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Some Considerations on the Practical Issues Related to Illegal Migration in Romania

- **ABSTRACT:** *After the peak of migration caused by the Syrian War in 2015, the Russian invasion of Ukraine has increased the challenges for European countries in the domain of migration. EU countries need to ensure efficient control at the external borders of the EU and identify, at the national level, proper mechanisms for tackling illegal migration and finding a solution to the problem of rejected asylum seekers. The objectives of EU and national immigration policies are to maintain security and stability in the European Area, protect EU external borders, and control organized crime. This paper examines some practical issues related to migration in Romania, a country situated at the intersection of migration routes (one coming from Russia to Hungary, The Western Balkan Route and the Southern Migration Route). It presents the challenges related to asylum, integration, labour market demands, and security risks this country faces. Adopting effective immigration policies and integration measures is essential in managing migration and ensuring the protection of fundamental rights for those seeking international protection, strengthening the asylum system, raising public awareness, and addressing security concerns. The paper highlights the issues the Romanian national authorities faced in their efforts to ensure the security of EU external borders.*
- **KEYWORDS:** asylum policy, migration, migration crisis, EU external border protection, illegal migration, illegal push-backs, readmission agreements

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1. Introduction

Since 2015, the intensification of migration in Europe has increased the pressure on decision-makers to adopt proper administrative and financial measures to tackle the challenges raised by the increasing numbers of refugees and immigrants in EU member states.¹ The objective of the EU-wide and national immigration policies² is to maintain a climate of security and stability in the European Area and to ensure protection for the EU's external borders and proper control of the activity of organised crime groups.

The actions of the EU institutions adopted in recent years had the objective of creating and adapting a proper legislative framework regarding asylum to ensure protection for immigrants transiting the Member State's territory or remaining there, good institutional coordination, regional security, and the protection of the external borders of the EU.

In Europe, several routes of migration can be identified:³

*The Eastern Mediterranean route*⁴ refers to illegal migration to Greece, Cyprus, and Bulgaria, especially by Syrian immigrants. Irregular migration was tackled by common measures adopted with Turkey and by a 6-billion-euro EU funding allocated for joint coordination mechanisms and refugee support.

*The Western Mediterranean route*⁵ tackles illegal migration flows to Spain, which illegal migrants from Africa use by transiting through Algeria and Morocco. Migration flows from this route have been reduced in recent years because of the excellent collaboration between Spain and Morocco with the help of the FRONTEX and Team Europe Initiatives⁶ (a cooperation mechanism to tackle illegal migration on the Western Mediterranean and Western African routes).

*The Western African route*⁷ refers to illegal arrivals to the Canary Islands via the Atlantic Ocean from Western African countries, such as Morocco, Senegal, Gambia, Mauritania, and Western Sahara.

1 Denisenko et al., 2020, p. 176.

2 See for more details Bodvarsson and Van den Berg, 2013, p. 370.

3 See for more details Bonifazi, 2008, pp. 107–129.

4 European Council (no date) *Migration flows on the Eastern Mediterranean route* [Online]. Available at: <https://www.consilium.europa.eu/en/policies/eu-migration-policy/eastern-mediterranean-route/> (Accessed: 23 October 2023).

5 [Online]. Available at: <https://www.frontex.europa.eu/what-we-do/monitoring-and-risk-analysis/migratory-routes/migratory-routes/> (Accessed: 12 September 2023).

6 European Union (no date) *Team Europe Initiatives and Joint Programming Tracker* [Online]. Available at: <https://capacity4dev.europa.eu/resources/team-europe-tracker> (Accessed: 10 September 2023).

7 [Online]. Available at: <https://www.frontex.europa.eu/what-we-do/monitoring-and-risk-analysis/migratory-routes/migratory-routes/> (Accessed: 09 October 2023).

*The Central Mediterranean route*⁸ refers to illegal arrivals across the Mediterranean Sea from Africa, Turkey, Italy, and Malta.

*The Western Balkan route*⁹ refers to illegal arrivals to the EU, mainly in Bulgaria, Croatia, Hungary, and Romania, by crossing with Albania, Bosnia, Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia. The importance of this route has increased significantly since the Russian invasion. This is one of the main migratory pathways in Europe. Considering the increasing importance of this migration route, an EU action plan for the Western Balkans was presented on the 5th of December 2022. For Balkan countries with statutes of actual or potential candidate countries, the Instrument for Pre-Accession Assistance permits reforms and provides technical assistance.

2. The Romanian National Strategy Regarding Immigration for 2020-2023¹⁰

This recently adopted strategy aims to establish principles and guidelines for various aspects of immigration in Romania. These aspects include regulating policies on workforce admission, residence and immigration, combating illegal immigration, managing the departure of foreigners from the territory, providing specific types of protection to those in need, and facilitating the integration of immigrants into Romanian society.

To implement the outlined directions of action, a specific Action Plan for the implementation of the National Strategy on Immigration has been developed for the years 2021 and 2022. The strategy's overall aim and action plans are likely to strike a balance between meeting the labour market demands and addressing the challenges posed by immigration while ensuring the fair and appropriate treatment of immigrants. It also emphasises the importance of respecting human rights, providing humanitarian aid to those in need, and facilitating the integration of immigrants into Romanian society.

Efforts made by institutions in Romania aim to create an immigration system that brings cultural, social, and economic benefits to the country while also addressing illegal immigration. The focus is on striking a balance between safeguarding the fundamental rights and freedoms of all individuals, regardless

8 [Online]. Available at: <https://www.frontex.europa.eu/what-we-do/monitoring-and-risk-analysis/migratory-routes/migratory-routes/> (Accessed: 30 September 2023).

9 [Online]. Available at: <https://www.frontex.europa.eu/what-we-do/monitoring-and-risk-analysis/migratory-routes/migratory-routes/> (Accessed: 27 September 2023).

10 Official Gazette of Romania, Part I, No. 839 bis/2.09.2021 [Online]. Available at: <https://igi.mai.gov.ro/wp-content/uploads/2022/01/National-Strategy-on-Immigration-2021---2024.pdf> (Accessed: 03 October 2023).

of their backgrounds, and allowing the state to have control over its domestic policy on legislation related to foreigners and their legal status.

