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Legal Aspects of Labour Migration Governance in the Republic of Moldova

Tatiana Ciumas

CARIM-East Research Report 2012/22



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CARIM-East
Creating an Observatory of Migration East of Europe

Research Report
CARIM-East RR 2012/22

Legal Aspects of Labour Migration Governance
in the Republic of Moldova

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CARIM-East – Creating an Observatory East of Europe

This project which is co-financed by the European Union is the first migration observatory focused on the Eastern Neighbourhood of the European Union and covers all countries of the Eastern Partnership initiative (Belarus, Ukraine, the Republic of Moldova, Georgia, Armenia and Azerbaijan) and Russian Federation.

The project's two main themes are:

- (1) migration from the region to the European Union (EU) focusing in particular on countries of emigration and transit on the EU's eastern border; and
- (2) intraregional migration in the post-Soviet space.

The project started on 1 April 2011 as a joint initiative of the European University Institute (EUI), Florence, Italy (the lead institution), and the Centre of Migration Research (CMR) at the University of Warsaw, Poland (the partner institution).

CARIM researchers undertake comprehensive and policy-oriented analyses of very diverse aspects of human mobility and related labour market developments east of the EU and discuss their likely impacts on the fast evolving socio-economic fabric of the six Eastern Partners and Russia, as well as that of the European Union.

In particular, CARIM-East:

- builds a broad network of national experts from the region representing all principal disciplines focused on human migration, labour mobility and national development issues (e.g. demography, law, economics, sociology, political science).
- develops a comprehensive database to monitor migration stocks and flows in the region, relevant legislative developments and national policy initiatives;
- undertakes, jointly with researchers from the region, systematic and *ad hoc* studies of emerging migration issues at regional and national levels.
- provides opportunities for scholars from the region to participate in workshops organized by the EUI and CMR, including academic exchange opportunities for PhD candidates;
- provides forums for national and international experts to interact with policymakers and other stakeholders in the countries concerned.

Results of the above activities are made available for public consultation through the website of the project: <http://www.carim-east.eu/>

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I. Introduction

Until Moldova gained its independence in the 1990s migration was not a common phenomenon, and the idea that people would leave the country for a better life or for family reunification or, for studies was unknown. After independence the state faced different problems like the Transnistrian conflict, the need to develop its own social-economic system and inflation, combined with the desire to affirm the name of the Republic of Moldova at the international level. Thus started the process of acceding to different international and regional organizations: Moldova acceded to many international instruments. The main interest was, of course, to protect the Moldovan people but the population itself – with the ending of borders restrictions, and the Constitution’s proclamation that they had the right to leave the country – went out and began to explore the unknown.

The Republic also faced in the 1990s high unemployment. “Unemployment, unfortunately, is one of components attendant to the transition economy. This new, for post-soviet countries, phenomenon was mainly caused by two circumstances: firstly, an abrupt decline in economic activity (first half of the 90s) and, later, a stable depression of the economy accompanied by certain structural changes in industry (privatization of state property and a restructuring of enterprises, including bankruptcy procedures), in agriculture (land reform and formation of new types of agri-enterprises), in the services sphere – with a complete change in how in the private sector, small and medium business are run. As a result of these difficult processes, labor market based on supply and demand and on competition took the place of the “complete employment” of the planned economy. As in other countries in transition, in Moldova the number of officially registered unemployed are comparatively small: about 10,000 in 1993 and 34,000 in 2000 (0.7 % and 1.9% of the total economically-active population).”¹

At the same time after the dissolution of the USSR people from other countries started to move into neighboring territories or some of the persons that were born in, for example Armenia, Azerbaijan, Uzbekistan etc., remained in Moldova, and some of them are still here illegally today.

According to the National Bureau of Statistics, in 1993, 84 persons came to Moldova for work, 637 for studies, and 1048 for family reunification. In 2000 there were 290 persons for family reunification, 740 for studies and 291 for work. In 2010, 813 came for work, 794 for studies and 905 for family reunification. As for emigration, in 2001, 6446 Moldovans officially emigrated and, in 2010, 4,714. These are the official figures but according to the reports of the International Organization for Migration and International Organization for Labor the reality is quite different and prior to 2011 more than a million citizens left Moldova. The countries of destination vary and, depending on the socio-economic situation, the profile of these countries changes. If ten years ago citizens preferred countries like Italy, Portugal, Spain, Greece, Israel now Sweden, France, Norway and the Czech Republic are favoured. Those leaving Moldova are, today, the younger generation, and we see the so-called brain drain: these individuals are following different courses, are attending universities and, if asked about their desire to return home, few say that they intend to and if they return it is only because they have not found a place abroad. Both phenomena are present in Moldovan emigration and immigration and state policy at the moment involves trying to promote activities which will transform Moldova into an attractive destination; one which will create conditions for the return of citizens. In 2011, there were 1257,5 (thousand pers.) active population, out of which only 1173, 5 (thousand pers.) were employed. The active population represents, from the economic point of view, the total number of available labor force for the production of goods and services in 2011, including those who are employed and those who are unemployed.

The present study will look at the legal aspects of immigration and emigration employing:

¹ Center for Strategic Studies and Reforms, Unemployment in Moldova, Chisinau, October 2001.

- International/regional agreements;
- Bilateral agreements signed by the Republic of Moldova;
- The legal framework of the Republic of Moldova (Laws and Decisions adopted by the Parliament, Government Decisions and Disposals);
- Best practices of EU Member States;
- Information provided by different public authorities and NGOs;
- Reports.

Also to better evaluate migration issues interviews were conducted with representatives of the courts of the first level and of the Supreme Court of Justice and also with foreigners and a representative of a legal entity regarding the documentation of immigrants.

The main goal of the study is to evaluate the present situation and to recommend improvements in the legal framework. Migration is a continuous process and is determined by political, social, economic and demographic factors. It is not a process that can be stopped by a simple decision; it can be redirected, developed and “used” for gaining benefits. At the same time, the updating of the legal framework in Moldova was directly connected to state policy, the decisions of the ruling party and the political life of the state in general.

In 1990-2011, 3 laws were adopted which regulated the migration process. The first Law on migration, of 1990, was adopted in the context of:

- political changes at the national level (the state language changed to using Latin script, Declaration of Sovereignty², independence of the Republic, 27 August 1991) and the collapse of the Soviet Union;
- a lack of sufficient knowledge on migration standards;
- a desire to create a national legal framework, different from the one imposed from above (USSR standards).

The main goal of the law was “to lead and regulate the immigration and emigration processes of the population on the territory of the republic”. Migration was divided into: family migration, labor migration, migration relating to education and special migration. Labor migration was seen as a way of using the labor force and pendular migration was seen as a special form of labor migration for the populations living in the cross border zones of the republic. In 2001 the State Migration Service was created, later on it would be called the Migration Department. The Law on migration was modified several times, but its main content never changed. The Law did not cover all the issues and did not respond to the evolution of socio-economic changes. In this context we must mention the National Strategy for the social-economic development of the Republic of Moldova, which was approved in 2001 through a Government Decision, and which determined the adoption of a new Law on migration 6 December 2002. The new Law was a progressive one. Migration was seen as a territorial permutation of persons, accompanied by a change in living place. Labor migration was seen as the voluntary departure of citizens of the Republic of Moldova abroad, as well as the voluntary entry of foreign citizens or stateless persons into the Republic of Moldova with a view to performing labor activity. Foreigners can perform a labor activity based on a work permit that confirms this right and that is issued by the responsible authority (National Bureau of Migration). Starting with 2008 labor migration was regulated by a special Law on labor migration thus the complexity of this domain is recognized. The main features of the new order: the Law preserves the same definition of labor migration as in 2002; the responsibilities on regulating labor migration are divided between the Bureau of Migration and Asylum under the Ministry of Interior and the National Agency of Employment

² Adopted through Law No. 691 of 27 August 1991.

under the Ministry of Labor, Social Protection and Family. There is a strict distinction between the right to work and the right to stay for the purpose of work.

Labor migration still represents a challenge for Moldova and, in the context of the global financial crisis, regional conflicts, immigration and emigration trends, the fact that one day Moldova might become more attractive for migrants cannot be excluded. Already, statistical data shows an increase and this must be analyzed not as a threat but as a way to replace the population that left the country to go elsewhere.

II. International Agreements

After gaining its independence Moldova started an intense process of accession and ratification of different international-regional instruments. It did so in order to prove to the international community its willingness to establish a democratic state based on the rule of law, where human rights would be respected. It is difficult to say if, when initiating this process, the state was aware of all the responsibilities and commitments as previously decisions had been centralized.

But, at the same time, this process allowed state bodies to identify priorities in each domain, to establish safeguards and step-by-step to discover the specifics of our society in approaching migration aspects. Also the Republic of Moldova started the process of joining international/regional organizations, which allowed the country to gain experience and to affirm itself as an independent entity. Thus for example in March Moldova celebrated 20 years as a member of the UN family, a time in which many different projects had been implemented and great results had been achieved.

1. Multilateral Agreements

Moldova signed the Universal Declaration of Human Rights and ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights³, the United Nations Convention Against Transnational Organized⁴ Crime, the Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime⁵, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime⁶, the Convention relating to the Status of Stateless Persons⁷ and the Convention on the Reduction of Statelessness⁸, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States⁹, the Convention on the Rights of Persons with Disabilities¹⁰, the Convention on the Elimination of All Forms of Discrimination against Women¹¹, the International Convention on the Elimination of All Forms of Racial Discrimination¹², **the Convention** relating to the Status of **Refugees**¹³, **the Convention** against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹⁴ and the Convention on the Rights of the Child¹⁵.

³ Parliament Decision No. 217 of 27 July 1990 published in Monitorul Oficial No. 8 of 30 August 1990.

⁴ Law No. 15 of 17 February 2005 published in Monitorul Oficial No. 36-38 of 4 March 2005.

⁵ Law No. 16 of 17 February 2005 published in Monitorul Oficial No. 36-38 of 4 March 2005.

