



# OPERATIONAL GUIDANCE NOTE

## ROMANIA

### CONTENTS

<b>1. Introduction</b>	<b>1.1 – 1.5</b>
<b>2. Country assessment</b>	<b>2.1 – 2.8</b>
<b>3. Main categories of claims</b>	<b>3.1 – 3.5</b>
Minority ethnic groups	3.6
Minority religious groups	3.7
Victims of trafficking	3.8
Military service	3.9
Prison conditions	3.10
<b>4. Discretionary Leave</b>	<b>4.1 – 4.2</b>
Minors claiming in their own right	4.3
Medical treatment	4.4
<b>5. Returns</b>	<b>5.1 – 5.3</b>
<b>6. List of source documents</b>	

#### **1. Introduction**

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

[http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)

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

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

- 1.3** Claims should be considered on an individual basis, but taking full account of the information set out below, in particular Part 3 on main categories of claims.
- 1.4** With effect from 1 April 2003, Romania is a country listed in section 94 of the Nationality Immigration and Asylum Act 2002. Asylum and human rights claims must be considered on their individual merits. However if, following consideration, the claim from someone who is entitled to reside in Romania, made on or after 1 April 2003, is refused, caseworkers should certify the claim as clearly unfounded unless satisfied that it is not. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail. The information set out below contains relevant country information, the most common types of claim and guidance from the courts, including guidance on whether cases are likely to be clearly unfounded.

#### **Source documents**

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

## 2. Country assessment

- 2.1 Romania is a multi-party parliamentary democracy with the most recent national elections held in late 2004 which resulted in a new president and government. Traian Basescu, the PD (Democratic Party) Mayor of Bucharest and DA ("Truth and Justice" alliance of PNL (National Liberal Party) and PD), was elected president on a pro-Western, anti-corruption ticket. He appointed Calin Popescu Tariceanu (leader of the PNL) as Prime Minister. The new cabinet includes representatives from four political parties - PNL (liberals), PD (democrats), PC (Conservative Party) and UDMR (the Democratic Union of Magyar (Hungarians) in Romania). This four Party coalition is dominated by the DA, but the PC and UDMR votes are usually needed to pass legislation. The PSD (Social Democratic Party), which won the largest single share of the vote in the parliamentary elections, constitutes a numerically strong opposition in parliament but according to the latest opinion polls has only 21% in the country. The other main opposition Party is the extreme nationalist PRM (Greater Romania Party) which has around 15% public support.<sup>1</sup>
- 2.2 In a referendum on 19 October 2003, a large majority of Romanian voters accepted a new constitution to replace the former one, the first post-communist constitution of 8 December 1991. The new constitution is intended to bring Romanian law into line with European Union (EU) acquis as part of the process for EU accession. It was also considered as a referendum on EU accession since new provisions for "sharing sovereignty" within the EU were introduced. The constitution voted by the Constituent Assembly proclaims Romania a state of law, democratic and social, in which human dignity, civic rights and freedoms, the unhindered development of human personality, justice and political pluralism are supreme and guaranteed values. The Constitution stipulates the separation of the three public authorities (the legislative, the executive and the judiciary).<sup>2</sup>
- 2.3 The Romanian judicial system has four levels of courts: local courts, tribunals (at the county level), courts of appeal, and the High Court of Cassation and Justice. Courts at each of these levels have prosecutors' offices attached to them. In general, cases enjoy a judgment in substance in the court of first instance and two degrees of judicial redress: appeal on facts and appeal on law. There is also a Constitutional Court in Romania which has a two-fold jurisdiction: the examination of laws before their promulgation by the President, and the examination of laws already in force when their constitutionality is challenged before ordinary courts.<sup>3</sup> In March 2005, the Romanian Government adopted a revised Strategy and Action Plan 2005-2007 to reform the justice system. In July 2005, the Constitutional Court promulgated a revision of the so-called three-law package on justice reform (Laws on the Superior Council of the Magistracy, on the Organisation of the Judiciary and on the Statute of Magistrates) which is intended to improve significantly the independence and effectiveness of the judiciary.<sup>4</sup>
- 2.4 The revised Constitution enshrines the right to legal representation and legal aid. In criminal cases, legal assistance is mandatory for a limited number of categories of defendants. Legal aid is also provided if a defendant is judged by the court as being unable to make his own defence. In civil cases, there is no obligation to provide legal assistance although litigants can request legal aid, either directly from the court or from the Bar Association.<sup>5</sup>
- 2.5 The National Police are primarily responsible for law enforcement, the Gendarmerie for preserving public order, and the Border Police for maintaining border security. The Ministry of Administration and Interior (MOAI) supervises these organisations. The military has primary responsibility for protection against external threats. The internal intelligence

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<sup>1</sup> Foreign and Commonwealth Office (FCO) Country Profile 2006

<sup>2</sup> Europa. European Commission (EC) website. Enlargement: Relations with Romania

<sup>3</sup> European Commission (EC): 2004 Regular Report on Romania's progress towards accession (page 19)

<sup>4</sup> European Commission (EC). Romania: 2005 Comprehensive Monitoring Report (page 10)

<sup>5</sup> EC: 2004 Regular Report on Romania's progress towards accession (page 25)

service assesses threats to national security, collects intelligence on major organised crime, major economic crimes and corruption, but has no law enforcement powers.<sup>6</sup>