One of the key components of this immigration system is ensuring *legal immigration channels*. By aligning with the country's current and future socio-economic needs, legal immigration can help meet labour market demands while reducing illegal immigration. Cooperation with third countries of origin and the transit of immigrants can provide safe and legal alternatives for people who wish to immigrate to Romania and help fill labour market gaps.

This return issue aims to establish an efficient return policy. This includes investing in mobilising various actors involved in return procedures and coordinating their actions to manage individual return cases effectively. This may involve detaining individuals who have received a return decision and show signs of non-compliance, shortening appeal deadlines, issuing return decisions without expiration dates, and combining the termination of legal residence with the issuance of a return decision. Additionally, efforts will be made to disseminate information on voluntary returns and reintegration programmes.

It is also fundamentally important to integrate third-country nationals into Romanian society. The rapid and successful integration of immigrants is beneficial for developing host communities and the labour market. The involvement of local authorities, deconcentrated services, social partners, and non-governmental organisations in the integration process is encouraged to create a partnership mechanism that effectively supports newcomers.

Romania promotes equal treatment and an appropriate standard of living for asylum seekers, respecting fundamental human rights. Therefore, particular attention should be paid to individuals with special acceptance needs to ensure they receive appropriate reception and assistance.

The objectives of the National Immigration Strategy for the period 2021–2024 are categorized under four general objectives: promoting the conditions of entry, residence, and exit from Romania (Objective A); consolidating the national asylum system and ensuring compliance with European and international standards (Objective B); unitary and integrated management of actions carried out under a crisis (Objective C); and the creation of sustained capabilities necessary for implementing policies in the field of migration, asylum, and integration of foreigners (Objective D). Each objective aims to achieve specific results, and the direction of action describes the measures taken to achieve these results.

Objective A.1. – Promoting the conditions of entry, residence in and exit from Romania

The major aim is to ensure better information on legal migration, by:

1. Informing foreigners, employers, authorities and other relevant parties in Romania about the country's immigration legislation.
2. They are informing citizens of their countries of origin about Romania's immigration legislation, either

directly or through liaison officers (ILO) or Romanian diplomatic missions and emigration authorities.

Objective A.2. – Simplifying the access of foreigners to Romania for employment/relocation purposes and developing the system enabling the access of investors from third countries to the Romanian market. The objective is to reduce the labour market deficit and to increase the number of investors, by: 1. Regularly analysing the current labour market by competent institutions and establishing annual quotas of newly admitted workers based on identified needs. 2. Negotiating bilateral agreements with interested third countries to allow their citizens to be admitted to the Romanian labour market. 3. Encourage employers to hire third-country nationals who have completed their studies in Romania. 4. Grant facilities include exemptions from certain conditions for granting long-stay visas and/or extensions of the right of residence for foreigners conducting commercial activities.

Objective A.3. – Effective prevention and combating of illegal migration, illegal migration associated with terrorism, immigrant trafficking, and labor exploitation of foreign employees. The aim is to ensure a safer space for citizens, via: 1. Enhancing collaboration among competent Romanian authorities to prevent and combat illegal immigration, immigrant trafficking, and the undeclared work of foreigners. 2. Increased efficiency and capacity to detect, transport, accommodate, and return illegal immigrants. 3. Prevent labour exploitation of foreign employees. 4. Identifying, isolating, and separating operatives/former members of terrorist organisations within illegal migration flows and implementing specific prevention measures. 5. Preventing actions threatening national security that may be carried out by immigrants involved in terrorist activities, such as self-radicalisation, jihadist propaganda, support for terrorist organisations, or violent actions.

The second major objective, namely, Consolidating the national asylum system and ensuring compliance with European and international standards, can be realised by emphasising the following objectives and specific actions.

Objective B.1. – The efficient processing of asylum requests in compliance with applicable national, European, and international legal standards. To obtain an efficient national asylum system compliant with applicable national and international standards by providing interpreting, counselling, and legal support services to asylum seekers; strengthening the quality control mechanism of the asylum procedure; updating operational work procedures; enhancing dialogue among decision-makers in the asylum procedure; adapting the national legal framework based on changes in the European acquis; and limiting abuses in the asylum procedure.

Objective B.2. – Streamlining the process of determining the member state responsible for analysing the international protection application to fulfil

Romania's obligations under the Dublin system and strengthen bilateral cooperation with member states participating in the Dublin system.

Specific Objective B.3. – Ensuring reception and assistance facilities for asylum seeker, by providing them with an adequate standard of life established at the European level.

Specific Objective B.4. – Consolidating the mechanism of social integration of individuals with a form of protection in Romania and those with legal residence, via the development of integration programs for individuals with a form of protection in Romania and those with legal residence and promoting education favouring social inclusion by adapting the legal framework to the specifics of migrant students and removing obstacles against the participation of minor third-country nationals in pre-school and school education.

Objective B.5. – Relocating refugees and asylum seekers and the temporary evacuation of people urgently needing protection in Romania and the subsequent relocation thereof

Objective B.6. – Develop cooperation with the European organism responsible for managing asylum-related issues and other European and international bodies to manage asylum-related issues in compliance with the attributes of the competent European body and other European and international bodies.

The third major objective of the national strategy, named Prior preparations and the unitary and integrated management of actions carried out under a crisis (Objective C), is to increase the population safety level as follows: 1. Improving knowledge on managing crises generated by an influx of immigrants. 2. Strengthening the interinstitutional cooperation mechanisms for crises generated by an influx of immigrants that might include members/adepts of terrorist organisations. 3. Equipping the General Immigration Inspectorate with necessary equipment and travel means and improving the physical infrastructure to manage crises generated by an influx of immigrants.

These specific objectives and their associated action directions focused on strengthening Romania's response capacity to an influx of immigrants along its borders. They emphasised the efficient processing of asylum requests, ensuring reception facilities and integration measures for those seeking protection, and fulfilling obligations regarding the relocation and temporary evacuation of refugees and asylum seekers.

The last general objective mentioned in the national strategy (Objective D) focuses on creating the necessary capabilities to implement strategies related to immigration by putting the accent on developing/updating the physical and IT infrastructure of national institutions and authorities, ensuring sufficient and well-trained human and financial resources; accessing non-reimbursable external funds and enhanced dialogue with the civil society and non-state international actors. The objectives and directions of action mentioned above aim to strengthen

the capabilities of the Romanian State to effectively implement policies related to the migration, asylum, and integration of foreigners.