⁶ Law No. 17 of 17 February 2005 published in Monitorul Oficial No. 36-38 of 4 March 2005.

⁷ Law No. 275 of 27 December 2011 published in Monitorul Oficial No. 25-28 of 3 February 2012.

⁸ Law No. 252 of 8 December 2011 published in Monitorul Oficial No. 21-24 of 27 January 2012.

⁹ Law No. 28 of 24 February 2011 published in Monitorul Oficial No. 43-45 of 25 March 2011.

¹⁰ Law No. 166 of 9 July 2010 published in Monitorul Oficial No. 126-128 of 23 July 2010.

¹¹ Parliament Decision No. 87 of 28 April 1994 published in Monitorul Oficial No. 5 of 30 May 1994.

¹² Parliament Decision No. 707 of 10 September 1991 published in Monitorul Oficial No. 6 of 30 October 1991.

¹³ Law No. 677 of 23 November 2001 published in Monitorul Oficial No. 150 of 11 December 2001.

Moldova has been a member of International Labor Organization since 1991 and since then it has promoted the implementation of the right to work in accordance with international standards especially by ratifying the Conventions and adjusting its legislation to these provisions. In the labor migration domain the most important instruments ratified by Moldova have been: Convention no. 29 concerning Forced or Compulsory Labor¹⁶, Convention no. 47 concerning the Reduction of Hours of Work to Forty a Week¹⁷, **Convention no. 81** concerning labor inspection in industry and commerce¹⁸, Convention no. 87 concerning the freedom of association and protection of the right to organize¹⁹, Convention no. 88 concerning the organization of the employment service²⁰, Convention no. 95 concerning the protection of wages²¹, Convention no. 97 concerning migration for employment²², Convention no. 98 concerning the application of the principles of the right to organize and to bargain collectively²³, Convention no. 100 concerning equal remuneration for men and women workers for work of equal value²⁴, Convention no. 105 concerning the Abolition of Forced Labor, Convention no. 111 concerning discrimination in respect of employment and occupation²⁵, Convention no. 117 Convention concerning Basic Aims and Standards of Social Policy²⁶, Convention no. 122 concerning employment policy²⁷, Convention no. 127 concerning the Maximum Permissible Weight to Be Carried by One Worker²⁸, Convention no. 129 concerning labor inspection (agriculture)²⁹, Convention no. 135 concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking³⁰, Convention no. 138 concerning minimum age for admission to employment³¹, Convention no. 142 concerning Vocational Guidance and Vocational Training in the Development of Human Resources³², Convention no. 150 concerning Labor Administration: Role, Functions and Organization³³, the Convention concerning Occupational Safety and Health and the Working Environment³⁴, Convention no. 160 concerning Labor Statistics³⁵, Convention no. 181 on private employment agencies³⁶,

(Contd.) _____

Moldova acceded to the Convention and Protocol but formulated some reservations for Transnistrian region, the most favorable treatment clauses, as well as to Arts. 13 (Movable and Immovable Property), 17(2)(Wage-earning employment), 21 (Housing), 24 (Labor Legislation and Social Security) and 26 (Freedom of Movement) of the Convention.

¹⁴ Parliament Decision No. 1238 of 9 July 1997 published in Monitorul Oficial No. 48 of 24 July 1997.

¹⁵ Parliament Decision No. 408 of 12 December 1990 published in Monitorul Oficial No. 12 of 13 December 1990.

¹⁶ Parliament Decision No. 610 of 1 October 1999 published in Monitorul Oficial No. 112 of 14 October 1999.

¹⁷ Parliament Decision No. 1330 of 26 September 1997 published in Monitorul Oficial No. 67 of 16 October 1997.

¹⁸ Parliament Decision No. 593 of 26 September 1995 published in Monitorul Oficial No. 59-60 of 26 October 1995.

¹⁹ Parliament Decision No. 593 of 26 September 1995 published in Monitorul Oficial No. 59-60 of 26 October 1995.

²⁰ Parliament Decision No. 593 of 26 September 1995 published in Monitorul Oficial No. 59-60 of 26 October 1995.

²¹ Law No. 207 of 29 July 2005, published in Monitorul Oficial No. 107-109 of 12 August 2005.

²² Law No. 207 of 29 July 2005 published in Monitorul Oficial No. 107-109 of 12 August 2005.

²³ Parliament Decision No. 593 of 26 September 1995 published in Monitorul Oficial No. 59-60 of 26 October 1995.

²⁴ Parliament Decision No. 610 of 1 October 1999 published in Monitorul Oficial No. 112 of 14 October 1999.

²⁵ Parliament Decision No. 593 of 26 September 1995 published in Monitorul Oficial No. 59-60 of 26 October 1995.

²⁶ Parliament Decision No. 593 of 26 September 1995 published in Monitorul Oficial No. 59-60 of 26 October 1995.

²⁷ Parliament Decision No. 593 of 26 September 1995 published in Monitorul Oficial No. 59-60 of 26 October 1995.

²⁸ Parliament Decision No. 1330 of 26 September 1997 published in Monitorul Oficial No. 67 of 16 October 1997.

²⁹ Parliament Decision No. 1330 of 26 September 1997 published in Monitorul Oficial No. 67 of 16 October 1997.

³⁰ Parliament Decision No. 593 of 26 September 1995 published in Monitorul Oficial No. 59-60 of 26 October 1995.

³¹ Parliament Decision No. 519 of 15 July 1999 published in Monitorul Oficial No. 80 of 29 July 1999.

³² Law No. 480 of 28 September 2001 published in Monitorul Oficial No. 130 of 26 October 2001.

³³ Law No. 274 of 29 July 2006 published in Monitorul Oficial No. 126-130 of 11 August 2006.

³⁴ Parliament Decision No. 755 of 24 December 1999 published in Monitorul Oficial No. 001 of 16 January 2000.

³⁵ Law No. 186 of 29 September 2011 published in Monitorul Oficial No. 182-186 of 28 October 2011.

Convention no. 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labor³⁷, Convention no. 184 concerning safety and health in agriculture³⁸, and Convention no. 187 concerning the promotional framework for occupational safety and health³⁹. All these conventions, except the one on statistical data, were ratified without any reservations meaning that they fully apply. In this regard we must mention Art. 4(2) of the Constitution of the Republic of Moldova that establishes the rule of international instruments⁴⁰.

Analyzing the evolution of the content of legal frameworks in the Republic of Moldova we can see that the main principles inserted in the international instruments are increasingly reflected and enumerated in the legislative/normative acts. Thus the authorities involved in implementation are more accurate and more involved in following the inserted principles. This characterizes the opening of the state to democratic values as the population is more aware of its rights. A very good example in this regard is the Law on employment and social protection of persons looking for a work place 13 March 2003⁴¹. Art. 3 of the Law refers to the main goal of the Law which basically represents a list of principles inserted in ILO Conventions.⁴²

As for judicial bodies, as a rule the legislation in force when examining the cases is applied and the specific international instruments are consulted when examining certain cases, depending on their complexity.

Besides ratifying different legal instruments the Republic of Moldova adjusted the legislation in force to requested standards and implemented new practices. The Constitution states for example in Art. 1(3) "Governed by the rule of law, the Republic of Moldova is a democratic State in which the dignity of people, their rights and freedoms, the open development of human personality, justice and political pluralism represent supreme values, and are guaranteed". Art. 20 guarantees free access to justice for all persons, including foreigners present on the territory Art. 24 proclaims the right to life and physical and mental integrity⁴³, Art. 27 freedom of movement, Art. 43 the right to work and work protection, Art. 44 sets a prohibition on forced labor etc. In the same context the Law on the status of foreign citizens and stateless persons⁴⁴ was drafted establishing the main rights, freedoms and duties for these persons.

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³⁶ Law. No. 482 of 28 September 2001 published in Monitorul Oficial No. 130 of 26 October 2001.

³⁷ Law No. 849 of 14 February 2002, published in Monitorul Oficial No. 33-35 of 7 March 2002.

³⁸ Law No. 1058 of 16 May 2002 published in Monitorul Oficial No. 69-70 of 30 May 2002.

³⁹ Law No. 72 of 26 November 2009 published in Monitorul Oficial No. 187-188 of 18 December 2009.

⁴⁰ Art. 4(2) "Wherever disagreements appear between conventions and treaties signed by the Republic of Moldova and her own national laws, priority shall be given to international regulations". Constitution of the Republic of Moldova of 29 July 1994 published in Monitorul Oficial No. 1 of 18 August 1994.

⁴¹ Published in Monitorul Oficial No. 70-72 of 15 April 2003, in force since 1 July 2003.

⁴² Art. 3 of the Law: Goals of the Law

Measures provided for by the present law lead to achievement of the following goals:

- a) preventing unemployment and ensuring the highest possible level of employment;
- b) employment or re-employment of persons looking for a job;
- c) supporting employment of persons from disadvantaged categories of population;
- d) ensuring equal opportunities on the labor market;
- e) stimulating employers for employing persons looking for a job;
- f) improvement of employment structure by economic sectors and geographical areas;
- g) increasing labor mobility under structural changes in the economy;
- h) material supporting the unemployed persons and their stimulation to fill a job;
- i) social protection of persons looking for a job;
- j) inform the population on labor supply and demand.

⁴³ Paragraph (2) sets that "No one may be subjected to torture or to cruel, inhuman or degrading punishment or treatment."

⁴⁴ Law No. 275 of 10 November 1994 published in Monitorul Oficial No. 20 of 29 December 1994.