- 2.6** The Romanian Government made increasing attempts to address human rights issues during 2005, however, human rights abuses continued to occur. The following human rights problems were reported during the year; police abuse and harassment of detainees and Roma, political influence over the judiciary, restrictions on freedom of religion, incidents of intimidation and harassment of journalists, widespread corruption, trafficking in persons, violence and discrimination against the Roma and homosexuals.<sup>7</sup>
- 2.7** Romania has ratified the major human rights instruments, including the revised European Social Charter. At the end of 2001, the Romanian Government published a 'Strategy for Improving the Condition of the Roma'. Areas covered include housing, social security, health care, education and development of local structures.<sup>8</sup> In May 2004, Romania signed Protocol No.14 to the ECHR to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention. However, Romania has still not ratified Additional Protocol No. 12 to the European Convention on Human Rights (ECHR) prohibiting discrimination on any grounds.<sup>9</sup>
- 2.8** The National Council for Combating Discrimination (NCCD) has continued its policy to prevent discriminatory actions. New legal provisions adopted in February 2004 represented further progress with the transposition of the anti-discrimination *acquis*. However, despite several legislative improvements, some elements of an efficient anti-discrimination mechanism, such as the shift of the burden of proof or acceptance of statistical data as evidence of indirect discrimination, are still lacking.<sup>10</sup>

### **3. Main categories of claims**

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Romania. It also contains any common claims that may raise issues covered by the API on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant API's, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the API on Assessing the Claim).
- 3.3** If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies

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<sup>6</sup> U.S. Department of State report on Human Rights Practices (USSD) - 2005 (Section 1)

<sup>7</sup> USSD 2005 (Introduction)

<sup>8</sup> FCO Country Profile 2005

<sup>9</sup> EC. Romania: 2005 Comprehensive Monitoring Report (page 71) & EC: 2004 Regular Report on Romania's progress towards accession (pages 24 & 130)

<sup>10</sup> EC. Romania: 2005 Comprehensive Monitoring Report (pages 19 & 53-55) & EC: 2004 Regular Report on Romania's progress towards accession (page 23)

for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

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

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

[http://www.ind.homeoffice.gov.uk/ind/en/home/laws\\_policy/policy\\_instructions/apis.html](http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis.html)

### **3.6 Minority ethnic groups**

**3.6.1** Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Romanian authorities and/or ordinary Romanian citizens due to their membership of a minority ethnic group.

**3.6.2** **Treatment.** According to the census of March 2002, 89.5 percent of the total population were ethnic Romanians, 6.6 percent were ethnic Hungarians and 2.5 percent were Roma (Gypsies). There are also communities of Germans, Ukrainians (Ruthenians), Carpatho-Rusyns and Turks.<sup>11</sup>

**3.6.3** The law forbids discrimination based on race, gender, disability, ethnicity, language, or social status, among other categories. However, during 2005 the Government did not enforce these provisions effectively in some circumstances and women, Roma and other minorities were often subject to discrimination and violence. In August 2003, a new ordinance increased fines for discriminatory acts up to 40 million Romanian Lei (approximately £750). The National Council for Combating Discrimination (NCCD) is responsible for enforcing the law.<sup>12</sup>

**3.6.4** Discrimination against the Roma minority continued to be widespread in 2005 and the social inequalities to which the Roma community is exposed remained considerable. The Roma community faces extremely high risks of poverty, exclusion and isolation across the country. Living conditions are poor and access to social and health services are limited.<sup>13</sup>

**3.6.5** According to the Romanian Government, only 27 percent of Roma had steady jobs in 2004 and only half of those jobs were considered skilled. In April 2004, following complaints by several NGOs that monitored such situations, the Ministry of Education nominally prohibited segregation in schools in a notification that was not legally binding. However, during 2005, Romani children continued to be segregated from other students in some schools.<sup>14</sup>

**3.6.6** Societal violence and discrimination against the Roma population remained a pervasive problem in 2005.<sup>15</sup> During 2005, Romani NGOs continued to claim that police used excessive force against Roma and subjected them to brutal treatment and harassment. On 12 April 2005, a police officer in Moreni allegedly beat a Romani individual in a bar, resulting in injuries that required six days of hospitalisation. The case is being investigated. It was also reported that on two separate occasions in November 2005, police searched Romani neighbourhoods during an eviction operation and physically assaulted several Roma.<sup>16</sup>

**3.6.7** There were still reports in 2005 of ill-treatment by law enforcement personnel, including excessive use of force and use of lethal force in non-compliance with European Union and

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<sup>11</sup> Europa publications. Regional Surveys of the World: Central and South-Eastern Europe 2005 (page 494)

<sup>12</sup> USSD 2005 (Section 5) & USSD 2004 (Section 5)

<sup>13</sup> EC. Romania: 2005 Comprehensive Monitoring Report (pages 54 & 55) & EC: 2004 Regular Report on Romania's progress towards accession (page 30)

<sup>14</sup> USSD 2005 (Section 5)

<sup>15</sup> USSD 2005 (Section 5)

<sup>16</sup> USSD 2005 (Sections 1 & 5)

international standards. As in the past, many of the reported victims were Roma.<sup>17</sup> In the first nine months of 2005, human rights monitors identified 19 cases of violence or abuse against Roma, including police abuse and segregation in schools.<sup>18</sup>

