creditable human rights record. Nevertheless, UN Committees on Human Rights, Racial Discrimination, Elimination of Discrimination Against Women and the Rights of the Child have all expressed concern at Moldova's human rights record in their respective areas and Moldova's first report to the Committee for Economic, Social and Cultural Rights was received 6 years late. There have been allegations of ill treatment and torture of suspects and prisoners by Moldovan police officers. There is also concern at the levels of corruption within the Moldovan police force and other areas of public life.[6]

2.7 The human rights situation in the secessionist Transnistria region is more worrying. Political and linguistic rights and freedom of expression are curtailed. The EU and OSCE have regularly called on the authorities to improve the human rights situation, including by granting a fair trial to Ilie Ilascu, imprisoned and facing the death sentence since the 1992 secessionist conflict. Mr Ilascu was finally released in May 2001, a move that was welcomed by the EU, the OSCE and the Council of Europe. In Transnistria: the rights of citizens to change their government was severely restricted; authorities reportedly continued to use torture and arbitrary arrest and detention; prison conditions remained harsh, and two members of the so-called Ilascu Group remained in prison despite a July 2004 ruling in their favor by the European Court for Human Rights [ECHR]. Transnistrian authorities harassed independent media and opposition lawmakers, restricted freedom of association and of religion, and discriminated against Romanian-speakers.[7]

2.8 The law provides for freedom of speech and of the press in 2005; however, the government sometimes restricted these rights and the government on occasion intimidated some journalists into practising self-censorship.[8] The predominant religion is Christian Orthodox with more than 90% of the population nominally belonging to one of two Orthodox denominations, the Moldovan Orthodox Church (MOC) and the Bessarabian Orthodox Church (BOC). Although there is no state religion, the MOC reportedly receives favoured treatment from the Government. The Government generally respects freedom of religion in practice; however, the law includes restrictions that at times inhibit the activities of some religious groups.[9]

2.9 The law provides for freedom of assembly; however at times in 2005 the government limited this right in practice. In several instances, citizens were arrested during peaceful protests, detained for several hours, and then released without charge.[10] The government generally respected the right to freedom of movement in 2005, however Transnistrian authorities sometimes restricted travel to and from the separatist region. Transnistrian authorities applied a transit fee to Moldovan nationals crossing through Transnistria and often stopped and searched incoming and outgoing vehicles. Transnistrian authorities prevented farmers from government-controlled villages in the Dubassari region of Transnistria from travelling to areas outside Transnistria to sell their produce and, in some cases, blocked farmers' access to their fields.[11]

2.10 Moldova is primarily a source country for persons, particularly women and girls, trafficked for the purpose of sexual exploitation to the Middle East and European countries west and south of Moldova. It is also to a lesser extent a transit country to

[6] COIS Moldova CR March 2006 (paras 6.01 – 6.02)
[7] COIS Moldova CR March 2006 (paras 6.03 – 6.04)
[8] COIS Moldova CR March 2006 (para 6.14)
[9] COIS Moldova CR March 2006 (paras 6.28 – 6.29)
[10] COIS Moldova CR March 2006 (paras 6.57)
[11] COIS Moldova CR March 2006 (paras 6.99 – 6.100)

European destinations for victims trafficked from former Soviet states. Moldovan victims continued to be increasingly trafficked to Turkey, the Middle East (including the United Arab Emirates (U.A.E.) and Israel), and Russia (particularly minors). New information indicates that Moldovan men are trafficked to Baltic and other former Soviet states for the purpose of agricultural and construction labor exploitation. IOM reported an increased number of families trafficked to Poland for forced begging. The small breakaway region of Transnistria in eastern Moldova is outside the central government's control and remained a significant source and transit area for trafficking in persons.[12]

2.11 The Government of Moldova does not fully comply with minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. In 2004, the government more than doubled the number of trafficking convictions handed down with prison sentences. While Moldova's National Committee to Combat Trafficking in Persons continued to meet regularly and frequently, the government spent very little of its own funds to combat trafficking.[13]

