Flygtningenævnets baggrundsmateriale

Bilagsnr.:	**56**
Land:	Moldavien
Kilde:	British Home Office
Titel:	”Operation Guidance Notes”
Udgivet:	Juni 2005
Optaget på baggrundsmaterialet:	6. oktober 2005

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Moldova

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 province. It must be read in conjunction with any CIPU Moldova bulletins.

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 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 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 Where numbers have been cited at the end of paragraphs, these refer to source documents are listed at the end of this note.
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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][2a][2b]

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. [1][2a][2b]

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. [1][2a][2b]

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. [1][2b]

2.5 According to the US Department of State's Country Report on Human Rights Practices (USSD) covering 2004 and the Foreign Office Country Profile (FOCP) of April 2005, the Government generally respected the human rights of its citizens and has achieved a creditable human rights record. [1][3] However, there were problems in some areas, particularly allegations ill treatment of suspects and prisoners by police officers. The levels of corruption within the police and other areas of public life are also a concern. [3] The human rights record of the Transnistrian authorities was poor. Political and linguistic rights and freedom of expression in the secessionist region are curtailed. [1][3]

2.6 The USSD stated that citizens generally had the right to change their government; however, authorities expanded their selective use of power to harass and intimidate sources of political opposition. [1] The OSCE concluded that the March 2005 general elections generally complied with international standards but fell short in some areas; primarily concerning unequal campaign conditions and constrained media coverage. [2c][3] The Constitution provides for an independent judiciary; however, judges were reportedly subject to outside influence and corruption. [1]

2.7 As reflected by the USSD, and most recent country reports by Amnesty International (AI) and Freedom House (FH), the authorities reportedly tortured and beat some persons, particularly persons in police custody and Roma. Prison conditions remained exceptionally poor, and attempts to improve them were hampered by lack of funding. Security forces were widely believed to monitor political figures and, at times, conducted illegal searches. Corruption was believed to be pervasive throughout the Government. This belief was reflected in numerous public opinion polls and widely reported by NGOs. Although the Government has acknowledged corruption to be a problem and formed special law enforcement and judicial units to combat it, some critics have charged that the Government used these units to persecute political opponents. [1][4][5]

2.8 The law provides for freedom of speech and of the press; however, the Government sometimes restricted these rights. The Government selectively applied the electoral law and the Civil Code against critics and intimidated some journalists into practising self-censorship. [1] According to FH, although the constitution prohibits censorship, nearly 500 journalists and media workers at the state-owned TeleRadio Moldova held demonstrations in March 2002 to protest alleged censorship and demand greater media independence. Under an agreement with the Council of Europe, the government subsequently passed legislation transferring state control of TeleRadio Moldova to an independent corporation. In March 2004, the new Law on Combating Extremism went into effect. Critics believe it may strengthen the government's ability to limit freedom of expression, although by late in the year no actions had been taken under the law. [4] The Constitution provides for freedom of assembly and the Government generally respects this right in practice. [1]

2.8 The Constitution provides for freedom of religion, and the Government generally respected this right in practice; however, the law includes restrictions that inhibit the activities of some religious groups. A few religious groups continued to encounter difficulties in officially registering. [1][4] According to FH, a number of groups, including the Church of True Orthodox-Moldova, the Church of Jesus Christ of Latter Day Saints (Mormons), and a local Muslim organisation have faced

Christ of Latter Day Saints (Mormons), and a local Muslim organisation have faced difficulties in recent years in dealing with the government bureaucracy. Nondenominational "moral and spiritual" instruction is mandatory in primary schools and is optional for secondary and university students. Restitution of church properties confiscated during the Communist era remains a problem. [4] The Constitution and law provide for free movement; foreign travel, emigration and repatriation, and the Government generally respects them in practice; however, Transnistrian authorities sometimes restricts travel to and from the separatist region. [1]

2.9 As reflected by the USSD, AI and FH, in Transnistria, the right of citizens to change their government was severely restricted. Transnistrian authorities reportedly continued to use torture and arbitrary arrest and detention. Prison conditions in Transnistria remained harsh. Human rights groups were permitted to visit prisoners in Transnistria, but obtaining permission from the Transnistrian authorities was difficult. Transnistrian authorities mistreated and arrested one journalist from the government-controlled area, harassed independent media and opposition lawmakers, restricted freedom of association and of religion, and discriminated against Romanian-speakers. [1][4][5]

2.10 According to FH, there are no official restrictions on women's rights in Moldova, although they are considerably under-represented in public life. Domestic violence against women is believed by human rights groups to be widespread. Trafficking in women and girls is an exceptionally important problem. Although the law prohibits trafficking in human beings, the country's poverty makes young women, especially from poor rural areas, vulnerable to promises made by traffickers for jobs in Western Europe. Moldova remains a major source for women and girls trafficked to other countries for purposes of forced prostitution. [4]

2.11 Moldova is one of Europe's most impoverished countries. Official unemployment hovers around 30%. By the government's own estimates, some 80% of the population subsists on less than the officially designated minimum. 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. [4] 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. [9] (p 45)

IAT Determinations: Ursu [2002] UKIAT02495 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

2.12 According to the USSD and highlighted by FH, ethnic minorities make up 30% of the population. Ukrainians and Russians are the two largest minorities. A Christian Turkic minority, the Gagauz, makes up a small percentage of the population and live primarily in the south of the country. Official statistics put the number of Roma at 11,600; however, the OSCE and Romani NGOs have estimated the number of Roma at 20,000 to 200,000. Roma suffered violence, harassment, and discrimination. There were reports of governmental and societal discrimination based on sexual orientation. [1][4]

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 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 flight 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 claim 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 applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant 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 Also, this guidance does not generally provide information on whether or not a person should be excluded from the Refugee Convention or from Humanitarian Protection or Discretionary Leave. (See API on Humanitarian Protection and API on Exclusion under Article 1F or 33(2) and API on DL)

All APIs can be accessed via the IND website.