- 3.6.8** Ethnic Hungarians are the largest minority in Romania and the Democratic Alliance of Hungarians from Romania (UDMR) is part of the governing coalition. In 2004, the European Commission reported that no major problems presented themselves in relations between ethnic Hungarians and other ethnic groups and in 2005 it was reported that the situation for the Hungarian minority continued to improve. A law providing for bilingual signs has been applied, including in localities where the minority population is less than 20% (the threshold indicated in the law). After the constitutional revision introducing the right for citizens to use their mother tongue in civil court cases, Hungarian is extensively used in certain areas. The law on the statute of police officers allows the recruitment of officers speaking minority languages, but the number of police officers with this skill remains relatively low.<sup>19</sup>
- 3.6.9** The National Council for Combating Discrimination (NCCD) is an independent governmental agency that reports directly to the Prime Minister's office. In 2005, the NCCD was involved in approximately 158 cases regarding alleged discrimination on the basis of nationality and ethnicity. Throughout 2004 and 2005, the NCCD continued to conduct public awareness campaigns and played a leading role, along with four NGOs, in drafting language for the proposed anti-discrimination law. In October 2005, the NCCD also launched a campaign to prevent and counter prejudice against Roma.<sup>20</sup> However, several NGOs have also reportedly expressed concern that the Government had allocated insufficient resources for the NCCD to carry out its mandate, particularly in areas outside of Bucharest.<sup>21</sup>
- 3.6.10** The Department for Inter-ethnic Relations and the National Office for Roma are also responsible for monitoring the problems of ethnic minorities, maintaining contacts with minority groups, submitting proposals for draft legislation and administrative measures, maintaining links with local authorities, and investigating complaints.<sup>22</sup>
- 3.6.11** In addition, a number of domestic and international human rights groups - as well as other organisations such as political parties and trade unions - also monitor the observance of human rights, investigating and publishing their findings on human rights cases in Romania. Government officials were generally cooperative and responsive to their views during 2005, however, there were reports of government officials harassing and intimidating members of the NGO community.<sup>23</sup>
- 3.6.12 *Sufficiency of protection.*** The Romanian Ombudsman deals with complaints lodged by persons whose civil rights and freedoms have been infringed by the public administration. The amendment of the constitution in October 2003 gave the Ombudsman the possibility of commenting on the constitutionality of legislation prior to its entry into force. The staff of the Ombudsman's office increased in 2004. The Ombudsman is accountable to Parliament. Between September 2003 and August 2004, the Ombudsman received 5,143 petitions - 658 more than during the previous reporting period.<sup>24</sup> The authorities of Romania recognise Roma as a national minority and discrimination against Roma is illegal. Roma may not always obtain the full protection of the law and individual police officers may discriminate against them, but the authorities are willing to offer sufficiency protection to Roma.

<sup>17</sup> EC. Romania: 2005 Comprehensive Monitoring Report (pages 15 & 16)

<sup>18</sup> USSD 2005 (Section 5)

<sup>19</sup> EC. Romania: 2005 Comprehensive Monitoring Report (page 19) & EC: 2004 Regular Report on Romania's progress towards accession (page 30)

<sup>20</sup> USSD 2005 (Section 5)

<sup>21</sup> USSD 2005 (Section 5)

<sup>22</sup> USSD 2004 (Section 5)

<sup>23</sup> USSD 2005 (Section 4)

<sup>24</sup> EC: 2004 Regular Report on Romania's progress towards accession (page 24)

**3.6.13 Internal relocation.** The law provides for freedom of movement within Romania, and the Government generally respected this right during 2005.<sup>25</sup> Therefore, Roma will be able to internally relocate to another part of Romania where they will not face ill-treatment and it would be reasonable to expect them to do so.

#### **3.6.14 Caselaw.**

**MP Romania [2005] UKIAT00086.** The appellant was a victim of trafficking and the Tribunal concluded that internal relocation was a viable option. If the Appellant chose not to go to her home area but to another part of Romania she will have to register with the authorities in order to work and access health care. The Tribunal found that the country information does not show that the police in her home area would be informed that she has registered in another area. The evidence does not show that, even if some of the police in the new area are corrupt, they would have any reason to think that it would be profitable to pass on information about her to others.

**SS (Romania) [2004] UKIAT 00274 (sufficiency of protection – Roma – Evidence)** The Tribunal concurred with case of FD (sufficiency of protection – Roma – Muteanu) Romania CG [2004] UKIAT 00001, in finding that the Romanian Government continues to make progress in addressing discrimination against Roma and that the State offers appropriate and adequate protection against both state and non-state actors.

**FD (Romania) [2004] UKIAT 00001 CG.** This Roma appellant claimed ill-treatment from the local police. The appellant had not made a complaint to a more senior police officer. Therefore, the Tribunal concluded that it had not been established that the state would not have taken appropriate action.

**3.6.15 Conclusion.** The Roma minority group continue to face widespread societal discrimination and harassment and the social inequalities to which the Roma community is exposed remain considerable. However, the Romanian authorities are taking steps to address the problem and provide protection to all minority groups. Effective avenues of redress, such as the Romanian Ombudsman, exist for those who experience, or fear, ill treatment at the hands of rogue officials within the Romanian authorities at a local level. Furthermore, internal relocation within the country to escape such treatment is an option. Therefore, claimants from this category of claim are unlikely to qualify for asylum or Humanitarian Protection and their claims are likely to be clearly unfounded.

### **3.7 Minority religious groups**

**3.7.1** Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Romanian authorities due to their membership of a minority religious group.