2. Regional cooperation

Moldova partially ratified the revised European Social Charter⁴⁵. When considering ratification two factors need to be underlined: the economic and social situation of the country and the necessity to keep the balance in order not to create better conditions for migrants than for nationals. Some of the provisions that were not ratified or that were partially ratified have an economic background and it is hardly logical to assume obligations that the state cannot fulfill. As to labor migration, Moldova ratified only paragraphs 3 and 4 of Art. 18.⁴⁶ Concerning Art. 19⁴⁷ Moldova ratified only paragraphs 7, and 8. Moldova did not ratify, even partially, Arts. 10⁴⁸ and 14⁴⁹. In 2011 the Council of Europe initiated discussions with the Republic of Moldova regarding the possibility of ratifying additional provisions. The Government accepted this possibility and at present a draft law for the ratification of some additional provisions is being drafted. Even if we look through Art. 19 we can see that provisions of paragraphs 3, 4 (b), (c), 5 are already implemented in national legislation. At the same time, Moldova cannot assume all the obligations set by the Charter, for example the obligation to provide housing for labor migrants (Art. 19(4)(c)): not even nationals receive this kind of treatment and this is also reflected in the reservations to the 1951 Convention relating to the status of refugees.⁵⁰

In the same context it might be noted that some of the provisions of the Charter are reflected in the Moldovan Constitution and the Law on the legal status of foreign citizens and stateless persons. They are also reflected in the Law on the integration of foreigners in the Republic of Moldova of 27 December 2011⁵¹, which will implement migrants' rights and will create the coordination mechanism between actors.

Moldova's Parliament approved the country's membership of the Commonwealth of Independent States and a CIS charter on economic union in April 1994. In 1995, the country became the first former Soviet republic admitted to the Council of Europe. In addition to its membership in NATO's Partnership for Peace, Moldova also belongs to the United Nations, the OSCE, the North Atlantic Cooperation Council, the International Monetary Fund, the World Bank, and the European Bank for Reconstruction and Development. Moldova is a member too of the World Trade Organization (WTO).

In 1998, Moldova contributed to the founding of GUAM, a regional cooperative agreement with Georgia, Ukraine, and Azerbaijan, in addition to Moldova. Although the agreement initially included a declaration of mutual defense, Moldova has since declared its disinterest in participating in any GUAM-based mutual defense initiative. Moldova has been involved in information exchange, trade and transportation, border control, and energy projects within this regional agreement. In 2006, the organization's members voted to change the organisation's name to "the Organization for Democracy and Economic Development – GUAM".

After gaining independence Moldova actively participated in CIS initiatives. The CIS became a replacement of sorts for the former USSR. However, now each state plays an active role, has its own position and documents approved at the CIS level were directed for the improvement of the situation in specific domains of national economy, social security and even migration. Although since the 1990s many documents have been produced not were implemented in Moldova or even functioned as real legal instruments. The most important for us are those signed on social security including for purposes of work, and the most effective ones are those signed by the Ukraine, the Russian Federation, Belarus and Azerbaijan. The CIS documents refer to the basic insurance of the rights of nationals, but these

⁴⁵ Law No. 484 of 28 September 2001 published in Monitorul Oficial No. 130 of 26 October 2001.

⁴⁶ The right to engage in a gainful occupation in the territory of other Contracting Parties.

⁴⁷ The right of migrant workers and their families to protection and assistance.

⁴⁸ The right to vocational training.

⁴⁹ The right to benefit from welfare services.

⁵⁰ Law No. 677 of 23 November 2011 on the accession of the Republic of Moldova to the Convention relating to the status of refugees, as well as the Protocol relating to the status of refugees.

⁵¹ Published in Monitorul Oficial of 13 March 2012, in force since 1 July 2012.

documents did not influence Moldovan legislation at the level of drafting. At the moment Moldova is placed between two “approaches”, the CIS approach and the EU approach. Since Moldova is now officially promoting the EU integration vector, collaboration with CIS countries and common CIS goals cannot be seen as a priority anymore. Cooperation is maintained only for bilateral cooperation ensuring protection for people that work abroad, though the level of assistance granted to Moldovan nationals in these countries differs as there are not standards, just general principles provided for by the agreements.

Relations between Moldova and the European Union have been a priority for the Republic for more than 10 years. The Partnership and Cooperation Agreement (PCA) represents the legal framework for the Moldova-EU relations. The Agreement was signed 28 November 1994 and entered into force 1 July 1998 and was to cover the next 10 years. The document provided the basis for cooperation with the EU in political, commercial, economic, legal, cultural and scientific domains. Its objective was to support Moldova in strengthening: democracy and the rule of law; the protection of human rights and the rights of minorities by ensuring an adequate framework for political dialogue; sustainable economic development and a finalizing of the transition towards the market economy by promoting trade exchanges, investments and harmonious economic relations. Later on the Republic of Moldova signed the Moldova-EU Action Plan 22 February 2005 in Brussels within the frameworks of its European Neighborhood Policy (ENP). The Moldova-EU Action Plan is a document which includes the strategic objectives and specific actions for achieving these objectives in specific domains including migration. Based on this document Moldova adopted a National Action Plan for its implementation and the European vector became a must when implementing policies for all public authorities.

On 5 June 2008 the Joint Declaration on a Mobility Partnership between the European Union and the Republic of Moldova was signed in Luxembourg. The main goals were: facilitating legal migration including circular and temporary migration, in particular for development purposes; and promoting return policies, with respect for human rights, through cooperation and dialogue. The declaration contains specific objectives and activities to be implemented.

In Brussels, 10 October 2010, the Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas was signed. The purpose of the document was to facilitate the issuance of visas to the citizens of the Republic of Moldova for an intended stay of no more than 90 days *per* period of 180 days. The Agreement regulates the way Moldovans travel to EU Member States: documents to prove the goal of the journey, that must be presented when applying for visa; procedure for issuing visas for Moldovan citizens; fees for processing visa applications (generally, 35 Euros); categories of persons exempted from these taxes; and categories of persons that can enter the territory of EU Member States without a visa. This Agreement is not applicable to all EU Member States, but only to: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden. At the same time as this agreement another agreement was signed between the European Community and the Republic of Moldova on the readmission of persons residing without authorization. This second agreement entered into force 1 January 2008. The objective of the Agreement was to strengthen cooperation in order to combat illegal immigration more effectively. It establishes readmission procedures for Moldovan nationals, third-country nationals, transit, escort procedure and the responsible authorities. Following these two agreements an Action Plan was elaborated and special Programs for their implementation (phase 1 and 2) were put into place at the national level through governmental decisions. At the moment Moldova promotes the EU vector and the implementation of EU standards in all domains. Legislation is adjusted to EU directives in an attempt to implement best practices.

Remembering that Moldova is an emigration country, a decision was made to sign agreements with destination countries in order to protect Moldovan nationals and to ensure their social security and protection. Moldova initiated talks with Italy, Portugal, Spain, and Greece but due to political changes the negotiations were interrupted.

3. Bilateral Agreement with Italy

The Government of Moldova signed on 5 July 2011 an *Agreement on labor migration and an Implementation Protocol thereof with the Government of Italy*,⁵² which replaced a previous one signed in 2003. With this agreement the Italian Government undertakes to favor Moldovan citizens by granting a special entry quota. The Agreement specifies that a quarter of this quota will be managed by the relevant Moldovan Ministry. Furthermore, the agreement provides for, among other things:

- the development of circular migration schemes for Moldovan workers,
- joint projects for technical assistance,
- the implementation of common initiatives for Moldovans staying in Italy,
- the organization of vocational training and Italian language courses, offered by Italian institutions in Moldova.

It is important to mention Art. 7 of the Agreement where Italy and Moldova recognize the possible role of the Moldovan Community (Diaspora) in the integration of newcomers as well as the initiation of development activities in the country of origin. Italy wants, through the agreement, to increase the direct involvement of Moldovan associations in Italy. Moldova in this regard will organize awareness campaigns and programs for maintaining relations with Moldovan citizens from abroad. Art. 7 is an example to follow for the Republic of Moldova in future agreements as migrants are seen as a potential resource capable of benefiting both countries.

According to Art. 10 the entering, stay and employment of migrant workers will be regulated in accordance with the legislation of the country which hires the migrant.

The present Agreement has an Implementing Protocol which defines the operational mechanisms relating to: technical assistance, training programs, circular migration schemes and seasonal work for citizens of the Republic of Moldova with a view to raising their qualification level and the reintegration of Moldovans who want to return⁵³. Candidates from the Republic of Moldova who participate in training programs could be included in a preferential list and will be able to obtain a preferential status when entering Italy with a view to performing a labor activity according to training programs⁵⁴.

For circular migration both countries are willing to promote activities for the voluntary return of Moldovan citizens and to promote circular migration programs for some categories of workers. The Protocol establishes the time for seasonal work and sets it at a maximum of nine months with a resident permit which cannot be renewed as well as the possibility of Moldovan citizens working for several different employers⁵⁵. If these conditions are respected by Moldovan citizens, the implementation of this Agreement would serve as an example when negotiating with other EU countries. It will decrease illegal migration for work purpose and it will avoid the negative social impact of migration: e.g. destroyed families and the need to leave the country of origin. Fulfilling the provisions of the Agreement and its Protocol Moldova would become a trusted partner when negotiating labor migration agreements.

⁵² This Agreement was approved by Government Decision No. 620 of 18 August 2011 (Monitorul Oficial; No. 139-145 of 26 August 2011).

⁵³ Art. 1 of the Protocol.

⁵⁴ Art. 5 of the Protocol.

⁵⁵ Art. 8 of the Protocol.

III. The Legal and Institutional Framework Concerning the Overseas Employment of Moldovan citizens

1. Main features of the Legal Framework

The Constitution of the Republic of Moldova⁵⁶ establishes in Art. 27(2) that “Every citizen of the Republic of Moldova is guaranteed the right to choose his place of domicile or residence anywhere in the country, to exit, to emigrate and to return to the country”. Thus the state validates the freedom of movement and from 1994 has accepted that its citizens can emigrate for work.

The main legal act which regulates emigration is Law no. 180 on labor migration of 10 July 2008⁵⁷, which regulates the conditions for the temporary employment of citizens abroad.