3. Public authorities involved in migration matters¹¹

Table 1. Romanian Authorities having competence in Immigration matters¹²

Stage of the procedure	Competent authority (EN)
Application	General Inspectorate for Immigration – Directorate for Asylum and Integration (IGI-DAI)
Dublin	General Inspectorate for Immigration – Directorate for Asylum and Integration (IGI-DAI)
Refugee status determination	General Inspectorate for Immigration – Directorate for Asylum and Integration (IGI-DAI)
First appeal	Regional Court (Judecatorie Sectia Civila, materie: Contencios Administrativsi Fiscal)
Onward appeal	County Tribunal Administrative Litigation Section (Tribunal Sectia de ContenciosAdministrativsi Fiscal)
Subsequent application	General Inspectorate for Immigration – Directorate for Asylum and Integration (IGI-DAI)

The General Inspectorate for Immigration (GII)¹³ in Romania handles the asylum procedure through the Directorate of Asylum and Integration (DAI). This includes operating reception centres for asylum seekers and specially designed closed spaces within these centres. The GII-DAI, as the competent authority, makes decisions regarding asylum applications in the first instance.

The leadership of the GII, including the general inspector and two deputy general inspectors, is appointed through a selection process organised by the GII by the relevant laws and regulations. The GII-DAI also consists of a director and one deputy whose positions are filled through exams, reassignments, or direct designation, as per Law 360/2002 on the status of police officers.

Government Decision No. 639 of 20 June 2007 prescribed the institutional structure and mandate of the GII.¹⁴ The GII-DAI operates six centres for asylum seekers' accommodation and legal procedures at the regional level. Each regional centre has a director, a deputy director, and officers responsible for different tasks related to asylum procedures.

11 [Online]. Available at: <https://www.pragueprocess.eu/en/countries/898-romania> (Accessed: 12 September 2023).

12 Source: AIDA Report, 2021, p. 16.

13 [Online]. Available at: <https://igi.mai.gov.ro/en/> (Accessed: 11 September 2023).

14 [Online]. Available at: <https://legislatie.just.ro/Public/DetaliiDocument/83157> (Accessed: 09 September 2023).

As of 2022,¹⁵ there were 29 case officers in the GII-DAI, compared to 23 case officers in 2020, with an additional 16 officers responsible for the preliminary interviews 2020. Case officers receive specific training through seminars, guideline processing, ad hoc meetings, monitoring visits, and quality assessments, among other methods.

In addition to the information provided in individual cases, case officers receive regular information through the specialised department within the GII-DAI and materials developed by organisations such as the United Nations High Commissioner for Refugees (UNHCR) and the European Union Agency for Asylum (EUAA). These measures ensure the proper handling of asylum applications and adherence to relevant guidelines and standards.

The Ministry of Internal Affairs¹⁶ is responsible for the General Inspectorate of the Romanian Police, the gendarmerie, the border police, the General Directorate for Internal Protection, and the Directorate General for Anti-Corruption.

The General Directorate for Internal Protection¹⁷ is responsible for intelligence gathering, counterintelligence, and preventing and combatting vulnerabilities and risks that could seriously disrupt public order or target the Ministry of Internal Affairs operations. The directorate reports to the Interior Minister.

The Romanian Intelligence Service,¹⁸ a domestic security agency, investigates terrorism and national security threats. This service was reported to the Supreme Council of National Defense. Civilian authorities maintained effective control over intelligence services and security agencies reported to the Ministry of Internal Affairs.

The United Nations High Commissioner for Refugees in Romania.¹⁹ The UNHCR plays a significant role in supporting and monitoring asylum-related issues in collaboration with Romanian authorities, and monitors asylum procedures carried out by the government. Thus, UNHCR ensures the Romanian government adheres to international refugee law standards. Legal statements may be drafted to address concerns related to the asylum framework. The institution advocates timely access to fair and efficient asylum procedures but does not have direct influence over the authorities' proceedings. The organisation also actively raises awareness of refugee-related topics and collaborates with various stakeholders, including NGOs, academia, and the media. However, the UNHCR does not perform certain tasks, such as registering asylum seekers, examining asylum applications, and issuing refugee or protection documents in Romania. These responsibilities

15 AIDA Report, 2021, p. 17.

16 [Online]. Available at: <https://www.mai.gov.ro/> (Accessed: 08 September 2023).

17 [Online]. Available at: <https://dgpri.ro/documente/2017/05/mfn/acasa-eng.html> (Accessed: 07 September 2023).

18 [Online]. Available at: <https://www.sri.ro/en> (Accessed: 07 September 2023).

19 [Online]. Available at: <https://www.unhcr.org/countries/romania> (Accessed: 07 September 2023).

fell under the purview of the Romanian government. If individuals wish to seek advice and information about the asylum procedure or know more about the available services, they can contact the UNHCR for assistance. Overall, the UNHCR's role in Romania focuses on supporting the government's efforts to protect and assist refugees while monitoring and advocating compliance with international refugee law and standards.

Commission for Immigration Management (hereinafter 'Commission'), which operates under the Government Decision No. 572/2008 on the organisation of the Commission for Immigration Management.²⁰ The main attributes of the Commission, and therefore of the Territorial Structures, are drafting the National Strategy on Immigration (SNI) project and the corresponding action plans, as well as supporting their passing and monitoring their implementation.

4. Particularities of national asylum granting procedure

■ 4.1. *The ordinary procedure*

4.1.1. *Initiation of the asylum procedure – registering the Asylum request*

According to Article 34 Paragraph 1 of the Asylum Act, a person is considered an asylum seeker from the moment of the manifestation of the will, expressed in writing or orally, in front of competent authorities, from which it follows that they request the protection of the Romanian state.

The following authorities can receive the asylum request:²¹ 1. The National Office for Refugees and its territorial structures; 2. the structures of the Romanian Border Police; 3. the structures of the Authority for Foreigners; 4. the structures of the Romanian Police; 5. the structures of the National Administration of Penitentiaries within the Ministry of Justice.

The asylum applications can only be on the state territory or at the state border²² as soon as the applicant presents themselves at a control point to cross the state border or enter the territory of Romania. Competent authorities cannot refuse an asylum application because it was submitted late.²³

Asylum applications need to be made in Romanian or another language spoken by the applicant individually²⁴ and submitted personally by the applicant or, as the case may be, by the curator or legal representative.