**3.7.2 Treatment.** The law provides for freedom of religion, and in 2005 the Government generally respected this right in practice.<sup>26</sup> The Romanian Orthodox Church is the predominant religion in the country and the Government officially recognises 17 religions: The Romanian Orthodox Church, the Roman Catholic Church, the Greek Catholic Church, the Old Rite Christian (Orthodox) Church, the Reformed (Protestant) Church, the Christian Evangelical Church, the Romanian Evangelical Church, the Evangelical Augustinian Church, the Lutheran Evangelical Church-Synod Presbyterian, the Unitarian Church, the Baptist Church, the Pentecostal Church, the Seventh-day Adventist Church, the Armenian Church, Judaism, Islam, and Jehovah's Witnesses (first recognised as a religion in May 2003).<sup>27</sup>

**3.7.3** The Baha'i Faith, the Family (God's Children), the Church of Jesus Christ of Latter-day Saints (Mormons), the Unification Church, the Methodist Church, the Presbyterian Church, Transcendental Meditation, Hare Krishna, and Zen Buddhism have active denominations in

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<sup>25</sup> USSD 2005 (Section 2)

<sup>26</sup> U.S. Department of State: International Religious Freedom Report (USIRFR) 2005 (Section II)

<sup>27</sup> USIRFR 2005 (Section I)

the country, but are not recognised officially.<sup>28</sup> These non recognised faiths are able to operate without restriction and members are able to worship freely, but they do not benefit from the same legal and financial advantages as recognised religions and they are not afforded various forms of state support.<sup>29</sup>

- 3.7.4** The Government registers religious groups that it does not recognise either as religious and charitable foundations or as cultural associations. The State Secretariat for Religious Denominations has reported that it has licensed 622 religious and charitable foundations, as well as cultural organisations thereby entitling them to juridical status as well as to exemptions from income and customs taxes.<sup>30</sup>
- 3.7.5** During 2005, several minority religious groups continued to claim that low-level government officials impeded their efforts at proselytising and interfered with other religious activities. Furthermore, whilst there are generally amicable relations among the different religious groups, the Romanian Orthodox Church has shown some hostility toward non-Orthodox religious churches and criticised the proselytising of Protestant, neo-Protestant, and other religious groups.<sup>31</sup>
- 3.7.6** During 2005, Jehovah's Witnesses and members of the Seventh-day Adventist Church continued to allege verbal and physical abuse from persons incited by some Orthodox priests, who often took an active part in these actions. In some instances, the priests reportedly had the support of local authorities and the police, in other incidents it has been alleged that the police have attempted to intimidate Jehovah's Witnesses/ Seventh-day Adventist Church to stop their activity.<sup>32</sup>
- 3.7.7** However, minority religious groups assert that central government and parliamentary officials are more cooperative than local officials and in 2005, leading political figures continued to make public statements on various occasions against extremism, anti-Semitism, and xenophobia.<sup>33</sup>
- 3.7.8** The National Council for Combating Discrimination (NCCD), established to curb discrimination of any kind (including on religious grounds), received nine complaints of discrimination on religious grounds in 2004 and seven in the first five months of 2005. In three of these cases, the NCCD decided to reprimand those found guilty of religious discrimination, and in a fourth one the NCCD fined the culprit \$220 (ROL 6 million).<sup>34</sup>
- 3.7.9** In addition, a number of domestic and international human rights groups - as well as other organisations such as political parties and trade unions - also monitor the observance of human rights, investigating and publishing their findings on human rights cases in Romania.<sup>35</sup>
- 3.7.10 *Sufficiency of protection.*** The Romanian Ombudsman deals with complaints lodged by persons whose civil rights and freedoms have been infringed by the public administration. The amendment of the constitution in October 2003 gave the Ombudsman the possibility of commenting on the constitutionality of legislation prior to its entry into force. The Ombudsman is accountable to Parliament. Between September 2003 and August 2004, the Ombudsman received 5,143 petitions - 658 more than during the previous reporting period.<sup>36</sup>

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<sup>28</sup> USIRFR 2005 (Section I)

<sup>29</sup> EC: 2004 Regular Report on Romania's progress towards accession (page 26)

<sup>30</sup> USIRFR 2005 (Section II)

<sup>31</sup> USIRFR 2005 (Introduction)

<sup>32</sup> USIRFR 2005 (Section III)

<sup>33</sup> USIRFR 2005 (Section II)

<sup>34</sup> USIRFR 2005 (Section II)

<sup>35</sup> USSD 2005 (Section 4)

<sup>36</sup> EC: 2004 Regular Report on Romania's progress towards accession (page 24)

**3.7.11** In general, the Romanian authorities are able and willing to offer sufficient protection to members of religious minorities. Most of the problems experienced by minority religious groups are at a local level and with members of the Romanian Orthodox church who object to their attempts at proselytising. The NCCD is willing to take action against those found guilty of discrimination against religious minorities and the Ombudsman investigates complaints of police abuse.

**3.7.12 *Internal relocation.*** The law provides for freedom of movement within Romania, and the Government generally respected this right during 2005.<sup>37</sup> Therefore, members of minority religious groups would be able to internally relocate to escape any ill-treatment or discrimination and it would be reasonable to expect them to do so.

**3.7.13 *Caselaw.***

**AH (IAF-Jewish Activist-Bucharest) Romania CG [2002] UKIAT 01086.** The Tribunal found that as a consequence of the applicant's persistent and determined attacks on discrimination against Jews, she would be at real risk of persecution from rogue local officials if she were to return to her home area. The Tribunal concluded however that internal relocation was a viable option.