The Law defines emigrant workers as citizens of the Republic of Moldova, with permanent domicile on its territory, who voluntarily left the country to go to another country in order to perform a temporary labor activity. There are five criteria set in legislation for examining emigration cases: Moldovan citizenship, permanent domicile in Moldova, voluntary departure from the country, a state of destination different from Moldova and performance of a temporary labor activity. The Law also defines 2 categories of workers:

- the seasonal worker, namely, a citizen of the Republic of Moldova employed on the territory of another state based on an individual employment contract for a determined period of time or for determined work performed within a certain period of the calendar year;
- border worker, namely, a citizen of the Republic of Moldova employed in a border zone of the state who returns at least once per week to the Republic of Moldova where he/she is a citizen. This is relevant as Moldova has a common border with Ukraine and Romania.

Practically the Law provides for 3 forms of temporary employment abroad for Moldovan nationals:

- On a voluntary basis, based on an individual employment contract concluded with the employer before exiting the country;
- Through private employment agencies, which have licenses;
- According to the provisions of bilateral agreements.

Thus the state offers the possibility for the emigrant:

- to decide upon a form of emigration;
- to protect his/her interests.

Although the Law has a special chapter dedicated to the employment of Moldovan citizens abroad it should be mentioned that provisions referring to the emigrant, his/her rights and duties have a rather general content and sometimes a contradictory one. Thus, for example, the title of Art. 16 refers to the conditions of temporary employment abroad of citizens on an individual basis. At the same time the first paragraph refers to the right of emigrants to fulfill the conditions, and the question that arises is: how a right can be conditioned referring to protection, if in the same Article (let. d) the state

⁵⁶ Published in Monitorul Oficial No. 1 of 18 August.1994, in force since 27 August 1994.

⁵⁷ Published in Monitorul Oficial No. 162-164 of 29 August 2008, in force since 01.01.2009.

practically imposes an obligation on the emigrant⁵⁸, which refers basically to child protection and Art. 23(1)(c)⁵⁹ confirms that, in this case, emigration can be restricted.

Most of the provisions in the chapter refer to employment via private employment agencies and their goal is mainly to protect the nationals. The state cannot control the flux of nationals who emigrate abroad but at least they can promote awareness. It is important that in the Law we find in Annex 1 the minimum clauses of an individual employment contract, with general data and the duties of both parties.

2. Institutional Framework

2.1 Migration Authorities

In order to understand the institutional framework today we must look back into the past. In 2005 a new phase of the migration management started in Moldova. Through Government Decision no. 1402 of 30 December 2005 the Reform Strategy of the public central administration in the Republic of Moldova was approved⁶⁰. The reform itself represented a political act and its implementation was preset by the most important national documents at that time:

- Economic Growth and Poverty Reduction Strategy (2004-2006)⁶¹;
- Activity Program of the Government for 2005-2009 “**Modernization of the country –welfare of the population**”;
- EU - Moldova Action Plan. The Moldova-EU Action Plan was a document which included the strategic objectives and specific actions for achieving these objectives.⁶² It was drafted based on the provisions of the EU-Moldova Action Plan signed 22 February 2005 in Brussels under the **European** Neighborhood Policy (ENP).

Thus the administrative reform touched the migratory domain and in 2006, through Law no. 25 of 16 February, the Bureau of Migration and Asylum were excluded from the Law on the Government of the Republic of Moldova. It is difficult to assess the consequences of this act, we can classify it as a political act/decision, necessity, desire/declaration to implement the best practices. The result, in any case, was the liquidation of an already functioning system and the creation of something new. Government Decision no. 529 regarding reorganization actions of some specialized central bodies of the public administration was taken 17 May 2006⁶³.

It was decided that the Ministry of Economy and Commerce would take over the functions relating to:

- the elaboration and implementation of policies and the regulation of processes from the labour migration domain,
- the issuance of work permits to foreign citizens,
- the granting of migrant worker status,
- the organization of employment abroad and the protection of migrant workers etc.

⁵⁸ Art. 16(d) to present to the National Agency, in the way established by the Government, the confirmation document issued by the competent body for the protection of children from the domicile region/district of parents, regarding evidence of minors who remain in the country.

⁵⁹ Did not present the confirmation document regarding evidence of minor children who remain in the country, issued by the competent body for childhood protection from the domicile region/district of parents.

⁶⁰ Published in Monitorul Oficial No. 1-4 of 06.01.2006.

⁶¹ Approved through the Law No. 398-XV of 2 December 2004, published in Monitorul Oficial No. 5-12, 2005.

⁶² Approved through the Government Decision No. 356 of 22 April 2005, published in Monitorul Oficial No. 65-66, 2005.

⁶³ Published in Monitorul Oficial No. 79-82, 26 May.2006.

- later on these competences were transferred to the Ministry of Labor, Social Protection and Family.

The Ministry of Internal Affairs took over the functions relating to:

- invitations,
- management of the entry flow of foreigners to the Republic of Moldova,
- issuance and prolongation of visas,
- granting of repatriated and immigrant statuses,
- asylum and refugees,
- other issues relating to immigration.

A new structure was created namely the Bureau of Migration and Asylum, a subdivision of the Ministry of Internal Affairs.

Besides this, Government Decision no. 811 of 11 July 2006⁶⁴ introduced modifications in the Regulation of the National Agency of Employment based on Law no. 25. Thus the Agency obtained some new objectives:

- implementation of state policy in the labor migration domain;
- implementation of international mechanisms and standards of national legislation in the labor migration domain and social protection of migrant workers;
- implementation of intergovernmental agreements regarding labor activity and the social protection of migrant workers.

In order to accomplish these objectives in the labor migration domain the Agency:

- examines the requests of natural and legal persons regarding the employment of foreign citizens;
- issues decisions regarding the issuance, prolongation and cancellation of work permits of foreign citizens and stateless persons;
- collects information regarding migration processes;
- participates in the elaboration of policies regarding the external migration of the workforce;
- participates in the elaboration of employment mechanisms abroad for the citizens of the Republic of Moldova;
- concludes bilateral agreements regarding the employment of the citizens of the Republic of Moldova abroad and the mediation of their employment;
- registers the individual employment contracts of the citizens of the Republic of Moldova employed abroad;
- implements the bilateral and multilateral instruments of cooperation in the labor migration domain with international institutions;
- implements, together with other state bodies, international and non-governmental organizations, projects relating to the voluntary return of the citizens of the Republic of Moldova from abroad and their reintegration in the labor market;
- coordinates the activity of private employment agencies in the employment of citizens abroad.

The National Agency of Employment is a subdivision of the MLSPF⁶⁵. Within the MLSPF there are also the Labor Inspectorate, the Social Inspectorate, and the State enterprise “Training Centre in the domain of work relations” with competences in this domain.

⁶⁴ Published in Monitorul Oficial No. 106-111 of 14 July 2006.

The Licensing Chamber⁶⁶ is a public body, subordinate to the Ministry of Economy, which implements state policy while regulating entrepreneurial activity, according to its competences. It assures the compliance of the license holder with the conditions established by laws that expressly regulate licensed activities⁶⁷. By doing this the Chamber does not admit infringement of rights, legal interests and the health of citizens, environment and state security. The main duties of the Chamber refer to:

- issuance/suspension/withdrawing of licenses;
- control over the compliance of the license holder with the licensing conditions;
- methodological assistance to license holders.

As a result the Licensing Chamber has a great responsibility when granting licenses to legal entities for performing employment activities. According to the Law the Chamber, in the course of the year, performs different controls in order to evaluate the situation. If we analyze the cases examined by the Supreme Court of Justice we can see that a majority of cases are initiated by natural persons who were prejudiced by a private employment agency. This reflects the fact that after the 1990s people started to leave the country in large numbers and were trying to find different ways to emigrate.

2.2 The Role of the Ministry of Labor

According to Government Decision no. 691 of 17 November 2009⁶⁸ the Ministry of Labor, Social Protection and Family (MLSPF) is the central specialized body of the public administration, subordinated to the Government. This body drafts, promotes and ensures implementation of the state policy in: work relations; wages; health and security in work; development of human resources and employment including professional orientation and training of the population; labor migration; demography; social partnership; social insurance; social assistance; social protection; equal treatment; family protection and children's rights protection; not to mention the prevention of trafficking in human beings (point 2).

The main goal of the MLSPF is to assure a decent lifestyle for the population (Moldovan citizens and foreigners), peace and social security. Point 6 of the Regulation sets out the main responsibilities of the Ministry in the labor migration domain. Referring mainly to: drafting of the legal framework regarding labor activities and the social protection of migrant workers, the elaboration of mechanisms for regulating migration processes, checking the legality of employment of foreigners including the right to work and private employment agencies' activity and the provision of statistical data⁶⁹.

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⁶⁵ Government Decision No. 691 of 17 November 2009 for the approval of the Regulation regarding organization and the functioning of the Ministry of Labor, Social Protection and Family, its structure and staff number of the central apparatus, published in Monitorul Oficial No. 166-168 of 20 November 2009.

⁶⁶ Through the Government Decision No. 779 of 27 November 2009 was approved the Regulation regarding the organization and functioning of the Licensing Chamber and its staff limit, published in Monitorul Oficial No. 173 of 1 December 2009.

⁶⁷ Point 2 of the Regulation.

⁶⁸ For the approval of the Regulation regarding organization and the functioning of the Ministry of Labor, Social Protection and Family, its structure and staff number of the central apparatus, published in Monitorul Oficial No. 166-168 of 20 November 2009.

⁶⁹ Point 6 of the Regulation states that the responsibilities of the MLSPF in the labor migration domain are:

- 1) elaboration and promotion of normative acts regarding labor activity, the social and legal protection of migrant workers;
- 2) elaboration of the regulating labor migration processes mechanisms;
- 3) performance of the impact analysis of the labor migration on the social-economic situation of the country and presents measures for diminishing the negative effects of this phenomenon;
- 4) elaborates, negotiates and concludes bilateral agreements which regulate the labor migration fluxes and migrant workers' protection;
- 5) promotes cooperation with main destination countries for Moldovan workers at the bilateral, regional and multilateral levels;

The MLSPF is a member of the Commission for the Coordination of Certain Activities relating to the Migration Process⁷⁰ which is a permanent advisory body under the Government. The Commission in Moldova was created for the coordination and monitoring of activities in the migration domain and for ensuring interaction between local and public central authorities with responsibilities in this area. Thus the MLSPF has a major role in the promotion and assurance of migrants' rights. It is the Ministry which submits proposals regarding the signing/ratification of the international/regional instruments and initiates the negotiations of bilateral agreements which could have a major impact on the evolution of the labor migration domain in the Republic of Moldova. As a member of the Government it is easier for the MLSPF to coordinate the drafting of different acts with other state bodies. It does so following the national strategies approved by the Government, especially with the Ministry of Internal Affairs, which covers other aspects of migration and it is responsible for granting foreigners who immigrate to Moldova the right to stay.