20 Published in the Official Gazette No. 439 from 11 June 2008.

21 Art. 35 of the Asylum Act.

22 According to Art. 36(2) of the Asylum Act, asylum applications submitted outside the territory of Romania are not accepted.

23 Art. 36(3) of the Asylum Act.

24 According to Art. 37(3) of the Asylum Act, collective asylum applications are not accepted.

Suppose the asylum application is submitted to the territorial bodies of the structures of the Ministry of Administration and Internal Affairs. In that case, the applicant must present themselves at the National Office for Refugees or, as the case may be, at one of its territorial structures. Suppose the asylum application was submitted to a territorial body of the Romanian Border Police from a control point for crossing the state border. In that case, the applicant who received access to the territory by the decision of the National Office for Refugees is informed with regarding the fact that they must present themselves at the National Office for Refugees or, as the case may be, at a territorial structure thereof. Usually, the asylum seeker bears the expenses caused by transport to the National Office for Refugees or, as the case may be, to one of its territorial structures. In exceptional situations in which the applicant does not have the necessary amount to cover transportation expenses, this amount is borne by the National Office for Refugees.

Asylum applications submitted at a control point for crossing the state border, to the Authority for Foreigners, and the bodies of the National Penitentiary Administration within the Ministry of Justice are registered in special registers.²⁵

4.1.1.1. Asylum requests made by minors

According to Article 39(1), in the case of a minor asylum seeker, his/her interests are defended by a legal representative. A legal representative makes the asylum request of minor foreigners aged under 14 years. Minors who have reached the age of 14 years can submit an asylum application personally, in writing, or orally before the competent authorities. Suppose the unaccompanied minor foreigners have expressed their will to obtain asylum in writing or orally before the competent authorities other than the National Office for Refugees. In that case, the territorial body of the specialised structure of the Ministry of Administration and Interior or the Ministry of Justice, which has been notified, will immediately inform the National Office for Refugees, which ensures the applicant's transport to the competent structure to analyse the asylum application.²⁶

After registration of the unaccompanied minor foreigners as asylum seekers, the National Office for Refugees will immediately notify the competent authority for child protection within whose territorial competence the accommodation centre where the asylum application is to be submitted is located in order to initiate the procedure of appointment of a legal representative.²⁷ In a situation where the unaccompanied minor cannot prove their age, and there are serious doubts about their minority, the National Office for Refugees requests the

25 Art. 38(5) of the Asylum Act.

26 Art. 39(4) of the Asylum Act.

27 Art. 40(1) of the Asylum Act.

performance of medico-legal experts to assess the age of the applicant, with the prior written consent of the minor and their legal representative. Suppose the asylum seeker and/or legal representative refuses to perform the medico-legal age assessment, and no conclusive evidence is provided regarding their age. In that case, they will be considered an adult, and it is considered that the person in question has reached the age of 18 on the date of submission of the asylum application.

The asylum application should be made within a maximum of three working days if the application is made in front of the National Immigration Office or within a maximum of six working days if the application is made in front of another competent authority.

4.1.2. Subsequent procedures after registering the asylum request

Asylum seekers are photographed, fingerprinted, and issued with a temporary identity document, which includes a personal numeric code. The temporary identity document is extended periodically.

After registering the asylum application at the National Office for Refugees or its territorial formations, the applicant completes a questionnaire to establish personal data regarding asylum seekers and their family members, information about the route travelled from the country of origin to Romania, data related to possible asylum applications submitted in other third countries or in an EU member state, and the identity or travel documents in the applicant's possession.²⁸

Once the asylum application is submitted, the National Office for Refugees or other competent authorities take the fingerprints of all asylum seekers who, according to their declarations, have reached 14 years of age. All data obtained will be transmitted and stored in paper format in the National Office for Refugees files and in electronic format in the AFCS national database (Automated Fingerprint Comparison System).²⁹ The transmission and collection of asylum seekers' fingerprints comply with provisions related to the principle of confidentiality and protection of personal data, and the person in question must be informed in writing about this fact. Starting with the date of Romania's accession to the European Union, the fingerprints taken were transmitted and stored in the European database EURODAC (European System for Automatic Identification of Fingerprints).

Asylum seekers are interviewed³⁰ to determine the form of international protection they can benefit from. The interview is recorded in writing and concerns the necessary information to process the asylum application, namely, the identification data of the applicant, the name of the official designated to carry

²⁸ See Art. 43 of the Asylum Act.

²⁹ Art. 44 of the Asylum Act.

³⁰ Arts. 45–46 of the Asylum Act.

out the interview; the name of the interpreter and, as the case may be, of the legal representative, the curator and/or of the lawyer who assists the applicant; the language in which the interview is conducted; the reasons for asylum; and the applicant's statement showing that all the data and information presented in the interview are real. Where it is reasonably assumed that the asylum seeker knows another language they can communicate, interviews may be conducted in that language. The asylum seeker could not refuse the interview because of the absence of a lawyer. Rescheduling the interview because of the lawyer's absence is possible only once and only if there are valid reasons to justify this absence. The reasons for their refusal were recorded if the applicant refused to sign the interview notes. The applicants' refusal to sign the interview note did not prevent the National Office for Refugees from deciding on the asylum application.

Interviews with minor asylum seekers were conducted with their legal representatives. The legal representative informs the minor asylum seeker about the purpose and possible consequences of the personal interview and undertakes the necessary steps to prepare the minor for the interview according to its degree of intellectual development and maturity.

4.1.3. Solving asylum applications – the administrative phase

The asylum application is resolved based on the existing documents in the applicant's file and the reasons cited by the applicant, which are analysed to the exact situation in the country of origin and the applicant's credibility. The decision to close the file is communicated immediately, in writing, to the applicant by direct communication with the National Office for Refugees representatives or by sending it by post to the applicant's last declared residence.

Suppose the applicant renounces the asylum application at the administrative stage. In that case, they must leave Romania after 15 days from the end of the asylum procedure, except that the applicant has the right of residence regulated according to the legislation on the legal regime of foreigners.

The decision regarding the asylum request should be issued in 30 working days and can have the following finalities:³¹ 1. the recognition of the refugee status; 2. granting of subsidiary protection; 3. rejection the asylum application.