2.12 Corruption and organised crime remain major concerns and affect all levels of political, social, and economic life. Corruption has been identified by civil society and the government as a major obstacle to social and economic reform in Moldova. Fighting corruption is a declared priority for the Communist government, but toward the end of its mandate the results are mixed and have consisted mostly of declaratory documents such as the Program on Fighting Corruption, introduced in 2002. The main government institution for fighting corruption is the Centre for Combating Economic Crimes and Corruption (CCECC), created in 2002. After the centre's reorganisation during the summer of 2004, the fight against corporate crime took on a new urgency. In the first nine months of 2004, the CCECC investigated 217 cases of corruption. [14]

2.13 Ukrainians and Russians are the two largest ethnic minorities. A Christian Turkic minority, the Gagauz, makes up a small percentage of the population and live primarily in the Gagauz Autonomous Region (Gagauz Yeri) in the south of the country. Official statistics put the number of Roma at 11,600, but Romani NGOs estimated the number to be much higher. The report also noted "There were 26 members of ethnic minorities in the 101-seat Parliament and 4 members of a minority in the 19-member cabinet. Russian, Ukrainian, Bulgarian, Azeri and Gagauz minorities had represention in Parliament. Deputies are elected from nationwide party lists rather than local districts.[15]

2.14 The Roma are the poorest of the minority groups and often lived in unsanitary conditions in segregated communities lacking basic infrastructure. The European Roma Rights Centre reported that officials discriminated against Roma with regard to housing, education, and access to public services. These conditions often led to segregated education and schools with even fewer resources than those elsewhere in the country. Many Romani children did not attend school, very few received a secondary or higher education, and there was no Romani-language education. Roma suffered violence, harassment, and discrimination in 2005. Local and international NGOs reported that Roma were victims of police beatings in custody, arbitrary arrest and detention, harassment by law enforcement officials, and societal violence and harassment. [16]

3. Main categories of claims

3.1 This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to

[12] COIS Moldova CR March 2006 (para 6.69)
[13] COIS Moldova CR March 2006 (para 6.71)
[14] COIS Moldova CR March 2006 (para 6.153 – 6.156)
[15] COIS Moldova CR March 2006 (para 6.106)
[16] COIS Moldova CR March 2006 (para 6.119 – 6.120)

reside in Moldova. It also contains any common claims that may raise issues covered by the API on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant APIs, but how these affect particular categories of claim are set out in the instructions below.

3.2 Each claimant should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the API on Assessing the Claim).

3.3 If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

3.4 This guidance is not designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)

3.5 All APIs can be accessed via the IND website at:

http://www.ind.homeoffice.gov.uk/ind/en/home/laws___policy/policy_instructions/apis.html

3.6 Roma

3.6.1 A significant proportion of claimants will make an asylum or human rights claim based on their experience of societal discrimination amounting to persecution due to their Roma ethnicity.

3.6.2 ***Treatment.*** The Roma are the poorest of the minority groups and often lived in unsanitary conditions in segregated communities lacking basic infrastructure. The European Roma Rights Centre reported that officials discriminated against Roma with regard to housing, education, and access to public services. These conditions often led to segregated education and schools with even fewer resources than those elsewhere in the country. Many Romani children did not attend school, very few received a secondary or higher education, and there was no Romani-language education. Roma suffered violence, harassment, and discrimination in 2005. Local and international NGOs reported that Roma were victims of police beatings in custody, arbitrary arrest and detention, harassment by law enforcement officials, and societal violence and harassment.[17]

3.6.3 Incidents of state-sponsored discrimination and ill-treatment of the Roma over the past ten years are well documented. Numerous reports by Amnesty International and the European Roma Rights Centre (ERRC) indicate a heavy-handed approach by the state authorities in relation to Roma suspected of criminal activity and societal discrimination continued in 2005.[18] Despite the situation of the Roma in Moldova, there are conflicting

[17] COIS Moldova CR March 2006 (paras 6.119 – 6.120 & 6.129)
[18] COIS Moldova CR March 2006 (paras 6.121 – 6.126)

reports of their geographical and social exclusion. Sources such as the ERRC have indicated that while the Roma are essentially an excluded element in Moldovan society, inter-marriage between Roma and non-Roma is very common.[19]