3. Organization of Recruitment and Placement Process

3.1 Role of private Employment Agencies and State Regulation of their Activities

According to Art. 15 of Law no. 180 on labor migration 10 July 2008 one of the ways for Moldovans to gain temporary employment abroad is through private employment agencies. This provision is transposed in practice and as a rule the recruitment is carried out only by private agencies. Law no. 180 does not expressly provide that there are only private agencies responsible for recruitment and that there are no public agencies, but the law has been interpreted in this way. The condition set by the state is that these agencies must have a license for the placement of Moldovan citizens on the labor market abroad. The license is issued based on the provisions of Law no. 180 and Law no. 451 regarding the licensing of business activity of 30 July 2001⁷¹.

According to Art. 17(1) of Law no. 180 "The private employment agency is performing the activity of selecting and placement of labor force abroad through performing job mediation services". The definition of the private employment agency can be found in Law no. 102 of 13 March 2003 regarding employment and the social protection of persons that are looking for a job⁷² provided, Art. 2, that this is a "legal entity which performs the activity of selecting placement of labor force in the country

(Contd.) _____

- 6) examines the international instruments in the labor migration domain and the social protection of migrant workers with a view to joining them and implementing the treaties to which the Republic of Moldova is a party;
- 7) assuring the evidence of migrant workers through registering individual employment contracts concluded between citizens of the Republic of Moldova and foreign employers;
- 8) coordinates the activities of issuing, prolongation and the revocation of the right to work for foreign citizens and stateless persons;
- 9) performs the control of legality of employment of foreign citizens and stateless persons on the territory of the Republic of Moldova;
- 10) monitors the activity of private agencies for employment abroad;
- 11) ensures accumulation, preservation, processing, dissemination and exchange of information regarding labor migration processes on the internal and external levels;
- 12) participates in the elaboration of studies, synthesis, opinion polls, analysis and evaluation in the domain.

⁷⁰ The Regulation of the Commission was approved through Government Decision No. 133 of 23 February 2010, published in Monitorul Oficial No. 80 of 26 February 2010.

⁷¹ Published in Monitorul Oficial No. 26-28 of 18 February 2005. According to Art. 1(1) "the Law determines the legal, organizational and economic framework for regulating through license the business activity, establishes the types of activity subjected to regulation through license and is directed towards enforcement of the conditions established through the law for performing types of activities regulated by licensing."

⁷² Published in Monitorul Oficial No. 70-72 of 15 April 2003. The Law regulates the measures regarding the implementation of strategies and policies for maintaining a high level of employment and adaptation to the requests of the labor market, regarding social protection of persons looking for a job, the prevention of unemployment and fighting its anti-social effects (Art. 1(1)).

and/or abroad and which has a license issued in accordance with the legislation". For example, Convention **no. 181** of the International Labor Organization concerning private employment agencies defines them as any natural or legal person, independent of the public authorities, who provides one or more of the labor market services provided for by the Convention. Although there are two laws that refer to the agencies as legal persons, Law no. 180 Art. 17(5) refers to the liability of natural and legal persons that have no license but that find employment for the citizens of the Republic of Moldova in other countries. Law no. 180 sets the conditions for issuing the license from the Licensing Chamber under the Ministry of Economy⁷³ if a number of conditions are fulfilled.

3.2 State intervention in work contracts

There are several conditions for issuing the license for the employment of the citizens of the Republic of Moldova abroad as set out in Art. 17(1)(d). One is that the legal entity must coordinate any collaboration contract with mediator/foreign employer and the draft of the individual employment contract with the National Agency of Employment. The National Agency registers the contracts free of charge. This activity is for the benefit of the emigrant as the state will be better able to protect his or her interests once they leave the country. Also by doing this the state controls the activities of private agencies preventing labor exploitation for purposes of work and it promotes legal emigration.

4. Legal measures to promote the recognition and accreditation of migrant workers' skills and qualifications

The National Strategy in the Migration and Asylum Domain (2011-2020)⁷⁴ sets out the main priorities regarding emigration and the importance of circular migration. In order to benefit from circular migration the state sets out the following necessary measures to be implemented:

- drafting recognition mechanisms for skills and qualifications obtained abroad and help in the initiation of business upon return to the country. Promotion of policies for maximizing the positive effects of migration through the diversification of ways of investing remittances in producing goods and competitive services on the external market, etc; streamlining founding joint enterprises with the support of employers-representatives from the host country with participation of migrants from the Republic of Moldova⁷⁵.
- drafting of professional and development programs for returned migrants with entrepreneurial skills. The promotion of the reintegration of returned migrant workers in the country through counseling, in recognition of obtained qualifications and the starting up of businesses.

The Action Plan for 2011-2015 for the implementation of the National Strategy in the Migration and Asylum Domain (2011-2020)⁷⁶ provides that in order to assure the compatibility of the skills and qualifications of migrants the authorities will perform activities for:

- the recognition and equivalence of study documents, qualifications and certificates of competences obtained abroad through the implementation of recognition procedures applied in EU Member States;
- the evaluation and certification of competences and skills acquired by Moldovan migrants abroad;

⁷³ The Regulation regarding the organization and functioning and staff limit of the Chamber was approved through Government Decision No. 779 of 27 November 2009, published in Monitorul Oficial No. 173 of 1 December 2009.

⁷⁴ Approved through Government Decision No. 655 of 8 September 2011, published in Monitorul Oficial No. 152-155 of 16 September 2011.

⁷⁵ Chapter IV point 21 of the Strategy.

⁷⁶ Approved through Government Decision No. 1009 of 26 December 2011 published in Monitorul Oficial No. 1-6 of 6 January 2012.

- the approval of ongoing training programs conducted by NGOs, economic agents, institutions of secondary vocational education, etc.;
- Strengthening of institutional capacity and new training centers and new training programs within education institutions.

The Ministry of Education is the public central authority responsible for the recognition of qualifications⁷⁷. According to point 6 (9) of the Regulation the Ministry adopts decisions regarding the recognition of qualifications in secondary vocational education, specialized secondary and high education. Also according to point 6 (24) the Ministry establishes the criteria for the recognition of study periods, qualifications and documents, based on national and international standards. The procedure performed by the Ministry of Education is regulated via an internal document. As for the recognition and equivalence of documents of high-scientific qualification and scientific-didactics there is a special Regulation⁷⁸, under the purview of the ministry. This is relevant for certificates obtained abroad by citizens of the Republic of Moldova and other persons with domicile and/or with permanent places of work in Moldova.

The involvement of the state in the recognition of competences is reflected in law no. 274 on the integration of foreigners in the Republic of Moldova which sets out, in Art. 18(4)⁷⁹, the role of the Ministry of Education in the recognition mechanisms.

5. Legal measures facilitating, reduction of costs relating to overseas employment

The legislation in force does not provide for any concrete provisions in this regard. By interpretation, for example, Law no. 180 on labor migration provides for several options when emigrating, set out in Art. 15, and thus offering the migrant the possibility of choosing the best option for him/her. The individual employment contract is registered at the National Employment Agency thus allowing the person to rely on legal employment conditions and the state benefits by receiving information regarding emigration. This legislation also explains what taxes and services are provided free of charge by private employment agencies and interdictions for tax collections⁸⁰.

The first step in this regard is the Agreement signed with Italy. Based on the provisions found in that Agreement the person will benefit from training programs, language courses, and civil education. They will have the possibility of being employed according to his/her qualification.

6. Providing information, assistance or training prior to departure

The information is provided by the National Agency of Employment and its 35 branch offices. Also there is a special website⁸¹ and a Call Center which offers assistance on problems regarding access to employment services. The beneficiaries are the jobseekers present in the country as well as those present abroad. At the Center information is provided regarding:

- services granted by the National Agency of Employment;
- social protection measures in the case of unemployment;
- vacancies registered in the database of the Agency;
- legal migration for the purpose of work;

⁷⁷ Government Decision No. 653 of 6 November 2009 approved the Regulation, structure and staff limit of the Ministry of Education published in Monitorul Oficial No. 162 of 10 November 2009.

⁷⁸ Approved through Government Decision No. 472 published in Monitorul Oficial No. 77 of 14 May 2004.

⁷⁹ Facilitating access to the labor force market.

⁸⁰ Art. 21 of the Law No. 180.

⁸¹ www.angajat.md

- immigration;
- and consultation regarding cooperation with other social partners.

For example, the Protocol for the implementation of the Agreement signed with Italy provides that the parties will encourage the organization of vocational courses and Italian language courses with a view to:

1. training Moldovan workers for their possible employment in Italy;
2. training Moldovan workers for their possible employment by Italian companies that function on the territory of the Republic of Moldova;
3. training Moldovan workers for self-employment and launching entrepreneurial activities in the Republic of Moldova.

The Italian Ministry of Labor and Social Policies approved the Program “Training abroad, in the countries of origin of migration fluxes towards Italy”⁸². The main goal of the Program is the organization of vocational training, Italian language courses and civic education for non-community citizens (including the Republic of Moldova). The pilot project “Implementation of the international agreement for the mobilization of the labor forces between Italy and the Republic of Moldova” is meant to facilitate the implementation of four projects by diverse Italian entities (associations and agencies). In this regard, a program has recently been launched regarding the identification of local partners for the implementation of the partnership of Italian organizations relating to labor migration domain.

