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Background information on the Situation in the Republic of Romania in the context of the Return of Asylum Seekers

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Introduction

1. In the interest of avoiding *refoulement* and orbit situations and promoting international co-operation for the protection of refugees, the return of applicants who have found or could have found protection in another country should take place in accordance with arrangements agreed among the States concerned, to determine which State is responsible for considering an application for asylum and for granting the protection required. Agreements providing for the return by States of persons who have entered their territory from another contracting State in an unlawful manner (readmission agreements) should not be used for this purpose unless they explicitly provide for the protection of refugees.¹ If nevertheless applied to asylum seekers, the application of such agreements should have due regard for their special situation.

2. UNHCR further considers that, in the absence of any formal agreement between States to this effect, the return of a refugee or an asylum-seeker to a country where he/she found or could have sought protection should not take place unless certain essential conditions relating to the person's safety and treatment in that country are met. UNHCR has identified some factors that should be carefully considered, in each individual case, when determining whether the return of a refugee or an asylum-seeker to a particular country should take place. These factors, which include both formal aspects and the practice of the State to which return is contemplated, are: observance of basic recognised human rights standards for the treatment of asylum-seekers and refugees, in particular the principle of *non-refoulement*; readiness to readmit returned asylum-seekers and refugees, consider their claims in a fair manner and provide effective and adequate protection, including treatment in accordance with basic human standards.

International Legal Framework

3. Romania ratified the 1951 Convention and the 1967 Protocol relating to the Status of Refugees on 7 August 1991. Romania is also a State Party to a number of international human rights instruments, including: the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of the Child; the Convention Against

¹ UNHCR notes that bilateral readmission agreements have become the main legal instruments for co-operation among European States to secure the readmission to a Contracting State of its nationals or permanent residents who have entered the territory of another Contracting State in an unlawful manner. However, these agreements do not specifically concern themselves with the special situation and circumstances of asylum-seekers and, as such, do not impose on the Contracting Parties an obligation to ensure that a request for asylum is received and examined by one of them.

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. At the regional level, Romania ratified on 20 June 1994 the European Convention for the Protection of Human Rights and Fundamental Freedoms and the eleven protocols thereto. Romania also ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on 4 October 1994 and the Framework Convention for the Protection of National Minorities on 11 May 1995.

4. Romania has concluded bilateral readmission agreements with the following countries: Austria (temporary protocol pending finalisation of agreement), Belgium, Czech Republic, Denmark (signed but not ratified), Finland (signed but not ratified), France, Germany, Greece, Hungary, India (signed but not ratified), Italy, Luxembourg, the Netherlands, Poland, Slovak Republic, Slovenia, Spain, Sweden and Switzerland. Negotiations are underway with Macedonia, Lebanon, Pakistan, Jordan and Egypt.² Readmission agreements with Sweden and Slovenia are being renegotiated. These agreements generally cover the readmission of two categories of persons present illegally on the territory of one of the Contracting Parties: 1) nationals; 2) third country nationals and stateless persons lawfully staying on the territory of one Contracting Party. In addition, most of these readmission agreements also provide for the admission to the territory of a Contracting Party for transit purposes in the case of third country nationals in another Contracting Party who are subject to measures of removal to their country of origin.

Domestic Refugee Legislation and Practice

5. Romania has taken a number of legislative and administrative implementing measures to accompany its ratification of the 1951 Convention and 1967 Protocol. The right of asylum is enshrined in the 1991 Constitution of Romania. Article 18 (2) of the Constitution reads: "The right of asylum is granted and withdrawn under the provisions of the law, in compliance with the international treaties and conventions Romania is a party to." According to Article 11 (2) of the Constitution, treaties ratified by Parliament are part of national law and, pursuant to Article 20 (2), international regulations take precedence over internal laws in the event of any inconsistencies between the internal laws and those pacts and treaties relating to fundamental human rights to which Romania is a State Party. In Article 19 (3), the Constitution guarantees that "expulsion and extradition shall be ruled by a court of law." Despite this constitutional development concerning expulsion, the 1969 Law relating to the Regime of Foreigners in the Socialist Republic of Romania, which *inter alia* confers authority on the Minister of Interior to issue an expulsion order against an alien, is still in force. The Draft Aliens Law, which has been debated since 1995, in its present form contains no express reference to refugees and asylum seekers to exclude these categories of the scope of the law. An indiscriminate application of aliens legislation could erode, nullify or violate asylum seekers' and refugees' rights. It was therefore recommended by UNHCR to explicitly exclude asylum seekers and refugees from the scope of the Aliens Law in order to ensure respect for international and national law, a recommendation which was unfortunately not taken into consideration by the Parliament so far.