3.6 Roma

3.6.1 A significant proportion of applicants will claim asylum based on their experience of societal discrimination amounting to persecution due to their Roma ethnicity.

3.6.2 Treatment. Official statistics put the number of Roma at 11,600; however, the OSCE and Romani NGOs have estimated the number of Roma at 20,000 to 200,000. The US Department of State Report on Human Rights Practices covering 2004 (USSD) reported that Roma continued to suffer from societal violence, harassment, and discrimination during the year. In 2004, local and international NGOs reported that Roma were victims of police beatings in custody, arbitrary arrest and detention, unlawful confiscation of personal property, harassment by law enforcement officials, and were subjected to societal violence and harassment. The European Roma Rights Centre (ERRC) reported that officials discriminated against Roma with regard to housing, education, and access to public services. [1]

3.6.3 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. [8]

3.6.4 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. [10]

3.6.5 Sufficiency of protection. According to the USSD, 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. [1] There is no evidence to suggest that Roma cannot seek and receive adequate protection from these authorities. 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.

3.6.6 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. Internal relocation is therefore possible in any circumstances where it is necessary.

3.6.7 Conclusion. Whilst the Roma minority in Moldova suffers from some degree of discrimination in the community and may be subject to racially motivated attacks they will not have encountered ill treatment amounting to persecution. The grant of asylum will not be appropriate and the claims likely to be clearly unfounded.

3.7 Members of opposition political parties and groups

3.7.1 Many applicants will claim asylum based on ill treatment amounting to persecution at the hands of the authorities due to their membership of, affiliation with and/or activism for a political opposition party or group.

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. [1]

3.7.3 Moldova is dominated by ethnic Romanians and is historically a Romanian territory, although the Transnistria region was not historically part of a Romanian territory. Some political organisations in Moldova have sought re-unification with Romania. However, Moldova?s constitution explicitly forbids the formation of political parties that seek to adjust the borders of Moldova or incorporate it into another state. This has led some nationalists seeking re-unification to allege persecution. However this legislation is not enforced in practice and there is no evidence that membership of such organisations would in itself lead to persecution. [6]

3.7.4 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%). [2c] 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. [7]

3.7.5 Sufficiency of protection. As this category of applicants' 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.

3.7.6 Internal relocation. As this category of applicants' 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.

3.7.7 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 applicants will 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. There are credible reports that ethnic Moldovans have experienced some discrimination in the separatist region of Transnistria. 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. [1] A dispute over closures of Moldovan-language schools in Trans-Dniester 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. [2a][2b]

3.8.4 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.

3.8.5 Internal relocation. According to the USSD covering 2004, the Constitution and law provide for freedom of movement and the Government generally respected them in practice; 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 and hindered movement by representatives of the OSCE and UN agencies on several occasions. 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. [1] 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.

3.8.6 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 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 Prison conditions

3.9.1 Applicants may claim 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.

3.9.2 Consideration. According to the USSD 2004, conditions in most prisons in the country and in Transnistria remained harsh, and in some instances were life threatening, with serious overcrowding. Male and female prisoners were held separately. Children convicted of crimes were sent to adult prisons, where they were held in separate cells. Pretrial detainees were held separately from convicted prisoners, although there were reports of convicted prisoners remaining in detention facilities due to prison overcrowding. [1]

3.9.3 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 sanitary

facilities. Local NGOs continued programs to provide medicine, warm clothes, and radios for prisoners, and the Institute of Penal Reforms continued a training program for prison staff. [1]

3.9.4 Government and independent human rights observers were generally permitted to visit prisons. The Moldovan Centre for Human Rights made regular prison visits during the year. The Government co-operated with the International Committee of the Red Cross (ICRC) and permitted visits to prisoners. After repeated attempts to receive permission from the Transnistrian authorities to visit the Ilascu group members, ICRC was allowed to see the prisoners for the first time in August 2003. In April 2004, a second official visit took place. [1]

3.9.5 Conclusion. Whilst prison conditions in Moldova are poor with cell sizes not meeting local or international standard and a high incidence of disease and illness amongst prisoners being particular problems these conditions are unlikely to reach the minimum level of severity required to reach the Article 3 threshold. Therefore 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, such as the seriousness or nature of the offence, the likely length of detention and the likely type of detention facility. These will need to be taken into account along with an individual's personal characteristics such as their age, gender and state of health. Individual cases, where the claimant demonstrates a real risk of imprisonment for a substantial period of time upon return, or where the claimant demonstrates a particular likelihood of ill-treatment, will need to be considered together with any personal characteristics which make the individual particularly vulnerable. Where taken together all these factors amount to a breach of Article 3 a grant of Humanitarian Protection will be appropriate. Where the real risk of imprisonment is related to one of the five Refugee Convention grounds a grant of asylum will be appropriate.

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

4.3 Unaccompanied minors

4.3.1 The policy on unaccompanied minors is set out in the API on Children. Unaccompanied minors who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception arrangements in place in Moldova.

4.3.2 Unaccompanied minors without a family to return to, or where there are no adequate reception 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 Applicants 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 to be engaged.

4.4.2 Moldova's health care system is relatively basic and cannot currently provide satisfactory treatment for all medical conditions. However, the range of treatments and medications available is constantly developing.

4.4.3 Where a caseworker considers that the circumstances of the individual

4.4.3 Where a caseworker considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 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 Returns are to the capital Chisinau. 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.

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.

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