**3.7.14 *Conclusion.*** Freedom of religion is guaranteed by the Constitution and is observed in practice. The Government registers religious groups that it does not formally recognise either as religious and charitable foundations or as cultural associations. These un-recognised faiths are able to operate without restriction but do not benefit from the same legal and financial advantages as recognised religions. However, this does not amount to persecution within the terms of the 1951 UN Refugee Convention

**3.7.15** At a local level, members of minority religious groups can face hostility from Romanian Orthodox clergy and abuse or lack of protection from low-level rogue government officials who sometimes abuse their authority. In such situations, effective avenues of redress exist such as the National Council for Combating Discrimination (NCCD), who investigate complaints of discrimination including on religious grounds, and the Romanian Ombudsman who deals with complaints lodged by persons whose civil rights and freedoms have been infringed by the public administration. Furthermore, internal relocation within the country to escape such treatment is almost always an option. Therefore, claimants from this category of claim are unlikely to qualify for asylum or Humanitarian Protection and their claims are likely to be clearly unfounded.

**3.8 *Victims of trafficking***

**3.8.1** Some victims of trafficking may claim asylum on the grounds that they fear ill treatment or other reprisals from traffickers on their return to Romania.

**3.8.2 *Treatment.*** During 2005, Romania continued to remain a country of origin, transit and destination for victims of trafficking in human beings, the majority of whom are young women and children who are sexually exploited. Men are often trafficked for labour exploitation or begging, whilst children and disabled persons are also trafficked in order to work as street beggars.<sup>38</sup>

**3.8.3** The International Organisation for Migration (IOM) found that most women who are trafficked from Romania come from poorer areas in the north, including the Transylvania and Moldova regions. Women and girls who were trafficked came mostly from medium sized towns of between 30-100,000 inhabitants. They were usually from single parent families who had not completed schooling and who were unemployed. Abusive parents, lack of opportunity and poor backgrounds often lead young women to take risks with regard to job offers abroad.

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<sup>37</sup> USSD 2005 (Section 2)

<sup>38</sup> EC. Romania: 2005 Comprehensive Monitoring Report (page 15) & International Organisation for Migration (IOM): Second Annual Report on Victims of Trafficking in South-Eastern Europe 2005 (pages 433 and 438)



Education was one of the most important factors in determining whether young women would become victims of trafficking.<sup>39</sup> In 2005, a number of NGOs believed that many girls from orphanages were at particular risk of being trafficked because they lacked the job skills and training necessary to support themselves independently.<sup>40</sup>

- 3.8.4** Women are frequently recruited by persons they know or by newspaper advertisements. A friend or relative would make the initial offer, often telling the victim that she would obtain a job as a baby sitter or waitress. According to the IOM, most women were unaware that they would be forced into prostitution. A minority of trafficked women were sold into prostitution by parents or husbands or kidnapped by trafficking rings. Romanian government officials have reported that trafficking rings appeared to be operated primarily by citizens and that several domestic prostitution rings were active in trafficking.<sup>41</sup>
- 3.8.5** The law prohibits trafficking, which is defined as the use of coercion to recruit, transport, harbour, or receive persons for exploitation. Coercion includes fraud or misrepresentation. Exploitation includes slavery, forced labour, prostitution, being a subject in pornography, organ theft, or other conditions that violate human rights. For minors under the age of eighteen, it is not necessary to prove coercion. In July 2005, the law was amended to provide for 5 to 15 years imprisonment for trafficking in minors or for multiple victims, if a victim suffers serious bodily harm or health problems, or if the trafficking is done by a public servant during his or her official duties. A sentence of 5 to 25 years is mandated for trafficking that leads to the death or suicide of the victim. These penalties are increased by two to three years if the trafficker belongs to an organised crime group and by five years if coercion is applied against minors.<sup>42</sup>
- 3.8.6** During 2004 and 2005, the Romanian Government increased its efforts against trafficking. In August 2004, a national Action Plan to prevent and fight the trafficking of children was approved and in January 2005 new legislation to ensure the protection of the victims of crime came into force. In 2004, the police assigned 15 officers at headquarters in Bucharest and over 87 officers in 15 zonal centres across the country to investigate trafficking. Of the 87 officers assigned to zonal centres, 42 were women who had received training in anti-trafficking procedures. The police continued to pursue cases via the human trafficking task force.<sup>43</sup>
- 3.8.7** In 2005, the authorities also continued to expand inter-agency and local resources assigned to trafficking and the Government participated in regional law enforcement cooperation. In December 2005, the Government created the anti-trafficking agency (ANAT) to coordinate anti-trafficking measures. During 2005, the organised crime police reported identifying 1,444 victims of trafficking offences and the border police referred 104 cases to prosecutors, involving 212 traffickers and 287 victims. In 2004, the authorities convicted 103 traffickers, up from 49 in 2003. Of those convicted in 2004, 34 received prison sentences of five to ten years, and 49 received sentences of one to five years. According to statistics compiled by the National Office, the courts rendered final decisions in 96 trafficking cases and 183 defendants were sentenced for trafficking-related offences during the first nine months of 2005.<sup>44</sup>
- 3.8.8** During 2004 and 2005, the Romanian Government continued to recognise that corruption in the police, particularly local forces, was a problem that contributed to trafficking in persons. There were reported allegations that border police and customs agency officials accepted bribes to ignore cases of trafficking. After three months of undercover investigations, a policeman and two accomplices from Cluj County were arrested in June 2005 for the organised trafficking of children to rings in Italy. The Government continued training and

<sup>39</sup> International Organisation for Migration: 'Who is the Next Victim? - Vulnerability of Young Romanian Women to Trafficking in Human Beings' (pages 5 & 6)

<sup>40</sup> USSD 2005 (Section 5)

<sup>41</sup> USSD 2005 (Section 5)

<sup>42</sup> USSD 2005 (Section 5)

<sup>43</sup> USSD 2004 (Section 5) & EC. Romania: 2005 Comprehensive Monitoring Report (page 15)