² According to the Ministry of Interior, 24 November 1999.

6. Draft refugee legislation was initiated by the Ministry of the Interior at the end of 1991 and, after some modifications, adopted by Parliament in March 1996. It was promulgated on 2 April 1996 as Law No. 15/1996 relating to the Status and Regime of Refugees in Romania and entered into force on 5 May 1996. The Romanian Refugee Law provides for three categories of refugees which may conveniently be termed as "Convention" refugees (Article 1), "humanitarian" refugees (Article 2) and "war" refugees (Article 5). Under the Romanian Refugee Law, day-to-day responsibility for refugee matters, e.g. registration and processing of asylum claims, has been assigned to the Refugee Office within the Ministry of Interior's General Directorate of Border Police, Aliens, Migration Problems and Passports. The Refugee Law also establishes under Article 9 that the competence for interviewing refugee status claimants, examining the claims and rendering a decision at first instance lies with a Government-appointed Commission formed of representatives from the Ministries of Interior, Foreign Affairs and of Labour and Social Protection - the three main ministries involved in the Romanian Committee for Migration Problems (RCMP). According to Article 13 of the Law, appeal against a negative decision by the Commission may be filed with the court of first instance (*Judecatorie*) within ten days. The decision of the *Judecatorie* may be appealed to second instance (the county *Tribunal*) by the asylum-seeker or the prosecutor within five days.

7. UNHCR co-operated with the Government and Parliament of Romania throughout the process of drafting, revising and adopting the Refugee Law and many of the Office's comments regarding a number of problematic provisions of the Refugee Law were taken into account in the final version adopted by the Parliament. There remain however certain aspects of the Romanian Refugee Law which are not in conformity with international legal instruments for the protection of refugees. These include *inter alia* the provision in Article 22 which limits the duration of refugee status to three years, with the possibility of an extension for up to a maximum of another two years if the refugee proves once again that he/she still meets the definition criteria in the Refugee Law. In practice, the Decision Commission has extended the period for another two years in accordance with the 1951 Convention and the Constitution art. 20, par. 2 upon verification in each case submitted. It is also cause for serious concern that under the Refugee Law the principle of *non-refoulement* applies to recognised refugees only. The Refugee Law makes no express reference anywhere to protection against *refoulement* in the case of asylum-seekers.

8. Article 4 of the Romanian Refugee Law which sets out grounds for exclusion from refugee status certain categories of persons far exceeds the exclusion clauses exhaustively enumerated in Articles 1 D, E and F of the 1951 Convention. For example, in the case of serious non-political crimes whereas the 1951 Convention excludes from refugee status only persons who have committed such crimes outside the country of refuge prior to their admission in that country, the Romanian Refugee Law also excludes from refugee status under Article 4 (b) persons who have committed any offence on the territory of Romania "for which the law provides a punishment of more than three years of imprisonment." Such an offence may include, for example, illegal crossing of the Romanian border which is punishable by varying terms of imprisonment ranging from three months to seven years under the Law concerning the Frontier of the Romanian State (Law no. 56/1992). Also excluded from refugee status under Article 4 (c) of the Romanian Refugee Law are persons who have "committed deeds

which are contrary to... international treaties and conventions concerning refugees and to which Romania is a Party."

9. In addition to the exclusion clauses provided for under Article 4, the Romanian Refugee Law in Article 10 imposes on applicants for refugee status a number of obligations the non-compliance of which can lead to an automatic rejection of an application pursuant to Article 11 (e) of the Law. Thus, refugee status can automatically be denied to, for example, an asylum-seeker who does not have "...a correct and civilised conduct..." or who does not "... obey the laws of the Romanian State or the measures established by the Romanian organs having competence in refugee matters." It is likewise in the case of an asylum-seeker who does not "...hand over the document used for crossing the border..." or who does not "...present himself for the medical examination established for him." All the same, leaving one's place of residence without authorisation is considered under the Romanian Refugee Law reason sufficient enough to automatically reject an asylum application. UNHCR is of the view that any one of these "transgressions" cannot in itself vitiate a refugee's well-founded fear of being persecuted in his/her country of origin. Cases of actual application of the obligations in Article 10 are not known to UNHCR.