The decision to grant subsidiary protection also includes reasons for not granting refugee status. The decision to reject the asylum application includes appropriate reasons and mentions the obligation to leave Romania's territory. Foreigners must leave the territory of Romania within 15 days of the completion of the asylum procedure unless the asylum request is rejected as obviously unfounded following its resolution within the accelerated procedures, in which case the foreigners are obliged to leave the territory of the Romanian state as soon as the asylum procedure has been completed. The admission or rejection of the asylum

31 See Art. 53 of the Asylum Act.

application is made by a decision that is communicated immediately, in writing, to the applicant, by direct communication with the National Office for Refugees representatives, or by postal delivery to their last declared residence.³²

The Asylum Act provides for an accelerated procedure³³ for manifestly unfounded applications, namely asylum applications of persons who, through their activity or membership in a particular group, threaten national security or public order in Romania and asylum applications of persons coming from a safe country of origin. A decision is issued within three days of the start of the accelerated procedure. A negative decision in the accelerated procedure may be appealed within seven days of the notification of the decision. If an appeal was filed within the deadline, it had an automatic suspension effect.

4.1.4. Contesting the decision – the Regional Court phase

In the event of a negative decision, the applicant may appeal, with a suspensive effect, to the Regional Court within ten days of communicating the decision.³⁴ In case of a complaint submitted at term, the applicant has the right to remain in Romania during the settlement of the case.

Complaints are submitted only to the National Office for Refugees or, as the case may be, to the territorial structure that issued the decision to reject the asylum application and will be accompanied by a copy of the decision to reject the asylum application, the reasons for the complaint and documents, or any other elements that supported the complaint. The complaint was submitted immediately to the competent court.

The complaints of minors aged under 16 years are submitted by their legal representatives. A minor who has reached the age of 16 can submit a complaint in their name.

The content of the complaint³⁵ will contain the factual and legal grounds on which the complaint is based, evidence, and the applicant's signature. Debates take place in front of the court in secret sessions and in compliance with principles of confidentiality.

The reception³⁶ made by the authority which issued the contested decision will include procedural exceptions that the respondent raises to the complaint formulated by the petitioner, answers to all factual and legal aspects, and the evidence with which they defend themselves against each end of the complaint.

32 Art. 54 of the Asylum Act.

33 Art. 75(1) of the Asylum Act.

34 Art. 55 of the Asylum Act.

35 See Art. 57 of the Asylum Act.

36 Art. 61 of the Asylum Act.

The appeals are resolved within 30 days.³⁷ The court resolved the complaint, whose territorial jurisdiction was within the competent structure of the National Office for Refugees that issued the decision.

4.1.5. Contesting the decision – the Appeal Court phase

According to the provisions of Article 66, against the court's decision, the appellant or the National Office for Refugees can file an appeal within five days of the ruling. In the case of minor asylum seekers under 16, the appeal is declared by their legal representative.

If the appeal is declared within the legal terms, the applicant can remain in Romania during its resolution. The appeal will be judged within 30 days of its registration by the court (the administrative litigation section), in which jurisdiction is the court whose decision is appealed.³⁸

If the appeal is made outside legal terms, the applicant may request suspension of executing the order to leave Romania's territory. The request for suspension is resolved within seven days of its registration by the competent court, which pronounces it in the council chamber without summoning the parties through an irrevocable conclusion. Until the request to suspend the execution of the order to leave Romania is settled, foreigners cannot be removed from the Romanian state.³⁹

4.1.6. Completion of the asylum procedure and the disposition to leave the territory of Romania

If foreigners have not obtained a form of protection after completing the asylum procedure, the Authority for Foreigners, based on the provisions of Article 53 Paragraph 3 and Article 51 Paragraph 6 of the Asylum Act, issues and implements an order to leave Romania's territory.

The asylum procedure is considered completed within seven days from the moment of communication of the decision to close the file, from the date of expiry of the legal deadline for submitting the complaint or, as the case may be, the appeal, or from the date of the pronouncement of the rejection decision to the court of appeal.⁴⁰

If, for objective reasons, foreigners cannot leave the territory of Romania in the legal terms mentioned in the Asylum Act, the competent authorities permit them to stay in the territory of Romania under the conditions provided by the legal regulations regarding the regime of foreigners in Romania.

37 Art. 64 of the Asylum Act.

38 See Art. 67 of the Asylum Act.

39 Art. 69 of the Asylum Act.

40 Art. 70 of the Asylum Act.

■ 4.2. *Special asylum procedures*

4.2.1. *The Dublin Procedure*

The primary goal of the Dublin Procedure is to determine the EU Member State responsible for examining an asylum request presented by a third-country national or stateless person. It is applicable when an asylum seeker requests international protection in Romania, and, after background checks, it is found that they have already requested another Member State, were seized for illegal entry in another Member State, or possessed a visa/residence document legally issued by another Member State that allowed them to enter the EU, even if those documents were not effectively used.

Once a Member State takes responsibility for the asylum seeker, the individual is transferred to the state where international procedures are applied. The transfer period ranged from 6 to 18 months.

Table 2. The Application of Dublin Procedures in Romania in 2022⁴¹

Dublin statistics: 2022 Outgoing procedure			Incoming procedure		
Requests		Transfers	Requests		Transfers
Total	551	11	Total	5,754	306
Bulgaria	205	2	Germany	1,376	90
Greece	73	0	Austria	1,366	93
Germany	5	4	France	1,100	42
Cyprus	4	0	Italy	457	0
Spain	2	0	Slovakia	109	17
Poland	2	1	Netherlands	102	11

Regarding the implementation of the Dublin Regulation in Romania in 2022, we can retain that in 2022, Romania had issued 551 requests under the Dublin Regulation, which decreased, compared to 815 requests in 2021 and 231 in 2020.

In addition 2022, Romania received 5,754 requests under the Dublin Regulation, a decrease from 9,493 requests in 2021 and 3,221 in 2020.

In Romania, asylum seekers are not required to present original documents or undergo DNA tests to prove family links for family reunification. Instead, they generally provide copies of the family book, birth certificate, residence permit of the relative with whom they want to be reunited and, in the case of unaccompanied children, a written expression of the relative's desire to be reunited with the child. Family unity is the most frequently applied criterion in practice for Dublin Regulation cases in Romania, with most cases involving reuniting with family members residing in other EU Member States. The cases in which the family criterion was

41 Source: AIDA Report, 2021, p. 53.

applied to 2–3 unaccompanied children with relatives in other EU Member States resulted in transfers to Germany and the Netherlands. Additionally, transfers were carried out to Bulgaria, Greece, Croatia, and Cyprus from other centres.