7. Main challenges in the implementation of the national legal framework

The main challenge is that all data regarding emigration are obtained from destination countries, but it is practically impossible to record information in Moldova. Taking into consideration that Moldovan citizens have the right to apply for Romanian citizenship, and that Moldovan legislation allows dual citizenship, it is very difficult to collect data. In practical terms this is the result of several factors:

- freedom of movement including permission to leave the country for the purpose of work;
- desire to leave the country legally or illegally and here we must bear in mind the expenses and consequences and the type of documents for crossing the border or for employment abroad including work contracts, if needed;
- lack of information about employment possibilities;
- and the danger/risk of labor exploitation leading to slavery or trafficking.

The fact that Moldovans obtain Romanian citizenship in order to travel more easily through Europe must not be interpreted as a policy which is detrimental to the Republic of Moldova or something which, in itself, causes emigration. By becoming Romanians Moldovan citizens avoid bureaucratic problems and cease to be third-country nationals. They also get access to other facilities, services and another level of protection. Remembering that Art. 24 of the Law no. 1024 on the citizenship of the Republic of Moldova of 2 June 2000⁸³ allows plurality of citizenship, the actions of Moldovan citizens must be interpreted only as a fulfillment of their rights, provided by the Constitution of the Republic of Moldova.

Another challenge is the protection of Moldovan nationals abroad. Though Moldova has signed several agreements on social protection we must recognize that some migrants will be excluded from these provisions. This is especially true of those working illegally and those who avoid contacting the national authorities, even though their life is in danger. Unfortunately there are cases when emigrants do not negotiate work conditions prior to their departure to the destination and here we have again a lack of information.

⁸² www.anofm.md

⁸³ Published in Monitorul Oficial No. 98 of 10 August 2000.

8. Role of judicial bodies in implementing the national legal system

According to Art. 6 of the Constitution of the Republic of Moldova the judicial power is the third power behind the legislative and executive branches. The main role of the judiciary bodies is to supervise the application of national legal norms. To assess the present situation interviews were conducted with judges from courts of different levels and the following became apparent. There is no case law in the Republic of Moldova in the domain of labor emigration. The cases usually examined in the courts relate to debt collection and the contestation of legal acts/ contracts. Also there are cases referring to recruitment and the use of labor force abroad and the transportation of persons who are kept after in “slavery”. These crimes, as a rule, start on the territory of one state and are finalized elsewhere: the court can, therefore, only record this irregularity and condemn it.

Examples of cases examined in the Courts:

Supreme Court of Justice: File no. 4-1re-1373/10: performance by a legal entity of the activity of private agencies helping with employment abroad for Moldovan citizens, without the relevant license. *De facto* the legal entity was performing tourist activities and encouraging emigration on a tourist visa, for a considerable amount of money. This type of crime has been particularly common during the last few years in Moldova: see, for example, no. 1ra-236/12 and no. 1ra-30/12.

Cases in the courts are examined in accordance with the legislation in force, including the Constitution. Usually the courts apply the provisions of international treaties if there are disagreements between national legislation and the provisions of the international treaties to which Moldova is a party; following the provisions of the Constitution of 1994, or when examining special cases. The courts do not apply the provisions of the European *acquis* as it is considered that the directives are mandatory only on the territory of EU Member States. At the same time there are cases when parties in the courtroom make reference to the provisions of the *acquis communautaire* as “good practices”.

9. Steps to improve the national legal framework

State migration policy is reflected in the main strategies of the state and all activities of the state bodies are detailed in the timeframes of their implementation. Remembering that emigration is a fact of life in the Republic of Moldova, within the documents signed with EU, like the Action Plan, ENP, it is stressed that that Moldova should become more involved in controlling outflow, brain drain and other consequences: destroyed families, risks for national social assistance if the young go abroad, irregular migration, human trafficking, exploitation for labor purpose, lack of protection in the destination countries etc. Thus through Government Decisions no. 1133 of 9 October 2008, an Action Plan was approved for stimulating the return of Moldovan migrants working abroad, in force until December 2011. The conditions concentrated mainly on:

- Information: activity opportunities in Moldova;
- Strengthening relations with Moldovan citizens staying abroad through diplomatic missions;
- Providing services for returned migrants;
- Providing access for emigrants to information services;
- And creating conditions for preventing the emigration of citizens, particularly the young.

In 2011 Moldova drafted, on the basis of the experience of other countries, a national document which establishes national policy in the migration and asylum domain. Thus, through the Government Decision no. 655 of 8 August 2011 National Strategy in the migration and asylum domain (2011-2020) was approved⁸⁴. The main objective of the Strategy is to provide the comprehensive regulation of migration and asylum management processes, the harmonization of national legal framework with

⁸⁴ Published in Monitorul Oficial No. 152-155 of 16 September 2011.

international law and EU law, and the regulation of flows, meant to serve as a contribution to socio-economic development, state security and the achievement of European integration goals. The Strategy describes the situation in each compartment: emigration, immigration, reintegration, asylum etc. analyzing the gaps and future activities that should be performed in order to improve the situation, paying special attention to the demographic aspect and the economic situation of the country. The main objectives of the Strategy set for the country in the labor migration domain are:

- promotion of circular migration model;
- reduction of irregular emigration for work;
- reduction of brain drain;
- facilitation of the return of migrant workers and their social, economic etc. reintegration;
- creation of a reference mechanism regarding returned migrant workers, their basic capacities and needs;
- improvement of the conditions for foreign investors;
- admission of foreigners for purpose of work, taking into consideration the internal market needs.

Based on its Strategy the Government approved through Decision no. 1009 of 26 December 2011⁸⁵ the Action Plan for 2011-2015 regarding implementation of the Strategy. The activities included a Plan to reflect how the state intends to improve migration management focusing mainly on: external collaboration and the implementation of present initiatives (the Mobility Partnership, EU-Moldova agreements, Stockholm Program etc.); the strengthening of legal migration mechanisms; the promotion of circular migration; assurance of rights protection in the labor and social protection domain for Moldovan migrants; assurance of the compatibility of skills and qualifications of migrants; information; the reintegration of Moldovan citizens; facilities for foreign investors; the admission of foreigners for work according to necessities identified on the internal labor market; and help for the admission of foreigners with high qualification who would have a direct impact on economic development etc.

10. Recommendation

- Implementation of the provisions from the National Strategy on Migration and Asylum and Visa Liberalization Plan phase II;
- Implementation of the best practices from countries that have experiences both in immigration and emigration, for example, Portugal;
- Promotion and maintenance of relations and consultations with the Diaspora. Introduction in the legislation, and not only in the national strategies/plans, direct competences for an authority which will deal with the Diaspora and maintain an ongoing dialogue between all national authorities and countries of destination. Due to the fact that relations between Diaspora and country of origin are not stimulated and promoted, citizens apply for the citizenship of their destination country and renounce Moldovan citizenship;
- The Agreement signed with Italy should be an example when negotiating agreements with other EU Member States and it should include in these agreements provisions referring to social protection and Diaspora;
- Consideration in legislation of the principle of non-discrimination and equal treatment according to ILO Conventions.

⁸⁵ Published in Monitorul Oficial No. 1-6 of 6 January 2012

IV. Access of Aliens to the Moldovan Labour Market

1. Definition of migrant workers

Law no. 180 on labor migration of 10 July 2008 regulates the performance of temporary labor activities by immigrant workers, the conditions for granting, renewal and the revocation of the right to work and subsequent residence (temporary) permits (Art. 2). In the Republic of Moldova immigration for work purpose is possible only if vacancies cannot be covered by citizens. The definition of the immigrant worker is provided for in Art. 1 of the Law: “the foreign citizen or stateless person authorized to perform a temporary labor activity on the territory of the Republic of Moldova”.

The Law also refers to several categories of immigrant workers:

detached worker, the employee of a foreign legal entity, with headquarters in another state, delegated to perform a labor activity in the Republic of Moldova; or an employee of a foreign legal entity with headquarters on the territory of another state, delegated to perform a labor activity for one of its representations or branches situated on the territory of the Republic of Moldova.

seasonal worker, a foreign citizen or stateless person employed on the territory of the Republic of Moldova by an individual employment contract for a determined period of time or for a determined work performed within a certain period of time through the calendar year;

border worker, citizen of a state with whom the Republic of Moldova has a common border, employed in the border zone on the territory of the Republic of Moldova, who returns every day or at least once per week to the territory of the state where he/she permanently resides and whose citizen he/she is. This is the case of Ukrainian and Romanian citizens or stateless persons with residence in Romania or Ukraine.

2. Regulation of access to the labor market

2.1 Principle of national preference

This principle is not directly specified in the legislation but the legislation provides facilities for foreign investors and could be interpreted as a form of preference. Thus Art. 8(4) provides for special procedure in the case of 3 categories of persons who made investments in the Republic of Moldova when getting the right to work and the right to stay:

- foreign citizens; or
- stateless persons; or
- the administrator of a foreign legal entity.

Taking into account the amount of money invested the authorities will take a decision regarding the period of time for granting the specific rights:

- 10,000 US Dollars – 100,000 US Dollars. The right to work and the right to stay temporarily for the purpose of work will be granted for up to 2 years with the possibility of prolonging for a new term;
- 100,000 US Dollars – 250,000 US Dollars. The right to work and the right to stay temporarily for the purpose of work will be granted for up to 3 years with the possibility of prolonging for a new term;
- More than 250,000 US Dollars. The right to work and the right to stay temporarily for work will be granted for up to 5 years with the possibility of prolonging for a new term, as long as the validity of the national identity document is not exceeded.

It is important to note that according to the Law these facilities will be granted only after investments have been made. But the question that arises in this context is who is responsible for evaluating the impact of any investment for the benefit of the Republic of Moldova and if the investments are being used or whether they are just sitting in a bank account. Some European countries, like, for example, Portugal, impose the condition that there must be a result that comes from the investment and in the context of economic crisis foreign investments are much appreciated. It would be logical to introduce some provisions in the Law referring to the result of investments and also to revise the possibility of revoking said rights.