10. Under Article 6 of the Romanian Refugee Law an asylum-seeker must apply for refugee status within maximum ten days of his/her entry into Romania or before expiry of valid visa. In internal instructions issued by the Ministry of Interior in August 1999 in par. 11 it is stipulated that the time limit may be derogated by the Decision Commission depending on the prevailing situation in the country of origin and the specific circumstances of the case. In an effort to assure respect for all international obligations concerning the principle of non-refoulement, the Refugee Office has so far processed claims even if an individual has stayed illegally in the country for a longer period. However, previous stay in a longer period during which the individual did not seek protection has been used as an argument of rejection to sustain lack of credibility and lack of real need of international protection.

11. UNHCR is also concerned about another provision of Article 6 which automatically bars from access to the territory of Romania undocumented asylum-seekers who do not "arrive directly" from a country where their life or liberty is threatened for any one of the refugee definition reasons contained in Article 1 of the Refugee Law. As such article 6 of the Romanian Refugee Law appears to incorporate into the legislation the notion of "safe third country" without expressly mentioning it or giving any indication as to the scope of its application. The Refugee Law implementation regulations issued by the Government on 13 November 1996 as Government Decision No. 1182 interpret "direct arrival" as including situations where the asylum-seeker "transits third countries which are not signatory to international conventions relating to the status of refugees" or where the asylum-seeker "was unable to claim refugee status on the territories of transited countries owing to reasons not imputable to him/her." As far as its application in practice is concerned, the "direct arrival" provision of Article 6 does not seem to be applied. Undocumented asylum applicants who file their claim directly to the border authorities upon arrival e.g. in Otopeni Airport are not admitted to the territory but detained until a final decision is reached on their claim regardless of the route of travel and the fact that most countries surrounding Romania through which they may have transited are not "safe third countries". According to the above mentioned internal instructions the decision to grant access to the territory belongs to

the Refugee Office upon the request from the Border Police. If asylum seekers applying from the border point are not granted access to the territory, they would need to remain there pending the outcome of the asylum procedure. However, the border points are hardly equipped with the infrastructures needed to that effect.

12. Apart from the incompatibility of a number of the provisions of the Romanian Refugee Law with international refugee instruments and other recognised international standards, UNHCR notes many lacunae in the implementation of those safeguards stipulated in the Law. For example, access to the Romanian territory and to the refugee status determination procedure is not always ensured and there have been cases, albeit limited, of direct or indirect *refoulement*. Especially in the case of asylum applications at the border the determining factor in ensuring respect for the principle of *non-refoulement* appears in many cases to be the goodwill of the border police, who often make decisions more on a discretionary basis than by employing internal instructions issued both in August 1998 and 1999 concerning the reception of asylum claims.

13. The problem of admission (or readmission) of asylum-seekers arriving at Otopeni Airport, Romania's main international airport just outside Bucharest, is of particularly serious concern. Often asylum-seekers are detained in the transit zone of Otopeni Airport between one and five months pending final decision on the asylum claim, although the Constitution of Romania sets the maximum term for any detention at twenty-four hours. As far as UNHCR is aware, the only instruments governing the detention of asylum-seekers in the transit zone of Otopeni Airport is an unpublished circular of the Ministry of Interior. In addition, the Refugee Law confers authority to the territorial unit of the General Directorate of Border Police, Aliens, Migration Problems and Passports to establish the place of residence of an asylum seeker for reasons justified by the public interest, protection of national security, public safety, maintenance of public order, protection of public health and morality, protection of the rights and liberty of other persons. However, it is recalled in this respect that the European Court of Human Rights found, in the *Amuur vs. France* case, that holding asylum-seekers in a so-called "international zone", which does not have extraterritorial status, may amount to deprivation of liberty and to this end the rule governing such deprivation must have the character of law. Moreover, the court ruled that prolongation of a decision to hold individuals requires speedy review by the courts. This requirement is not met by above mentioned provision of the Refugee Law which does not stipulate any time limits or other legal safeguard to holding in an "established residence".

14. The only accommodation currently available in the transit zone is a two-room facility where men, women and children are sometimes kept together and according to information available to UNHCR food is given irregularly. Since June 1998 many detainees held in the transit zone have had to obtain their own food. Basic health care service is provided but medication is only given against payment. The inadequacy or lack of accommodation and social assistance cause undue hardship to asylum-seekers held in the transit zone for unreasonably prolonged periods. A recent development is that of an agreement about to be signed among UNHCR, the Ministry of Interior and the Ministry of Transportation concerning access to legal counselling for asylum seekers held in the transit zone. The agreement is being implemented in practice offering the possibility for asylum seekers to receive legal assistance once a week.