<sup>44</sup> USSD 2005 (Section 5) & U.S. State Department. 2005 Trafficking in Persons Report (page 183)

made personnel changes in law enforcement agencies to improve the response to trafficking. Police continued to investigate suspected trafficking through border crossing checks, with Border Police questioning victims and attempting to identify traffickers. Organised Crime Directorate officers assigned to investigate trafficking questioned suspects who were identified by victims.<sup>45</sup>

- 3.8.9** In 2004, Romania's lead police anti-corruption agency investigated 81 police officials implicated in trafficking related corruption. The authorities imposed administrative sanctions on 31 officials, dismissed 10 officials and sent 40 cases forward for prosecution.<sup>46</sup>
- 3.8.10** The law requires the Government to protect trafficking victims, but does not stipulate what forms this protection must take. In 2004, the Government authorised undercover operations and electronic surveillance against traffickers. The law also eliminates criminal penalties for prostitution if the victim surrenders to authorities or cooperates in the investigation of traffickers.<sup>47</sup>
- 3.8.11** The Government's victim protection efforts have improved and by June 2005, seven governmental shelters for trafficking victims were opened. While victims are entitled to shelter, legal, psychological and social assistance by law, overall funding for NGOs that assist trafficking victims remained low in 2004 and 2005, and the shelters were reportedly underutilised. The law obligates law enforcement officials to inform victims of the services available at government operated shelters, but many victims reportedly choose to decline these services. Male victims of trafficking often do not access assistance and many victims of labour exploitation may see themselves as 'unlucky migrant workers' rather than victims of trafficking. Still, during 2005 the Romanian Government worked to build public awareness of trafficking issues and to improve and expand the services offered to victims. The Government co-sponsored with domestic and international NGOs numerous programmes to raise awareness of trafficking and prominent public officials made public statements during the year about the trafficking problem.<sup>48</sup>
- 3.8.12 *Sufficiency of protection.*** Trafficking in persons is illegal in Romania and those who are convicted of such offences face stiff penalties. The Romanian authorities are able and willing to prosecute those responsible and during the first nine months of 2005 183 defendants were sentenced for trafficking-related offences. The authorities recognised that corruption in the police, particularly local forces, was a problem that contributed to trafficking in persons and investigated and prosecuted those officers responsible. The Government also provides help, legal, psychological and social assistance to victims of trafficking and has established a number of shelters. Sufficiency of protection is therefore available.
- 3.8.13 *Internal relocation.*** The law provides for freedom of movement within Romania, and the Government generally respected this right in practice during 2005.<sup>49</sup> A victim of trafficking's fear that registering with the police in a new location may lead to traffickers discovering the individual's new location is unjustified. When registering a new address, the police are not required to contact police in the original area of residence. Police will only contact colleagues in the original area if they wish to obtain the criminal records of that person. Victims of trafficking, who had been returned to Romania with the help of the International Organisation for Migration were interviewed by the Border Police together with a social assistant and a psychologist. Victims are returned to their original area only if there are no risks involved. Otherwise they are sent to shelters in Bucharest or in Iasi.<sup>50</sup> Therefore, internal relocation is an effective way of avoiding risk and would be reasonable.

<sup>45</sup> USSD 2005 (Section 5) & USSD 2004 (Section 5)

<sup>46</sup> U.S. State Department. 2005 Trafficking in Persons Report (page 183)

<sup>47</sup> USSD 2005 (Section 5) & USSD 2004 (Section 5)

<sup>48</sup> USSD 2005 (Section 5), USSD 2004 (Section 5), U.S. State Department. 2005 Trafficking in Persons Report (page 183) & IOM: Second Annual Report on Victims of Trafficking in South-Eastern Europe 2005 (page 462)

<sup>49</sup> USSD 2005 (Section 2)

<sup>50</sup> FCO letter dated 9 September 2004

### 3.8.14 *Caselaw.*

**MP Romania [2005] UKIAT00086.** The Tribunal considered a large array of information, including expert reports, and concluded that whilst trafficking is still a problem, "it is clear that the Romanian authorities have taken wide ranging steps to address not only the immediate problem but related problems such as police and judicial corruption". The Tribunal also found that the appellant did not fall within a particular social group and that she would not be at risk on return from either being trafficked again, or as the victim of a revenge attack from her previous traffickers. The Tribunal went on to find that even if there were a risk to this appellant, as a general rule and specific to her circumstances, "the authorities have both a willingness and an ability to provide a reasonable level of protection for victims of trafficking in Romania" The Tribunal does, however, make clear that there may be exceptional cases with particular circumstances in which there could be a risk and an inability to access a sufficiency of protection.

**3.8.15 *Conclusion.*** Trafficking (most commonly in women and girls to work as prostitutes overseas) remains a widespread problem in Romania. The Romanian authorities have put in place a range of measures to combat trafficking. There is in general sufficient protection available to male and female victims of trafficking through enforcement of legislative provisions and availability of governmental and non-governmental shelters, advice, legal aid and counselling so as to ensure that victims would not be at risk on return of a revenge attack from their previous traffickers and not at risk of being trafficked again. Therefore, claimants from this category of claim are unlikely to qualify for asylum or Humanitarian Protection and are their claims are likely to be clearly unfounded.

**3.8.16** As there is a general sufficiency of protection, internal relocation will not be an issue in many cases. However, the law provides for freedom of movement within the country and the Government respects these provisions in practice. Romanian citizens have the right to settle or to change their residence to any place in the country. Internal relocation is therefore a viable alternative to male and female victims of trafficking in any circumstances where it is necessary.