All asylum seekers were fingerprinted, photographed, and checked against the Eurodac database, which contained the fingerprints of asylum seekers and irregular border crossers in the EU. Refusal to be fingerprinted may result in the application of measures of constraint. The Dublin interview was conducted during or after the preliminary interview, depending on the regional centre. It is generally conducted faster than the regular asylum procedure and sometimes on the same day as a preliminary interview.

The Romanian Dublin Unit does not seek individualised guarantees before transferring an asylum seeker to another Member State. However, an asylum seeker subject to the Dublin procedure has the same rights and obligations as an asylum seeker in the regular procedure until the transfer is carried out effectively. The GII-DAI has the authority to reduce or withdraw the material reception conditions for asylum seekers, including those subjected to the Dublin procedure. This decision can be challenged in court. An asylum seeker subject to the Dublin procedure can appeal a decision that rejects access to the asylum procedure in Romania and orders a transfer within five days of communication. The appeal does not have an automatic suspensive effect, but the asylum seeker can request suspension of the transfer decision when the appeal is pending.

The average duration of the Dublin procedure, from the issuance of a request to transfer, was approximately 2–3 months. The average duration between accepting responsibility and the actual transfer was one month.

Asylum seekers subject to the Dublin procedure may be subject to various restrictive measures, including the obligation to report to the Immigration and Asylum General Inspectorate, designation of their residence in a Regional Centre of Procedures for Asylum Seekers, and in some cases, placement in public custody (detention). However, in general, asylum seekers subjected to the Dublin procedure are not placed in detention.

The Act includes provisions for express and tacit withdrawal cases of asylum applications. Tacit withdrawal occurs when the applicant is absent from the scheduled interview without valid reasons. If an applicant makes an asylum claim within nine months of the decision to close the file because of tacit withdrawal, the asylum procedure may continue.

If an applicant's asylum application was discontinued due to explicit withdrawal or leaving the territory for at least three months and they returned to Romania and lodged a new asylum claim, it was considered a subsequent application and not a continuation of the previous procedure.

4.2.2. *Tolerance procedure*

The tolerance procedure, as regulated by Emergency Decree No. 194/2002, provides a special mechanism for individuals who are not Romanian citizens or citizens of an EU/EEA Member State and cannot leave Romania for objective reasons. These objective reasons can include various situations, such as being criminally charged with a ban on leaving the city or country, the end of a period of public custody, suspension of the obligation to return, and the temporary presence required for important public interests.

To be eligible for the tolerance procedure, applicants must submit a written request to the GII and provide relevant documents as proof of the objective reasons preventing them from leaving the country. If the authorities find the applicant's reasons valid, they may grant tolerance, allowing the individual to stay in Romanian territory despite not being a Romanian citizen or a citizen of an EU/EEA Member State.

Tolerance is temporary and ceases to be applicable once the objective reasons for which it was granted no longer exist. If an applicant's request for tolerance is not granted, they have the right to contest the decision within five days of receiving the communication. Appeals should be made in the Territorial Court of Appeals. The Territorial Court of Appeals reviewed the case and issued a rule within 30 d. The court's decision was considered final, and there was no further appeal after the ruling.

4.2.3. *Accelerated procedure*

The accelerated procedure for assessing asylum applications in Romania is designed to handle cases that are manifestly unfounded, involve applicants who may threaten national security or come from a Safe Country of Origin.⁴²

An application is considered manifestly unfounded if the applicant lacks a well-founded fear of persecution or serious harm in their country of origin and their statements lack credibility and coherence or are inconsistent with the situation in their home country. It also includes instances where the applicant has misled the authorities or filed an application in bad faith.

In 2022, many asylum applications will be assessed using an accelerated procedure across various regional centres in Romania. Nationals from Bangladesh, India, Pakistan, Morocco, Algeria, Sri Lanka, Tunisia, Egypt, Turkey, and Nepal were among those whose applications were processed using an accelerated procedure.⁴³

The responsibility for making decisions on asylum applications in the accelerated procedure lies with the General Inspectorate for Immigration–Directorate for Asylum and Integration (GII-DAI). As part of the accelerated procedure,

42 Art. 75 of the Asylum Act.

43 AIDA Report, 2021, pp. 64–67.

applicants underwent personal interviews by the GII-DAI. The same rules and guidelines as in the regular procedure were applied to the personal interviews. Applicants have the right to appeal a negative decision in the accelerated procedure within seven days of the notification of the decision. If an appeal was filed within the deadline, it had an automatic suspension effect.

Asylum seekers have access to free legal assistance during the accelerated procedure subject to the same conditions as those in the regular procedure. However, if applicants are detained in one of the two detention centres (Arad and Otopeni), there might not be permanent access to legal counselling.

5. Practical issues related to illegal migration – National practices and statistical data related to illegal pushbacks

as a Member State of the EU and the Council of Europe, Romania generally respects major provisions in human rights matters. The latest reports on Human Rights Practices by the US Department of State and the European Union Agency for Asylum revealed relevant national practices regarding respect for human rights in immigration matters.

In Romania, the internal movement of the beneficiaries of international protection measures and stateless people is generally unrestricted. However, the free movement of asylum seekers can be subject to restrictions under specific circumstances. The General Inspectorate for Immigration designates a specific place of residence for asylum seekers. National authorities may adopt restrictive measures, subject to approval by the prosecutor's office, that amount to administrative detention in so-called 'specially arranged closed areas.' Statistically 2022, one asylum applicant was placed under such restrictive measures, whereas in 2021, there were no practical cases to apply such measures.

The so called 'tolerated status' can be granted to persons who do not meet the requirements for refugee status or subsidiary protection, but who cannot be returned to their home countries for different reasons (e.g. stateless persons not accepted by their former country of habitual residence, risks related to the physical integrity of persons or life-related threats etc. Persons with 'tolerated status' can work on the Romanian territory and move freely in a specific region without having the right to receive any social protection and inclusion measures. In 2022, the status above was granted to 172 individuals, whereas in 2021, no such measures were taken.⁴⁴

⁴⁴ U.S. Department of State (no date) *2021 Country Reports on Human Rights Practices: Romania* [Online]. Available at: <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/romania/> (Accessed: 20 September 2023).