Moreover, it is expected that asylum seekers will have access to a telephone to contact UNHCR and NGOs and have access to information material on the asylum procedure translated into several languages. The holding facilities for asylum-seekers and other foreigners in the transit zone of Otopeni Airport was one of the detention areas visited by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment when it carried out its initial visit to Romania from 24 September 1994 to 6 October 1995. The facilities were also visited by the UN Working Group on Arbitrary Detention when on mission in Romania from 28 September to 2 October 1998 and again by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in January 1999.

15. A new detention facility opened in January 1999 close to Otopeni Airport. It will have a capacity of app. 100 persons when the rehabilitation of the building will be entirely completed. While living conditions are appropriate and medical care assured on a regular basis, the detention facility is closed and visitors are allowed only upon prior permission from the central authorities of the Aliens Directorate. The detainees are confined to the detention rooms and have currently no access to any recreational activities. The detainees receive legal assistance from an NGO visiting the centre on a weekly basis. Some detainees transferred there have been held for prolonged periods, in one case seven months. The facility was visited by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in January 1999.

16. Asylum-seekers who are held in the above mentioned detention centres thus subjected to a deprivation of liberty do not benefit from the Constitutional guarantees that "any person detained ... shall be promptly informed, in a language he understands, of the grounds for his detention ... and that notification of the charges against him shall be made only in the presence of a lawyer..." Nor are they informed about the practical steps they have to take in order to request refugee status in Romania if they have a well-founded fear of persecution if returned to their country of origin.

17. Romania's refugee status determination procedure has seen important improvements since the Ministry of Interior was charged in November 1995 with the task of co-ordinating the Romanian Committee for Migration Problems. Among the improvements made is the fact that an asylum-seeker in the territory of Romania can now file his/her application for refugee status within a few days as opposed to the two to three months waiting period that was the general norm until the end of 1995. In addition, registration of asylum-seekers is no longer confined to Bucharest as applicants can address themselves to any provincial Passport or Border Police Directorate although they still have to come to Bucharest to be interviewed and proceed with all other formalities. Asylum seekers who file applications from detention centers are interviewed in the centers. The interviewing procedure has seen some improvements, but there are a number of shortcomings. Most importantly, the legislated requirement under Article 9 of the Romanian Refugee Law for one single authority - the inter-ministerial Commission - to have the exclusive jurisdiction for both interviewing applicants for refugee status and deciding on the applications at first instance has been ignored.

18. In contradiction to Article 9 of the Refugee Law, therefore, the task of interviewing applicants and examining their claims has been contracted out to the Refugee Of-

fice of the Ministry of Interior, with the Commission merely rendering decisions without any contact with the applicant. Interviewing by the Refugee Office was justified by the authorities as being necessary since the three-member Commission sits only once a week for three hours in a situation where some 100 applications for refugee status are registered every month. Although the motivations of the decisions have improved, there is still a need to provide sufficient substantive reasons for the rejection outlining the refugee definition grounds upon which the claim is based and the findings of fact drawn from the evidence and arguments presented in support of the case, as well as clearly identifying the issues and the relevant points of law upon which the claim was assessed and decided on. Since the Refugee Law came into effect in May 1996, out of 4,312 asylum applicants 1,004 were granted refugee status.

19. UNHCR's essential conclusion in respect to Romania's refugee status determination procedure is that there is still a need to reconceive a wide range of policies and practices in order to ensure compliance with internationally recognised standards. Decisive measures have to be taken to remove the existing barriers to the efficient functioning of the refugee status determination procedure, especially measures for the establishment of rules of procedure, code of conduct and a system of accountability for the inter-ministerial Commission statutorily mandated to interview applicants for refugee status and decide on their applications. It should be ensured that the refugee status determination process, which by its very nature should take the form of an inquisitorial adjudication, is led by informed, expert and impartial decision-makers familiar with juristic work environment in which all relevant issues are examined in terms of their relationship to the promotion of core legal values.

Living Conditions of Asylum-seekers and Refugees

20. UNHCR considers that the level of State benefits granted to refugees and asylum-seekers should at a minimum correspond to the general standard of living in Romania. Refugees and asylum-seekers in Romania receive at present material support for their minimal upkeep from the Government of Romania in accordance with the provisions of the Refugee Law. However, it should be noted that the financial assistance is granted to refugees as reimbursable loans and only granted for a period of six months, in exceptional circumstances up to nine months. According to the Romanian Refugee Law, the amount is equal to the official minimum salary per month. However, Government ordinance no. 47 of 2 September 1997 amended the Law by stipulating the amount to 172,500 Lei per month to be indexed according to the rate applied to national wage increases. In November 1999, the amount was app. 280,000 Lei or considerably lower than the official minimum salary. The provisions of the Refugee Law concerning reception of asylum seekers have been implemented so far with the opening of a Government-run accommodation centre in May 1999 in the outskirts of Bucharest.