## 3.9 **Military service**

**3.9.1** Some claimants will apply for asylum or make a human rights claim on the basis that they will be at risk of ill treatment by the authorities for refusing to undertake military service or deserting from military service. Claimants may cite their religious beliefs (most commonly Jehovah's Witnesses) or ethnic origin (commonly ethnic Hungarian or Roma) as the reason for their objection to undertaking military service and as being likely to result in them receiving disproportionate punishment.

**3.9.2 *Treatment.*** Under the terms of Article 55 of the Constitution, as amended in 2003, and the 1996 Law on the Preparation of the Population for Defence (46/1996) all men aged between the ages of 20 and 35 are required to undergo compulsory military service and reservist obligations apply up to the age of 50. The length of military service is 8 months, and 4 months for university and college graduates. The Romanian Government has announced that it plans to abolish conscription in 2007. The armed forces comprise 97,000 troops, including 29,600 conscripts. Every year, approximately 170,000 young men reach conscription age and approximately 35 per cent are recruited.<sup>51</sup>

**3.9.3** Draft evasion is punishable by a fine of between 500,000 and 3 million lei. Furthermore, failure to report for military service is punishable by one to five years' imprisonment under Article 354 of the Criminal Code.<sup>52</sup>

**3.9.4** The right to conscientious objection is regulated by the 1996 Law on the Preparation of the Population for Defence (1996/46) and Government Decree 618/1997 ( "As regards the way of execution of the alternative service law according to the provision of Article 4 from Law

<sup>51</sup> War Resisters' International: Romania 2005

<sup>52</sup> War Resisters' International: Romania 2005

46/1996"). However, the right to conscientious objection only applies to "members of religious groups that do not allow the discharge of military service under arms". The religious groups concerned are named in a list that is made by the State Secretariat for Religious Denominations. The list includes the Pentecostals, Adventists, Baptists, Seventh Day Adventists and Jehovah's Witnesses.<sup>53</sup>

- 3.9.5** There is a strict time limit for submitting conscientious objection applications. Applications must be made to the Ministry of Defence within 15 days of receiving call-up papers and the applicant must state to which church or religious group he adheres. The Ministry of Defence checks the application with the State Secretariat for Religious Denominations. Applications are only granted if the mentioned religion is included in the government list. If the application is rejected, there is no right to appeal with the civil court.<sup>54</sup>
- 3.9.6** The length of substitute service is 12 months, and 6 months for high school graduates. Substitute service is administered by the Ministry of Defence. According to Government Decree 618/1997, substitute service can be performed in public institutions, independent administrations and trade companies working in social and medical assistance, industrial construction, and protection of the environment, agriculture and forestry. In 2000, there were 29 known cases of Jehovah's Witnesses who refused to perform substitute service. They had reservations about its length and nature as, at that time, substitute service lasted twice as long as military service. Moreover, they felt discriminated against because ordained priests of officially recognized religious organisations are legally exempt from military service. Court rulings were inconsistent. Some of them were charged under Article 354 of the Criminal Code for failure to report for military service, some of them were acquitted. In October 2001, the Supreme Court ruled that the failure to report for substitute service is not provided for in the Criminal Code. Since this Supreme Court ruling there have been no new cases of Jehovah's Witnesses refusing to perform substitute service. Some of the Jehovah's Witnesses concerned actually lodged a complaint with the European Court of Human Rights. They accused the Romanian authorities of discrimination because ordained ministers of officially recognized religious organisations are legally exempt from military service. Their cases are believed to be still pending.<sup>55</sup>
- 3.9.7** It is not known how many conscientious objection applications are made or granted each year. However, according to the Romanian Ministry of Defence, between 1991 and 1998, 1,670 conscripts had applied for an alternative service. Most of them were members of the Jehovah's Witnesses and other religious denominations who forbid their members to bear arms. Pending the introduction of Government Decree 618/1997, their call up for service was postponed, but they were supposed to be called up for substitute service by 1998. It is not known how many conscientious objection applications have been made since 1998, nor is it known how far substitute service has been organised in practice.<sup>56</sup>
- 3.9.8** **Sufficiency of protection.** As the claimant fears the state authorities, he/she cannot apply to these authorities for protection.
- 3.9.9** **Internal relocation.** As the claimant fears the state authorities, relocation to a different area of the country to escape this threat is not a consideration.

**3.9.10 Caselaw.**

**SEPET & another [2003] UKHL 15** – The ground upon which the appellants claimed asylum was related to their liability, if returned to Turkey, to perform compulsory military service on pain of imprisonment if they refused. The House of Lords in a unanimous judgement dismissed the appellants' appeals. The House of Lords found that there is no internationally recognised right to object to military service on grounds of conscience, so that

<sup>53</sup> War Resisters' International: Romania 2005

<sup>54</sup> War Resisters' International: Romania 2005

<sup>55</sup> War Resisters' International: Romania 2005

<sup>56</sup> War Resisters' International: Romania 2005

a proper punishment for evading military service on such grounds is not persecution for a Convention reason.

**3.9.11 Conclusion.** The right exists for those members of religious groups that do not allow the discharge of military service under arms to undertake alternative non-military national service. There is no evidence that those who refuse to undertake military service (or substitute service) receive disproportionate treatment by the authorities on account of their religious beliefs or ethnic origin. Proper punishment for evading military service on grounds of conscience is not persecution for a Convention reason. Asylum claims made under this category are therefore likely to be clearly unfounded and will fall to be certified as such.