3.6.4 In February 2001 the Moldovan government formally adopted a *Strategy to improve the Roma situation in Moldova*. The Department for National Relations and Roma representatives drafted a resolution urging the improvement of the social and cultural situation of the Roma population. The Moldovan Government ratified the Framework Convention on National Minorities and Racial Discrimination and is part of the programme *Roma and the Stability Pact in South-East Europe*, which covers several projects implemented by the Organisation for Security and Co-operation in Europe (OSCE). The projects aim to strengthen the institutional mechanisms for effective implementation of basic civil and political rights of persons of Roma ethnicity and to raise awareness and contribute to solving the issues of Roma related to the wider situation of inter-ethnic conflicts in the region.[20]

3.6.5 The Council of Europe stated that a 'Consultancy on National Strategy for Roma in Moldova', whose purpose was to assist public administrations in protecting Roma's Human Rights began in April 2003 and was due to end in May 2005.[21]

3.6.6 ***Sufficiency of protection.*** The national police force is the primary law enforcement body in the country. The police force is subdivided into regional and city police commissariats, which are subordinated to the Minister of Internal Affairs.[22] While there is evidence that the state authorities at times mistreat or are heavy-handed with Roma suspected of criminal activity, there is no evidence to suggest that ordinary Roma who approach the state authorities of their own volition cannot receive adequate protection. Furthermore, there have been several Government-sponsored national initiatives over the past few years which have helped to improve the long term social prospects of the Moldovan Roma.

3.6.7 ***Internal relocation.*** As there is a general sufficiency of protection, internal relocation will not be an issue in many cases. The law provides for freedom of movement to travel domestically and the Government respects these provisions in practice.[23] Internal relocation is therefore possible in any circumstances where it is necessary.

3.6.8 ***Conclusion.*** Whilst the Roma minority in Moldova suffers from some degree of discrimination in the community and may be subject to racially motivated attacks, the evidence indicates that such incidents do not amount to systematic discrimination. Moreover the government has undertaken several initiatives to boost Roma rights in recent years and, though Roma suspected of criminal activity have experienced heavy-handed treatment by the authorities, the availability of adequate state protection and an internal relocation alternative for ordinary Roma means it is not likely that claimants will have encountered ill treatment amounting to persecution. The grant of asylum will not be appropriate and such claims are likely to be clearly unfounded.

3.7 Members of opposition political parties and groups

3.7.1 Many claimants will make an asylum or human rights claim based on their membership of, affiliation with and/or activism for a political opposition party or group.

---

[19] COIS Moldova CR March 2006 (para 6.121 – 6.122)
[20] Council of Europe Commission/OSCE – ODIHR 'Stability Pact for Souht Eastern Europe' January 2002
[21] Council of Europe: Joint Programmes - Logframes and Activities: Roma II, 17 February 2003 – 16 May 2005.
[22] USSD Moldova 2005 (Introduction and Section 1)
[23] COIS Moldova CR March 2006 (para 6.99)

3.7.2 ***Treatment.*** The Constitution provides for freedom of association and states that citizens are free to form parties and other social and political organisations; however, the Constitution also prohibits organisations that are "engaged in fighting against political pluralism," the "principles of the rule of law," or "the sovereignty and independence or territorial integrity" of the country. Small parties that favour unification with Romania charged that this provision is intended to impede their political activities; however, no group has been prevented from forming as a result of this provision. Private organisations, including political parties, were required to register, but applications were approved routinely. The law provides that the Ministry of Justice may suspend a party for up to one year for violating the Constitution or the law if it does not desist in an illegal activity after receiving a written warning. During election campaigns, only the Supreme Court of Justice may suspend a party's activity.[24]

3.7.2 The general elections of March 2005 resulted in the incumbent Communist Party of the Republic of Moldova (CPRM) taking 46% of the vote, but losing ground to the opposition Democratic Moldova bloc – Moldova Noastra (28.4%) and the Christian Democratic Popular Party CDPP (9%). The OSCE declared that the elections complied with international standards, in spite of some concerns about restrictions on media coverage of general campaigning and access to basic information about candidates.[25] There have been no significant reports in 2005 of any state-sponsored interference or restrictions on opposition party activity.

3.7.3 ***Sufficiency of protection.*** As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection. However, as there is no evidence that the authorities discriminate against any opposition political grouping or persecute members of these groups, as such the issue of access to adequate state protection is not relevant.

3.7.4 ***Internal relocation.*** As this category of claimants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible. However, as there is no evidence that the authorities discriminate against any opposition political grouping or persecute members of these groups, as such the feasibility of internal relocation is not relevant.