Regarding the protection ensured for refugees, Romanian governmental authorities cooperate with the Office of the United Nations High Commissioner for Refugees (UNHCR) and other humanitarian organisations to ensure proper protection and assistance for refugees, returning refugees, and asylum seekers. As previously mentioned, asylum procedures are available to foreign nationals and stateless people who express their desire for protection. Refugees are granted protection, either in the form of official refugee status or subsidiary protection measures.

As we said before, the general non-refoulement principle applies in Romania. However, exceptions from the general principle are applicable in the case of the so-called ‘undesirable’ persons—for example, when classified information or ‘well-founded indications’ suggest that a foreigner (asylum seeker or person with refugee status) intends to commit terrorist acts or favour terrorism, or in situations where other national security grounds are in matter. Against such persons, custody measures can be taken until the finalisation of their asylum procedure, or the measure of deportation can be deployed in case of the final denial of granting refugee status.

According to the US Department of State’s Report, from 2020 to 2022 several incidents of harassment, discrimination, abuse against refugees and migrants, pushbacks, and deviations from asylum procedures in border areas occurred,⁴⁵ although most incidents were not reported because of fear, lack of information, inadequate support services, and inefficient redress mechanisms.

■ 5.1. *Border violence case studies 2020-2022*

14th of October 14 2022⁴⁶ five Syrian citizens, aged between 18 and 33, were pushed back from Romania to Serbia, around road DJ682, located at the crossing point between the Hungary-Romania-Serbia border (near the border locality of Maidan), at 7 am. The Romanian Police Officers addressed Syrian citizens with verbal injuries while sending them back to Serbia. The border police officer reported physical violence against the transit group of immigrants (by kicking down people on the ground), cell phone destruction, and the theft of 1200 euros.

21st of June 2022⁴⁷ three men and one unaccompanied minor were apprehended in Hungary and pushed back to Romania and, then, to Serbia. The immigrant group crossed the border between Serbia and Romania at approximately 5 pm. After walking into Hungary, the group was pushed back into Romania by five Romanian border officers with their dogs. Officers were accused of several forms of physical violence against immigrants (e.g. kicking, pushing people to

45 AIDA Report, 2021, p. 17.

46 Border Violence Monitoring Network (BVMN), 2022c.

47 Border Violence Monitoring Network (BVMN), 2022a.

the ground, insulting, dog attacks). Immigrants were forced to walk back to the Serbian territory.

26th of November 2021⁴⁸ – Four Romanian border police officers engaged in physical violence, abuse (threatening with a gun), and theft against four Syrian citizens, aged 38 years, near the Romanian border locality Beba Veche.

26th of October 2021 – ten Romanian border police officers performed physical violence, humiliating behaviour, and torture (undressing, keeping in cold temperatures without food and water, refusing to provide medical assistance, and refusing translation services) against a group of 15 Afghan citizens (the majority of them being minors). The group was then pushed back to the Serbian border near Setschan.

3rd of March 2021⁴⁹ a group of 32 Afghanistan citizens were victims of physical violence and abuse (kicking, threatening with guns, destruction of personal belongings, theft of personal belongings, and reckless driving) exercised by 12 Romanian border police officers near the Romanian border locality Comlosu Mare. Violence was not used in the presence of controlling FRONTEX Officers. Immigrants feared asking for asylum because of physical violence. All group members were transported back to the Serbian border.

1st of April 2021⁵⁰ – a group of seven minor Afghanistan immigrants were victims of theft, physical violence, and abuse by 13 border police officers near Moravita village from the Romanian-Serbian border.

23rd of February 2021 a boat of the Ministry of Internal Affairs was reported to have blocked a migrant boat in the Aegean Sea to help Greek authorities push back migrant boats into Turkish Waters.⁵¹

21st of January 2021⁵² – a group of 30 Afghanistan citizens aged 16-25 was the victim of physical violence (beating with batons/hands/other), insulting, destruction and theft of personal belongings by 7 Romanian border police officers, near to Moravița.

13th of June 2020⁵³ – a group of 16 adults and six children with Syrian and Palestinian citizenship were caught by Romanian police officers in a forest near Timișoara. The personal belongings of the group members were destroyed, and the group was transported back to the Serbian border. The claims were made by a Palestinian man born in Germany but stateless because of the lack of family reunification claims made by his parents, who were immigrants in Germany before moving to Lebanon, Palestine.

48 Border Violence Monitoring Network (BVMN), 2022b.

49 Border Violence Monitoring Network (BVMN), 2021a.

50 Border Violence Monitoring Network (BVMN), 2021b.

51 Nielsen, 2021.

52 Border Violence Monitoring Network (BVMN), 2021c.

53 Border Violence Monitoring Network (BVMN), 2020a.

28th of June 2020⁵⁴ – a group of 30 Palestinian and Syrian citizens aged 2–26 years were caught at the river border between Serbia and Romania and pushed back to Serbia. The personal belongings of the group were destroyed, and several men of the group suffered serious physical injuries (bruises and broken noses).

17th of February 2020⁵⁵ – a group of 27 (4 minors and 23 adults) Syrian, Irakian, and Iranian police officers near Arad at the Romanian-Hungarian field border was caught. The group had a translator, but was not informed about the content of the signed documents, and immigrants who refused to sign were supposed to be physically violent. The request of the group to apply for asylum in Romania was refused, and the group was victims of insults and physical violence. The group was kept in improper conditions without food or medical care (two pregnant women and one chronically ill person who had their medicine confiscated). According to the report, group members were kept for several days in a camp under poor hygienic conditions. At their release, the group members refused to sign the interdictions regarding their return to Romania for one and a half years. The papers were signed with fake signatures by the police border officers.