### **3.10 Prison conditions**

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

**3.10.2 Consideration.** Prison conditions remained harsh and did not meet international standards during 2005. Overcrowding remained a serious problem, although there was a slight improvement over 2004 in respecting prisoners' rights, such as visitation privileges. At the end of 2005, 36,682 persons, including 858 minors, were in prison or juvenile detention facilities in a system with a capacity of 37,393. Overcrowding resulted from a high concentration of inmates in a few facilities; for example, the prison in Bacau operated at 300 percent of its capacity, and the facility at Margineni had 60 cells for 1,500 prisoners, with many cells housing 40 to 50 prisoners each. As a result of overcrowding in certain prisons, detainees awaiting trial were sometimes held in the same facilities and treated in the same manner as convicted prisoners.<sup>57</sup>

**3.10.3** Media and human rights organisations reported that the abuse of prisoners by authorities and other prisoners continued to be a problem during 2005. There were reports that at the prison in Jilava, prisoners with few or no visitors were often the victims of physical and sexual abuse by other prisoners, due to the inability of the victims to obtain outside support, including through filing complaints.<sup>58</sup>

**3.10.4** Sanitation and hygiene in prisons did not meet international standards during the year. Medical facilities were not sufficient to care for all prisoners and detainees. Heating and hot water were not available in several facilities. At the prison at Jilava, prisoners complained of mould on cell walls, rust in the tap water, poor heating, and cold showers. Because the facility was built on swampland, sludge periodically flooded the cells, bringing rats and mice. Many prisoners had lice and scabies, and reported the insufficient provision of many medications.<sup>59</sup>

**3.10.5** NGOs reportedly stated that the lack of daily activities for prisoners was a major problem during 2005. NGOs also reported that prison meals did not provide the minimum necessary calories and that prisoner access to health care was inhibited by the lack of doctors dedicated to prisoners.<sup>60</sup>

**3.10.6** The Government continued limited efforts, including partnerships with NGOs, to alleviate harsh conditions and to deter the spread of HIV and tuberculosis during 2005. With funding from the European Union (EU), the Romanian Government upgraded five prison hospitals, equipping them to detect infections more rapidly. The Government also provided segregated cells for self-declared homosexual prisoners at the maximum security

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<sup>57</sup> USSD 2005 (Section 1)

<sup>58</sup> USSD 2005 (Section 1)

<sup>59</sup> USSD 2005 (Section 1)

<sup>60</sup> USSD 2005 (Section 1)

penitentiary in Adjud to better ensure their safety, and offered higher education courses for prisoners to continue their studies.<sup>61</sup>

**3.10.7** The Government permitted prison visits by human rights observers and media representatives. The national administration of penitentiaries reported that there were 5,688 individual or group visits by media and domestic and foreign NGOs to penitentiaries during the year.<sup>62</sup>

**3.10.8 *Conclusion.*** Whilst prison conditions in Romania are poor, with overcrowding being a particular problem, conditions are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to Romania, a grant of Humanitarian Protection will not generally be appropriate. Similarly, where the risk of imprisonment is for reason of one of the five Refugee Convention grounds, a grant of asylum will generally not be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold, a grant of Humanitarian Protection will be appropriate unless the risk of imprisonment is for reason of one of the five Refugee Convention grounds in which case a grant of Asylum will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Humanitarian Protection.

#### **4. Discretionary Leave**

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

**4.2** With particular reference to Romania, the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave.

#### **4.3 Minors claiming in their own right**

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

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

#### **4.4 Medical treatment**

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

**4.4.2** Romania has a comprehensive state insurance scheme, premiums being paid by enterprises and institutions on behalf of wage earners. A law on unemployment allowance was adopted in

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<sup>61</sup> USSD 2005 (Section 1)

<sup>62</sup> USSD 2005 (Section 1)

January 1991. In addition, funds are allotted to sickness benefits, children allowances, pensions and the provision of health resorts. Emergency medical care is provided free of charge, but there is a growing private healthcare sector.<sup>63</sup>

- 4.4.3** Medical care in Romania is generally not up to Western standards, and basic medical supplies are limited, especially outside major cities. Some medical providers that are up to Western quality standards are available in Bucharest and other cities, but can be difficult to identify and locate. However, there are public and private hospitals/clinics in Bucharest that specialise in General medicine, rheumatology; surgery; fertility, maternity, pediatry and neonatology, oncology; cardiology and heart surgery; pneumology and thoracic surgery; Neurology and Psychiatry. There are also specialist hospitals and clinics for the treatment of children.<sup>64</sup>
- 4.4.4** There are a large number of people affected by HIV and AIDS in Romania. By the end of 2003, overall HIV prevalence was about 44 per 100,000 inhabitants, but given the absence of wide and systematic surveillance, the actual rates could be much higher. The Romanian national response to HIV and AIDS became more structured in 2000 when the National AIDS Strategy 2000-2003 was launched. Since 2001, the Ministry of Health has declared HIV and AIDS as top public-health priority and has developed a Plan for Universal Access to Treatment and Care. As a result, in 2004 more than 6,000 people living with HIV and AIDS received active medical surveillance and received antiretroviral therapy according to international standards. Since 2001, a public-private partnership facilitated by the United Nations has also achieved price reductions of anti-retroviral drugs and donations from pharmaceutical companies.<sup>65</sup>
- 4.4.5** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

## **5. Returns**

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim.
- 5.2** Romanian nationals may return voluntarily to any region of Romania at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Romania. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Romanian nationals wishing to avail themselves of this opportunity for assisted return to Romania should be put in contact with the IOM offices in London on 020 7233 0001 or [www.iomlondon.org](http://www.iomlondon.org).

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