3.7.5 ***Conclusion.*** There is no evidence of persecution of members of these political parties and it is unlikely that a claim made solely on the basis of membership of the Democratic Moldova bloc (Moldova Noastra), the CDPP or any other political grouping will engage the United Kingdom's obligation under the 1951 UN Convention. The grant of asylum will not therefore be appropriate and any such claim is likely to be clearly unfounded.

3.8 Ethnic Moldovans from the Transnistria region

3.8.1 Some claimants will make an asylum or human rights claim asylum based on ill treatment amounting to persecution at the hands of Transnistrian authorities due to their Moldovan ethnicity.

3.8.2 ***Treatment.*** Since 1992, separatist elements of Russian origin, assisted by Russian military forces in the area, have declared a *Trans Dniester Moldovan Republic* in Transnistria between the Dniester River and Ukraine. The Government does not control this region. Ethnic Moldovans constitute 40% of the population in Transnistria, the largest ethnic group in the area.[26]

[24] USSD 2005 (Sections 1 & 2b)
[25] COIS Moldova CR March 2006 (paras 4.09 – 4.13)
[26] COIS Moldova CR March 2006 (paras 4.14 – 4.15)

3.8.3 There are credible reports that ethnic Moldovans have experienced some discrimination in the separatist region of Transnistria and specific concerns in 2004 over the Transnistrian security forces' treatment of Moldovan citizens and the illegal extraditions of Moldovan citizens to Transnistria to stand trial under the unconstitutional provisions of that region. Transnistrian authorities have required state schools within the region to use the Cyrillic alphabet when teaching Moldovan, contradicting the 1989 Language law which had reinstituted obligatory use of the Latin script. A dispute over closures of Moldovan-language schools in Transnistria using Latin rather than Cyrillic script in July 2004, resulted in the Moldovan authorities imposing economic sanctions on the region and pulling out of talks on its status.[27]

3.8.4 In June 2005, the Moldovan Parliament backed a Ukrainian plan granting Trans-Dniester region autonomy within Moldova and called on Russia to withdraw troops by end of 2005.[28] In March 2006, Igor Smirnov, the leader of the breakaway region of Transnistria said his unrecognised republic was pulling out of talks on resolving its conflict with Moldova. The move came in response to a decision by neighbouring Ukraine not to allow in goods from Transnistria unless they were cleared by Moldovan customs. Transnistria's seperatist leaders said the new rules amount to 'an economic blockade' and accused Ukraine of taking Moldova's side in the conflict. Smirnov said on 7 March 2006 that in such conditions 'all negiotiations' have become 'totally pointless'.[29] Meanwhile at the end of 2005, the Russian military forces remained in the separatist region.[30]

3.8.5 ***Sufficiency of protection.*** As the secessionist Transnistrian authorities control the region, access to sufficient protection from the Moldovan authorities is not feasible for individuals who reside there.

3.8.6 ***Internal relocation.*** The Constitution and law provide for freedom of movement and the Government generally respected them in practice in 2005; however, Transnistrian authorities sometimes restricted travel to and from the separatist region. Transnistrian authorities applied a transit fee to Moldovan nationals crossing through Transnistria and often stopped and searched incoming and outgoing vehicles. Transnistrian authorities prevented farmers from Government-controlled villages in the Dubassari region of Transnistria from travelling to areas outside Transnistria to sell their produce and, in some cases, blocked farmers' access to their fields.[31] Aside from these exceptional restrictions, internal relocation from Transnistria to any other region of Moldova to escape this threat is therefore possible in any circumstances where it is necessary and is not unduly harsh.

3.8.7 ***Caselaw.***

PH (Moldova) [2004] UKIAT 00011 promulgated 10 February 2004 was concerned with the claim of a appellant who was a policeman in the DMR and was told to change his citizenship from Moldovan to Dnestra Moldovian Republic (DMR). The appellant refused to do so and claims the police and Mafia harassed him. The tribunal found "If the applicant faced persecution in the DMR, the obvious course of action in light of his refusal to give up Moldovan citizenship would be for him to relocate in Moldova".