2.2 Economic needs test/identifying labor market shortages

At the moment the Republic of Moldova does not apply this test. The problem that arises in practice is that the needs of economic agents are not presented to the National Agency of Employment or the MLSPF. If these needs were presented, say, 3-6 months before, the National Agency would be able to forecast the situation on the labor market. This is the practice in the Czech Republic, Lithuania and it could become the practice in Moldova if economic agents were mobilized. Thus the state should examine the possibility of introducing some provisions into the legislation referring to consultations between state authorities and legal entities and the need to present the needs in different branches at a specific date. This obligation should not be seen as a restriction on the rights of the legal entities but as a way for the state to protect the different branches of its economy. It would also prevent locals immigrating, if jobs were available, and would give new possibilities to foreigners too.

2.3 Mobility of foreign workers inside the labor market

In accordance with Art. 4(3) of Law no. 180 on Labor migration “Foreign citizens and stateless persons arrive for work based on individual employment contracts can be employed only for a single employer and can occupy exclusively the vacant job places registered by the respective employer at the territorial employment agency”.

Let’s compare now this situation with other categories of foreigners: asylum seekers and beneficiaries of a form of protection. These categories fall under the provisions of Law no. 270 on asylum in the Republic of Moldova of 18 December 2008. There is no restriction for asylum seekers in finding a job, the only condition set by the law is proper documentation (Art. 32) and the right to work granted by the Refugees Directorate (Art. 28(1))⁸⁶. As for the beneficiaries of a form of protection there is no restriction on: the right to be employed by legal or natural persons, exercise freely professions; on carrying out entrepreneurial activities, pursuant to the provisions of the legislation in force⁸⁷; on receiving wages and benefit from other material rights resulting from the activities performed; as well as on the right to social insurance, pursuant to the provisions of the law⁸⁸. Also Law no. 274 on the integration of foreigners in the Republic of Moldova of 27 December 2011 sets access to the labor market in Art. 12 with the same conditions for the citizens of Moldova. It enables, in this way, beneficiaries of a form of protection to enjoy the existing system in the Republic of Moldova and to enjoy protection on the labor market.

⁸⁶ Upon request, to work-the right granted temporarily-provided that, for objective reasons, the person lacks the necessary means of subsistence.

⁸⁷ Art. 33(1)(d).

⁸⁸ Art. 33(1)(e).

2.4 Matching migrants' profiles with employments offered

According to Art. 4(4) of Law no. 180 priority of employment shall be given to specialists with high qualifications and/or specialists invited by the Government on the proposals of the specialized central bodies of the public central or local authorities.

Art. 18(4) of the Law on integration of foreigners in the Republic of Moldova⁸⁹ entered into force 1 July 2012. According to this Article, the Ministry of Education elaborates the mechanisms of recognition or equivalence of skills and professional qualifications obtained by foreigners in their country of origin and assures the evidence for information regarding foreigners who requested access to the labor market.

3. Entry and stay conditions

Art. 4(1) of Law no. 180 states that “In the Republic of Moldova the immigration of foreign citizens and/or stateless persons for purpose of work is possible in situations when the vacant job places cannot be covered from local human resources, in accordance with the provisions of the Law on labor migration, other normative acts and international treaties to which the Republic of Moldova is a party”. The state imposes that only if citizens are not available should foreigners be allowed to work; in this way the state protects its own nationals. Foreign citizens and stateless persons can perform labor activities with a temporary residence permit alone. The right to work and the right to reside for the purpose of work are granted to:

- immigrant workers;
- detached workers;
- seasonal workers;
- border workers;
- and other categories provided for by bilateral agreements signed by Moldova with other states.⁹⁰

Minors and students are ruled out here. Though at the EU level students are allowed to work for a certain period of time, the Republic of Moldova excluded those in education. It is possible that this exclusion came about because some of them, expelled from universities, decided to remain in the country and changed their residence permit for purpose of work and thus will change their legal status. At the moment there are situations where expelled students, trying to find ways to legalize their stay, even for a short period of time, apply for asylum or conclude a marriage with a national.

According to Art. 4(2) the state assures the protection of immigrant workers following the main principles included in national legislation and also in the ILO Conventions ratified by Moldova.

Granting the right to work is regulated by the Law 180 on labor migration establishing:

- the responsible authority – national Agency of Employment under the MLSPF;
- the procedure to be followed by the applicant;
- and the prolongation and the revocation of the right to work and the right to stay for work.

Law no 200 on the regime for foreigners in the Republic of Moldova 16 July 2010⁹¹ entered into force on the 24 December 2010. The Law on labor migration entered into force on 1 January 2009. All basic provisions regarding the employment of immigrants are basically incorporated into Law no. 180

⁸⁹ Law No. 274 of 27 December 2011 published in Monitorul Oficial No. 48 of 13 March 2012.

⁹⁰ Art. 5(3) Law No. 180.

⁹¹ Published in Monitorul Oficial No. 179-181 of 24 September 2010.

which is implemented by the MLSPF. The Ministry of Internal Affairs through its competent authority, the Bureau of Migration and Asylum is entitled, based on the decision of the MLSPF, to grant or to reject applications for resident permits for the purpose of work. It is important to note here that a foreigner, holding the right to stay for family reunification, can be employed or carry out business activity or be self-employed under the conditions established by that Law.⁹²

Through Government Decision no. 1187 of 22 December 2010 the One Stop Shop at the Bureau of Migration and Asylum is established. The Decision approved Regulations for the One Stop Shop and established the competences for all authorities involved in the implementation of this new institution. The Regulation establishes a single procedure for receiving applications at the One Stop Shop and was elaborated in order to simplify the legalization mechanism and the documentation for foreigners that requests the granting of a residence right on the territory of the Republic of Moldova.

Basically we have three main actors: the Ministry of Interior via the Bureau of Migration and Asylum, MLSPF via the National Agency of Employment and also the Ministry of Information Technology and Communication (MITC). The MITC is represented by the Department for the Documentation of the Population of State Enterprise "CRIS REGISTRU" in documenting foreigners and is activated based on the provisions inserted in the Law on the national passport system⁹³ and Government Decision no. 376 on additional measures for the implementation of the National Passport System⁹⁴. CRIS REGISTRU is *de facto* responsible for preparing documents technically.

The One Stop Shop for the documentation of foreigners is the single point of access and the single mechanism which allows the applicant to address the public authority, empowered by law. This ensures coordination with other public authorities where the applicant respects the provisions of the law and other normative acts in the immigration domain, according to the competences conferred to each relevant public authority⁹⁵. Before the One Stop Shop was created foreigners were obliged to visit each authority, sometimes several times, in order to receive a resident permit for the purpose of work or other permits.

These are the provisions of the Law, but how do things work in practice? During the writing of the this paper two interviews were conducted. The first was with a Romanian who wants to apply for the right to work and a resident permit for work purpose. The second interview was conducted with a representative of a legal entity from Turkey present on Moldovan territory as investors, where foreigners work. In both cases the procedure was the same when applying at the One Stop Shop:

Step one: The persons approached the One Stop Shop, the procedure was explained and the entire list of necessary documents was set out. The employer submits the request to the territorial employment agency regarding available job places. The file is examined over fifteen days and during this period the organization must post an announcement. As a rule they place the announcement in the newspaper *Makler*, also at the suggestion of an employment agency. But legislation has no specific rules in this regard, it is just for transparency and for public access.

Step two: After fifteen days the file is prepared to be presented to the National Agency of Employment in order to receive positive or negative notification for immigrant employment. The file contains: a request regarding the need to invite the person to work; a copy of the *Makler* announcement; copies of the documents establishing organization; and a draft of the individual employment contract.

⁹² Art. 40 of the Law No. 200.

⁹³ Law was adopted on 9 November 1994 published in Monitorul Oficial No. 9 of 9 February 1995.

⁹⁴ Adopted on 6 May 1995 published in Monitorul Oficial No. 47 of 24 August 1995.

⁹⁵ Point 2 of the Government Decision No. 1187.

Step three: Two files are being prepared which are submitted simultaneously to the One Stop Shop: one for the National Employment Agency which will give the right to work and another for the Bureau of Migration and Asylum which will give the work-related residence permit. The file is submitted at least thirty days before the period of stay on the territory of Moldova expires. The files contain the documents required by Law.

The two experiences were different. The Romanian commented that in the Republic of Moldova the procedure is more complicated than in Germany, where that person had worked previously. You have to prepare a lot of documents for many institutions in Moldova. The procedure could be simplified and bureaucracy reduced and mechanisms improved. The Romanian gave the example of Germany where he submitted the documents and the request and where afterwards he received his permit at home. In Moldova the entire procedure takes about 2 months and there is a condition imposed at the moment the file is submitted for the resident permit that the person should have the right to stay on the territory for at least 30 days.

The representative of the legal entity from Turkey also complained about bureaucracy. In theory the system is very good but there are problems at the practical level especially when you want to prolong your permit. According to the Law you receive the residence permit and that permit is valid for 1 year. But in practice it is only valid for ten months as you have to submit the file one month before the permit expires and you have to wait for one month. At the same time it is not so convenient for legal entities which have had a long period of activity in Moldova. These have created benefits for Moldovan society and created work for citizens and yet they only receive resident permits for one year. Also there is a problem in the case of foreigners that are staying in Moldova for five to ten or even more years and each year they are obliged to prolong their permit without any facilities. Maybe it would be better to modify the legislation and these persons will receive their permits in a simplified procedure. The fact that each year the foreigner has to follow the same procedure can become frustrating. The director of the legal entity, meanwhile, can receive the resident permit for only two years with the condition that the statutory capital allows this. It is important to mention that in practice the certificate regarding the absence of HIV/AIDS is no longer requested when you want to prolong the permit, though it is required by Law. Some of the foreigners employed at the legal entity previously worked in Austria or in the Croatia. When comparing their experience in Moldavia they concluded that the procedure must be differentiated. They also suggest that the concept of “migrant worker” should not be narrowed but differentiated as there are different categories of workers and there is a continuous diversification,

In conclusion: the existing system can work for newcomers. But foreigners who have been working in other countries, and who have been treated differently, will find the system complicated and they may refuse to come again or to renew their work permits.