22. The Government of Romania does not have as of yet any policy or program for the integration of persons it recognises as refugees. Refugees are entitled by law to enjoy certain basic social and economic rights as may help them integrate into Romanian society, but they are confronted with a number of practical obstacles to exercising these rights. For example, refugees have the right to work, but they hardly have a chance to find employment without sufficient knowledge of the Romanian language.

There are no language courses organised by the Government, nor are there vocational training or qualification/re-qualification programs to help refugees acquire and develop specific job skills tailored to existing labour demands. Where employment opportunities are available, the income levels often do not allow refugees to meet their basic needs largely due to lack of possibilities to have access to State-subsidised or other affordable housing. Although in accordance with Article 23 of the 1951 Convention domestic legislation guarantees access of refugees to such public relief as social security and child allowance under the same conditions as Romanian citizens, this has not materialised in practice. Prospects for integration of refugee children in the long-term are also uncertain given that under the Romanian Refugee Law free access of refugees to public school is limited to primary education only which in Romania consists of four years of school. In practice however, refugee children have had free access to secondary education, i.e. on condition of passing the same exams as Romanian children. Access to university education is in general conditional to paying tuition fees under the same conditions as foreign students, app. 300 USD per month.

23. Given the budgetary austerity Romania has been experiencing in its transition to the market economy, UNHCR has repeatedly stressed the need for material and technical assistance program of European institutions in order to establish efficient systems and structures for the reception of asylum-seekers and processing of their applications and the local integration of those recognised refugees for whom voluntary repatriation is impossible. To this end, the Ministry of Interior submitted in 1999 project proposals under the PHARE National Programme to improve the asylum system in Romania. However, with the lack of sufficient Government measures for the care and support of asylum-seekers and for assisting recognised refugees to find long-term durable solution by way of local integration, large numbers of refugees and asylum-seekers have felt impelled to move in an irregular manner from Romania to seek better opportunities elsewhere. Although no official statistics are available on how many of both asylum seekers and recognised refugees have moved irregularly from Romania, UNHCR estimates are at around 50-60 per cent.

Conclusion

23. UNHCR recognises the many other pressing priorities currently facing the Romanian Government. In the face of the enormous social and economic difficulties inherent in a restructuring process, effective management of the refugee problem is not an easy task. The situation in Romania, as elsewhere in Central Europe, is further complicated by the fact that many asylum-seekers do not necessarily wish to apply for refugee status in Romania and they do so only when confronted with the risk of deportation. UNHCR also shares the preoccupation of Romania over the increase in illegal migration, but at the same time the Office is concerned that measures intended to curb illegal migration are frequently applied indiscriminately with the consequence that refugees and asylum-seekers are denied the rights and protection which they should enjoy under international and domestic refugee instruments.

24. A fair, efficient and accessible refugee status determination procedure is the best mechanism which guarantees respect for the principle of *non-refoulement* thereby ensuring that international legal obligations are fulfilled. Romania has taken a number of legislative and administrative initiatives to this end, and UNHCR endeavours to in-

crease its advisory services and support to further enhance the Government's institution and capacity-building efforts to ensure an adequately functioning asylum system with all its essential components ranging from registration procedures and reception facilities to refugee status determination process and integration structures. These efforts should, as a matter of course, be seen in the overall context of the ongoing process of democratic change and legal/administrative reforms.

25. With respect to the return of asylum-seekers or refugees to Romania on the basis of their transit or stay there, UNHCR would, in view of the above considerations, strongly recommend that States carrying out returns whether under a bilateral readmission agreement or any other return arrangements should seek and obtain from the Romanian authorities unconditional assurances that they agree

- to readmit the persons in question to the territory and the refugee status determination procedure;
- to provide adequate protection, in particular against refoulement during the refugee status determination procedure;
- to refrain from applying during the refugee status determination exclusion clauses which are not enshrined in the 1951 Convention Relating to the Status of Refugees;
- to apply the international non-refoulement provisions also to persons who are rejected because of the Safe Third Country concept;
- to treat the persons in question in accordance with basic human standards, in particular to avoid unjustified and unduly prolonged periods of detention in transit zones or elsewhere.

26. In addition to obtaining the above assurances from the Romanian authorities, returning States should also inform the asylum-seeker of his/her right to apply for refugee status in Romania and of the practical steps he/she should take to exercise such right immediately upon return to Romania. In this context UNHCR also recommends that the asylum seeker or refugee is informed of the possibilities to contact UNHCR Branch Office in Bucharest.

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