3.8.8 ***Conclusion.*** The level of harassment and discrimination encountered by the majority of ethnic Moldovans in the Transnistria region is in itself unlikely to amount to persecution within the terms of the 1951 UN Convention. The availability of internal relocation enables any individual who has encountered discrimination or ill treatment in Transnistria

[27] COIS Moldova CR March 2006 (para 6.107 – 6.109)
[28] COIS Moldova CR March 2006 (para 4.19)
[29] COIS Moldova CR March 2006 (para 4.20)
[30] COIS Moldova CR March 2006 (para 4.22)
[31] COIS Moldova CR March 2006 (para 6.99 – 6.100)

to move to any other part of the country. The grant of asylum will not therefore be appropriate and any such claim is likely to be clearly unfounded.

3.9 Organised crime and corruption

3.9.1 Some claimants will make an asylum and/or human rights claims based on a lack of sufficient police protection where crimes carried out by organised criminal gangs have been reported. Claimants will usually refer to widespread corruption throughout the State authorities as a contributory factor.

3.9.2 ***Treatment.*** Organised crime and corruption are particularly problematic. The shadow economy, dominated by extensive organised crime networks, accounts for between 30 and 70% of all economic activity.[32] According to Transparency International, in 2002 there were some 300 criminal groups in Moldova, most of which belonged to one of 35 criminal clans. Though a lack of State power has also resulted in increases in tax evasion, drug trafficking, illegal import/export operations and contract murders, the creation of the Centre Against Economic Crimes and Corruption in June 2002 improved the government's record in combating fraud and corruption.[33]

3.9.3 Corruption remains a major concern in Moldova and continues to affect all levels of political, social, and economic life. Corruption has been identified by civil society and the government as a major obstacle to social and economic reform in Moldova. Fighting corruption is a declared priority for the Communist government, but the initiatives have consisted mostly of declaratory documents such as the Programme on Fighting Corruption, introduced in 2002. In 2004, at the behest of the president, a strategy and action plan for preventing and fighting corruption was elaborated. The 'prevention' dimension is crucial in that it is the first time the authorities intend to tackle the causes of corruption as opposed to merely taking repressive measures. The strategy was reviewed in October 2004 by a group of national legal experts and Council of Europe representatives and was adopted by the Parliament in November 2004.[34] Criminal groups have fused with the government and business. Independent and opposition media struggle to survive amid a general state of lawlessness and poverty that has forced many to align themselves with political parties to survive.[35]

3.9.4 ***Sufficiency of protection.*** Though there have been State and NGO anti-corruption and witness protection initiatives since 2002 which have improved the State's approach to tackling corruption and organised crime [36], the practical effect of these measures appears to be, as yet, limited and these problems remain endemic in Moldova. The State authorities' capacity to offer effective protection against organised crime remains severely hampered by institutionalised corruption. It is therefore unlikely that claimants would be able to seek and receive adequate protection from the State authorities for complaints related to serious and organised crime, as opposed to common criminals with little influence vis-à-vis the State authorities. The individual circumstances of each case ought to be exmained closely to determine what kind of gang the claimant fears and what the gang's influence is. Any past attempt (s) to seek State protection should also be considered to determine whether in a particular case the claimant is likely to receive sufficiency of protection on return.

3.9.5 ***Internal relocation.*** The availability of a viable internal relocation alternative depends on the type and status of crime group cited by the claimant.

---

[32] Freedom House: Freedom in the World Report 2005 (Moldova)
[33] Transparency International 2002
[34] COIS Moldova CR March 2006 (para 6.153)
[35] COIS Moldova CR March 2006 (para 6.163)
[36] COIS Moldova CR March 2006 (paras 5.49 – 5.50 & 6.156 – 6.161)

3.9.6 Organised criminal gangs usually operate in particular localities where their dominance is not threatened by rival gangs, especially for the purposes of people trafficking[37]. Where a claimant fears a gang and the evidence is that the gang operates in a particular region only, it is likely that he will be able to move to another part of Moldova where this essentially localised threat would not exist. This kind of case can be certified on the basis of internal relocation, unless it is arguable that the gang would be willing and able to track him down in another part of Moldova.

3.9.7 Some organised criminal gangs such as the Mafia and related criminal groups are well-connected and known to operate countrywide. Where a claimant fears this kind of gang, internal relocation is unlikely to be available.