4. Quotas for migration workers

According to Art. 13(1) of Law no. 180 foreign citizens and stateless persons can immigrate to the Republic of Moldova for work within the work quotas established annually by the Government; these quotas are decided on the basis of the needs of the national economy. According to Government Decision no. 74 of 4 February 2011⁹⁶ the immigration quota was set at 1300 persons for 2011. The quota does not include seasonal and border workers, immigrant workers in sport or investors. Remembering that in 2012 this quota has not been yet approved, it is possible that the state has renounced this practice meaning that the Law must be modified. The presence of a quota in the legislation of the Republic of Moldova is a consequence of previous practices and legislation regulating labor migration. In the context of bringing best practices to Moldova, the country should

⁹⁶ Published in Monitorul Oficial No. 25-27 of 11 February 2011.

cancel these quotas. is not high and for possible investors this quota would be a potential obstacle as it could be interpreted as putting restrictions on foreigners.

5. Legal measures to prevent and sanction illegal labor immigration

Art. 334 of the Contravention Code⁹⁷ provides for the sanctions applied in the cases of the violation of the rules of employment of foreigners or stateless persons. These violations refer to:

- a) the employment of foreign citizens or stateless persons who are temporarily in the Republic of Moldova without a residence permit for purpose of work issued in accordance with the legislation;
- b) the performance of labor by foreign citizens or stateless persons who are temporarily in the Republic of Moldova without a residence permit for work purposes issued in accordance with the legislation;
- c) obtaining, at the request of a responsible person, a work permit issued in the name of a foreign citizen or a stateless person who is in the Republic of Moldova on a temporary basis without employing him/her

It must be mentioned that in practice this provision also covers asylum seekers performing a labor activity without following the rules established by asylum legislation. Thus, according to Art. 28(1) of the Law on asylum in the Republic of Moldova, asylum seekers enjoy the right to work upon request if for objective reasons the person lacks the necessary means for subsistence. The Law does not define these “objective” reasons, but the provision should be interpreted in the interest of the asylum seeker and in the context of the reservations which Moldova made to the 1951 Convention relating to the status of refugees (Art. 42(1)).

6. Main challenges in the implementation of a national legal framework

The main challenge at the practical level is the quota which is seen as a barrier for foreigners and which contradicts the declared opening of the state.

At the institutional level, we find the One Stop Shop concept. Discussing this issue with the MLSPF and the Ministry of Interior both institutions present their arguments regarding the importance of the Shop but the way the mechanism functions must be improved. Another issue is that there is only one office in Chisinau and foreigners that live in the North or South of the country must come to the capital. EU best practices show that after submitting documents, the foreigner should be able to receive the permit at the Shop or at home, and this solution would benefit the foreigner and also keep queues down.

Another challenge would be the implementation of the Law on the integration of foreigners in the Republic of Moldova of 27 December 2011. Since we have no practice in this field, at the state level, this process is considered to be very complicated and unknown. Though the legislation of Moldova contains provisions regarding the rights of foreigners – e.g. Constitution, Law on the right of foreign citizens and stateless persons, Law on asylum – in practice these provisions are not always implemented. The new Law creates a mechanism of coordination between the relevant authorities and giving foreigners their rights. Implementation will allow immigrants to better integrate in society and it will create conditions for those who qualify to receive Moldovan citizenship.

But if we talk about the overall situation the main challenge is the mobilization of public central authorities for the implementation of the National Strategy on Migration and Asylum and the Action

⁹⁷ Contravention Code of the Republic of Moldova of 24 October 2008, published in Monitorul Oficial No. 3-6 of 16 January 2009. In force since 31 May 2009.

Plan on visa liberalization. In the last two years Moldova drafted and adopted a large number of legislative and normative acts which affect all aspects of migration: but it is not enough to adopt, these acts need also to be implemented.

7. Role of judicial bodies in implementing the national legal framework

The judges rate Moldovan immigration legislation highly and the steps forward that have been achieved. In the last two decades Moldova continued to be a country which produces emigration, but, at the same time, there has been an increase in immigration and a change in the list of the countries of origin; this can be deduced, at least, from the cases examined in court. Also, in the context of international events, it is not impossible that Moldova will face an influx, especially if Romania accedes to the Schengen zone. Already now there are changes in the figures especially from the Middle East. The most common cases examined by the courts are asylum cases and cases of those staying illegally on the territory, or those performing illegal activities: the same cases made up the majority even five to ten years ago. Exceptional cases registered in Moldova include: refusal by authorities in issuing the resident permit because of a positive HIV/AIDS test. There are already several cases⁹⁸ won by immigrants at the Supreme Court of Justice, as the obligation contained in Art. 38 of the law no. 200 and Art. 24 (2) of the Law no. 23⁹⁹, Art. 7(8)(i) of the Law no. 180¹⁰⁰ are considered to be discriminating and contrary to international standards. So it is mandatory for the authorities to modify legislation in force in order to protect human rights.

The problems faced by the judges at the moment is one concerning translation. It is, in fact, very difficult to find translators for some languages or specific dialects which are not common in the Republic of Moldova.

8. Steps to improve the national legal framework

Moldova perfectly understands that its opening to changes and to dialogue will contribute to social and economic changes. The steps undertaken in order to facilitate documenting foreigners shows the political will of the Government in facilitating foreign investors' access to our country. It also shows the will to bring down bureaucratic barriers and to promote the improved image of the country. In this regard, through the Government Disposal no. 106 of 9 November 2011¹⁰¹ the Action Plan for the improvement of the situation in the immigration domain of foreigners in the Republic of Moldova and the facilitation of the conditions for obtaining the right to stay by the foreign investors and other categories of immigrants was approved. Thus the main priorities of the Government in terms of labor migration are the following:

- modifications in the legal framework in order to improve and simplify the documentation process for foreign investors. It is intended, in 2012, to introduce special provisions relating to foreign investors, to revise the amount of investment necessary for granting the right to work for more than 1 year, to introduce the notion “key persons for investments development”;

⁹⁸ <http://aids.md/aids/index.php?cmd=item&id=863>

⁹⁹ Law No. 23 regarding the prophylaxis of HIV/AIDS infection of 16 February 2007 published in Monitorul Oficial No. 54-56 of 20 April 2007. Art. 24 refers to restrictions when traveling and where choosing residence. Paragraph (2) sets that “The person who was not subjected to HIV tests is obliged to go within 10 days to the specialized institution after arriving in the Republic of Moldova for the test.”

¹⁰⁰ The Law on labour migration sets the list necessary for obtaining the right to work and resident right to work including the medical certificate in the established form and medical certificate that confirms the absence of HIV/AIDS.

¹⁰¹ Published in Monitorul Oficial No. 197-202 of 18 November 2011.

- simplification of the procedure for conducting medical examination on foreigners that request the right to stay on the territory of the Republic of in Moldova. It is intended to take the best practices in this regard from EU countries;
- exclusion of discriminating provisions from the law regarding an obligation to pass on HIV/AIDS control for foreigners as well as the inclusion of the foreigners with temporary rights to stay in the system of compulsory medical insurance.
- simplification of the procedure for issuing invitations;
- improvement of the quality of the services provided by the One Stop Shop by introducing Customer Flow Management.

9. Recommendations

Analyzing, in its entirety, the legislation of the Republic of Moldova and its evolution during the last seven years (since signing the Moldova-EU Action Plan) you can see progress and a marked tendency to implement new standards. The representatives of the state authorities dealing with labor migration issues are aware of this progress. There is the fact that legislation is now in place and that the European *acquis* is partially transposed following the declared EU vector. At the state time new strategies and plans are approved with specific actions for improvement in each domain, including labor migration and there is also the recognition that legislation should be further improved.

At the same time there are different approaches when dealing with immigration issues and there is some “opposition” when implementing activities. This may be a consequence of all the reforms that passed through the migration domain, legal and institutional aspects. The question about who is in charge with labour migration issues is also under discussion. Both MLSPF and the Bureau of Migration and Asylum can present strong arguments but in debating this issue the only one who suffer are foreigners in Moldova. Their concerns are limited to their rights on the territory of the country and the reason that they are here. In the context of the new Directive voted on in 2011, the so called “single permit”¹⁰², it is not impossible that this document will be used to justify merging labor migration competences within the Bureau of Migration and Asylum. But, in this case, it will be a question of the situation preceding 2006 and the question that arises in this situation is: each reform implies financial resources and Moldova has benefited from different projects so will our country be considered a reliable investment partner for the future?

After analyzing the legal framework and its implementation in my opinion several recommendations should be made:

- there is no single approach for state bodies. Since there are different structures dealing with emigration, immigration, documentation process etc, there is not a single/common view. Remembering that the Strategy was adopted and that the migration profile is about to be adopted the authorities must mobilize themselves for a common approach;
- Moldova has drafted and adopted a lot of documents. It is important to carry out some kind of information campaign in this regard so that foreign nationals coming to Moldova are aware of their rights and duties and procedures;
- State authorities should implement the provisions of the Strategy on Migration and Asylum according to the Plan (2011-2015) bearing in mind the protection of migrants and that Moldova needs to revise the international/regional documents referring to social security;
- Moldova should grant to students the right to work in accordance with EU standards;

¹⁰² Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State **Official Journal L 343, 23/12/2011 P. 0001 - 0009**

- Moldova should evaluate the possibility of introducing a single permit in accordance with EU standards;
- Moldova should revise the conditions for granting work permits to foreigners who are staying for 5 or more years;
- the country needs to introduce into legislation consultations and negotiations between the public authorities and the most representative organizations of employers and workers;
- Moldova should introduce into the Law explanations regarding investments;
- Moldova should abolish the immigration quota;
- the country should introduce a modification into the Penal Code in order to avoid exploitation for labor purpose;
- legislation needs to be modified so as to exclude the HIV/AIDS test for foreigners.