3.9.8 ***Caselaw.***

Ursu (Moldova) [2002] UKIAT 02495 promulgated 10 July 2002 found that there would be a real risk of inhumane and degrading treatment at the hands of criminal gangs as a result of the "corruption, at all levels of society, and the lack of police protection.

PH (Moldova) [2004] UKIAT 00011 promulgated 10 February 2004. Sufficiency of protection – mafia. The Tribunal accepted that "corruption is common amongst state officials in Moldova… Nonetheless the authorities are attempting to take action against corruption. In July 1999 the then Interior Minister announced that 15 criminal cases had been opened against Interior Ministry officers and in March 2000 an officer within the Department of Combating Organised Crime and Corruption was arrested in connection with a number of crimes. The Adjudicator was referred to the determination in **Ursu [2002] UKIAT 02495** where on the facts of that case it was held that there was no adequate protection against those involved in organised crime. In our judgment that case turned on its own particular facts. The Tribunal are not satisfied that the applicant would be at risk as he has described but, in any event, as a former policeman from the DMR the Tribunal do not accept that the applicant would be unable to look to the authorities in Moldova for protection. In these circumstances the Tribunal are satisfied that the Adjudicator's assessment of the risk on return to Moldova was not properly open to him." (para 19)

3.9.9 ***Conclusion.*** In spite of government initiatives to combat State corruption and counter organised crime, corruption remains pervasive throughout the State authorities and organised crime continues to be a very serious problem. In cases where it is accepted that the claimant fears a serious and organised criminal gang which is well-connected and known to operate countrywide, there is unlikely to be adequate State protection and a viable internal relocation alternative. A grant of Humanitarian Protection in such cases is likely to be appropriate. However, in cases where the claimant fears a group which operates on a local basis or common criminals with little influence vis-à-vis the State authorities, the grant of Humanitarian Protection is not likely to be appropriate and should be certified as clearly unfounded.

3.10 Prison conditions

3.10.1 Claimants may say that they cannot return to Moldova due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Moldova are so poor as to amount to torture or inhuman treatment or punishment.

3.10.2 ***Consideration.*** In 2005, conditions in most prisons in the country (including Transnistria) were harsh and in some instances were life threatening with serious overcrowding. Cell sizes did not meet local legal requirements or international standards. The incidence of malnutrition and disease, particularly tuberculosis, was high in all prisons. Conditions were particularly harsh in facilities for persons awaiting trial or sentencing. Detainees reported being denied food and water and being held in underground facilities without medical care, fresh air or ventilation, or appropriate

[37] COIS Moldova CR March 2006 (para 6.164)

sanitation in 2005. Government and independent human rights observers were generally permitted to visit prisons. The Moldovan Centre for Human Rights regularly made prison visits during 2005. The government cooperated with the International Committee of the Red Cross (ICRC) and permitted visits to prisoners.[38]

3.10.3 In August 2004, the Supreme Court of Justice ordered the Bender prosecutor's office to take action to resolve the situation of 250 prisoners with tuberculosis who were held at Bender prison under inadequate conditions, but the prosecutor's office had taken no action by the year's end. Male and female prisoners were held separately. Children convicted of crimes were sent to adult prisons, where they were held in separate cells. Pre-trial detainees were held separately from convicted prisoners, although there were reports of convicted prisoners remaining in detention facilities due to prison overcrowding. As a result of no juvenile justice system existing in Moldova, at police stations, juveniles shared cells with adults. In prisons, however, juvenile delinquents were held separately from adults.[39]

3.10.4 On 27 July 2005, in the penitentiary nr. 2, located in the city of Tiraspol in Transnistria, a revolt broke out as a result of continuous inhuman treatment of the prisoners. 1000 prisoners went on hunger strike and 180 persons mutilated themselves as a protest against the inhuman treatment from the prison's administration. [40]

3.10.5 ***Conclusion.*** Whilst prison conditions in Moldova are poor with overcrowding and poor health facilities being particular problems, these conditions will not normally be sufficiently severe to meet the high Article 3 threshold. Similarly where the risk of imprisonment is related to one of the five Refugee Convention grounds, a grant of asylum will not be appropriate. The information available does not suggest that particular groups of inmates are more at risk of such mistreatment than others. There is no evidence that the mistreatment is of such a systematic nature as to make removal a breach of Article 3 on these grounds.

3.10.6 Even where claimants can demonstrate a real risk of imprisonment on return to Moldova a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate unless the risk of imprisonment is related to one of the five Refugee Convention grounds in which case a grant of asylum will be appropriate. Such cases should be referred to a Senior Caseworker for consideration prior to a grant of Humanitarian Protection.

4. Discretionary Leave

4.1 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See API on Discretionary Leave)

4.2 With particular reference to Moldova the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other

[38] COIS Moldova CR March 2006 (para 5.57)
[39] COIS Moldova CR March 2006 (paras 5.58 - 5.59 & 5.62)
[40] COIS Moldova CR March 2006 (para 5.60)

specific circumstances not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave.

4.3 Minors claiming in their own right

4.3.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place in Moldova.

4.3.2 Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted 12 months Discretionary Leave, or leave to their 18th birthday, whichever is the shorter period.

4.4 Medical treatment

4.4.1 Claimants may claim they cannot return to Moldova due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

4.4.2 The health care system consists of three tiers: primary, secondary, and tertiary care. The Primary Health Care sector has seen significant reform since 1996 and is now based on general practitioners called family doctors (FDs). Secondary care is provided by general hospitals. The former district hospitals were scaled down to an average of 215 beds and to 4-5 basic specialities, whereas the central judet hospitals (with 550 beds on average) provide a broader range of specialties and serve as referral institutions at the judet level.[41]

4.4.3 The health system's overall performance is widely perceived to be inadequate to meet the population's needs. The level of available finance is low and the economic burden on individuals is unfairly distributed, making access to care difficult for the poor. However, resources are often used irrationally within the health sector. Hospitals continue to consume the majority of health resources, with 40-50% of available funds being spent on utilities and not on patient care. The total number of hospital beds has decreased more than two fold since 1991; however, this was mostly the result of closing rural hospitals and was not specifically planned to address the issue of the secondary care infrastructure as such. Many hospitals operate at less than half of their operational capacity. There is an acute shortage of drugs at in-patient facilities; most hospitals possess only few very basic centrally purchased drugs and small quantities of donated medicines. Technologies are outdated even in tertiary care institutions. Together with the absence of standard treatment protocols, these issues result in serious concerns about the quality of care. Over-capacity and the significant duplication of hospital services persist in Chisinau. A lack of human resource planning has resulted in an excess of professionals in certain disciplines and in urban areas, but a shortage of generalists in many rural communities.[42]

4.4.4 The response to the HIV/AIDS epidemic in Moldova is problematic. The government is struggling with serious financial problems in some public sector services, including the health sector, but it is strongly committed to fighting the spread of the HIV/AIDS epidemic. Moldova has developed and approved a National Strategic Framework for 2001–2005; put into effect harm reduction programmes both for injecting drug users and

[41] COIS Moldova CR March 2006 (para 5.84)
[42] COIS Moldova CR March 2006 (para 5.85)

for prisons; approved a palliative care strategy for people living with HIV; and opted for methadone maintenance programmes.[43]

4.4.5 Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of discretionary leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

5.1 Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Returns are to the capital Chisinau.

5.2 Moldovan nationals may return voluntarily to any region of Moldova at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Moldova. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Moldovan nationals wishing to avail themselves of this opportunity for assisted return to Moldova should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org.

6. List of source documents

- Council of Europe Commission/OSCE-ODIHR 'Stability Pact for South Eastern Europe' January 2002
- Council of Europe: Joint Programmes - Logframes and Activities: Roma II, 17 February 2003 – 16 May 2005. http://jp.coe.int/CEAD/JP/Default.asp?SA=1&ProjectObjectiveID=67
- Freedom House: Freedom in the World Report 2005: Moldova at: http://www.freedomhouse.org/template.cfm?page=22&year=2005&country=6792
- Transparency International Global Corruption Report 2002 at: http://www.transparency.org/publications/gcr/
- UK Home Office RDS-COI Service Moldova Country of Origin Information Report March 2006 at: http://www.homeoffice.gov.uk/rds/country_reports.html
- US Department of State Country Report on Human Rights Practices in 2005: Moldova 8 March 2006 at: http://www.state.gov/g/drl/rls/hrrpt/2005/61664.htm

Asylum and Appeals Policy Directorate
3 April 2006

[43] COIS Moldova CR March 2006 (para 5.87)