July 2020 – November 2021 – the Serbian ONG KlikAktiv had documented more than 3700 illegal push-backs of the Romanian Border Police applying physical violence (beating with rubber sticks) and other humiliating and degrading treatments (people sent back on barefoot during wintertime to the Serbian territory).⁵⁶

According to newspapers, international news platforms, and reports of credible international organisations (e.g. Lighthouse Reports, Group for Social Initiatives, etc.), several EU countries, such as Croatia, Romania, and Greece, have applied physical violence against asylum seekers and prioritised the objective of protecting the external borders of the EU before granting the internationally recognised right to seek asylum. Incidents similar to those mentioned previously were mentioned as an example in Croatia, where nearly 189 illegal immigrants were pushed back (in 11 operations of the Croatian border police⁵⁷) from the borders of the country without having their circumstances evaluated as part of the national strategy for immigration matters. The same source reported that 635 immigrants were pushed back illegally by Greece's border police in 2020. National authorities' orders regarding the repelling of illegal immigrants were given orally to avoid incriminating the national authorities involved in such practices. In Romania, Lighthouse Reports employed remote, motion-activated cameras to document instances in which uniform border guards were seen forcing individuals into neighbouring Serbia on three distinct occasions. Immigrants alleged that they had experienced physical assaults during these incidents. Additionally, two border

54 Border Violence Monitoring Network (BVMN), 2020b.

55 Border Violence Monitoring Network (BVMN), 2020c.

56 KlikAktiv, 2022b, pp. 5–8.

57 Child, 2021.

guards, who chose to remain anonymous, disclosed to the Lighthouse Reports that Romanian police frequently engage in pushbacks against Serbia.

Some representatives had expressed their concern related to the EU authority's complicity in illegal pushbacks of immigrants and the systemic character of the refusal to grant asylum rights at the level of EU Member States situated at the external border of the EU, the unofficial strategy being 'to prevent immigrant's arrival, regardless of costs and consequences.'⁵⁸ According to Lighthouse reports, EU Member States from the external borders of the EU use masked men as part of special police units to deter asylum seekers from entering the country and escape accountability for violent pushback actions.⁵⁹ Regarding the abuses mentioned, the international journalistic community asks for action from the European Commission regarding the suspension of EU financing instruments for countries using abuse and violence at the EU's external borders and asks FRONTEX to carry out extensive investigations on the subject.⁶⁰

Unfortunately, a recent report published by the Serbian ONG published by KlikAktiv⁶¹ contains several testimonies regarding FRONTEX's alleged involvement in push-backs at the Romanian-Serbian border, which raises serious concerns about human rights violations and the treatment of individuals seeking international protection. These testimonies provide firsthand accounts of encounters with FRONTEX officers during pushback incidents. 1. The testimonies contained in the report describe an incident in Romanian territory in which three Syrian men were caught by FRONTEX officers and subsequently handed over to the Romanian police, who handed them over to the Serbian police. Men reported that the Serbian police did not show any concern for their well-being. 2. Subsequent testimonies collected in November 2021 from a group of 30 men from Syria indicated FRONTEX's involvement in several pushbacks. Men reported varying treatment by FRONTEX officers, with some claiming to have experienced physical violence.

The individuals in the testimonies identified the officers as belonging to FRONTEX based on visual cues such as the officers' appearance and the 'FRONTEX' label on their vehicles. Official information from FRONTEX's website and media articles indicate the deployment of FRONTEX officers at the Romanian-Serbian border. Reports suggest the presence of 50 border guards in Romania and 20 officers at the Romanian-Serbian border. FRONTEX launched its operation in Serbia, titled 'Joint Operation Serbia – Land 2021,' starting on 16 June 2021. The operation initially involved 44 standing corps officers deployed on the Serbian-Bulgarian border, with plans to increase the number of officers in Serbia.

58 See for example C. Woolard's opinion as head of the European Council of Refugees and Exiles.

59 Christides et al., 2021.

60 Gall, 2022.

61 KlikAktiv, 2022b, p. 11.

These testimonies raise serious concerns about the treatment of individuals during pushbacks and the alleged involvement of FRONTEX officers. Any reports of violence, mistreatment, or human rights violations by law enforcement and border control authorities must be thoroughly investigated, and appropriate measures should be taken to address and rectify the situation.

It is essential for all parties involved, including FRONTEX, national authorities, and relevant international organisations, to adhere to international law and human rights principles when dealing with people on the move. These include respecting the rights of individuals seeking international protection, ensuring access to asylum procedures, and prohibiting violence or abuse during border control.

According to official information provided by Romanian Border Police. Migrants arrive in Romania through different land borders, with the southwestern border with Serbia, the southern border with Bulgaria,⁶² and the northern border with Ukraine being the primary entry points. Additionally, by 2022, there will be instances of migrants intercepted by the Romanian Coast Guard in the Black Sea, with 157 people rescued.⁶³

In conflict with the information published by the Border Violence Monitoring Network, official statistics do not contain any references regarding ill treatment applied to immigrants by representatives of the border police.

In the following, we analyse the statistical data regarding illegal migration presented in the latest AIDA report.

Asylum seekers arrive in Romania mainly through its southwestern border with Serbia, southern border with Bulgaria, and northern border with Ukraine.

According to the statistical data offered by the Border Police, 4,966 persons were appointed for irregular entry in 2022, compared to 9,053 in 2021, 6,658 in 2020, and 2,048 in 2019.

Recent statistics show a significant decrease in the migratory pressure at the Serbian border, explained as a result of securing vulnerable border areas and increasing response capacity, including FRONTEX support (374 representatives, of whom 239 operated on the ground and the rest on the Danube River), acting in collaboration with Serbian border authorities to prevent the illegal migration. In 2022, 27,524 people were prevented from entering the country, the indicator decreasing by 63.6% compared to 2021.

62 Migrants apprehended at the Bulgarian border were taken over by the Bulgarian Border Police, according to the Romanian-Bulgarian Readmission agreement. On the 17th of March 2023, the two neighbouring countries had launched a pilot project of cooperation regarding repatriation, border management and international cooperation in asylum related matters. See for more details: Directorate-General for Migration and Home Affairs, 2023.

63 JRS Romania, no date; Nica, 2021.

Table 3. Border regions where persons were apprehended for irregular entry in 2022⁶⁴

Border	Number
Serbia	1,591
Bulgaria	504
Ukraine	4,871
Moldova	56
Hungary	41
Air border	80
Maritime border	196
Total	7,339

On the other hand, the Border Police prevented entry into the country of 11,232 persons, compared to 9,053 persons in 2021, 6,658 persons in 2020 and 2,048 persons in 2019. Foreign citizens were not allowed to enter Romania because they did not fulfil the legal entry conditions (lack of documentation to justify the purpose and conditions of stay, lack of a valid visa, valid residence permit, etc.)

Regarding illegal pushbacks at the border in 2022, UNHCR Serbia reported 1,232 pushbacks from Romania compared to 13,409 reported in 2020 for foreign citizens collectively expelled from Romania to Serbia.

Regarding refusals to enter Romania, in 2022 were reported in 9,044 cases, compared to 11,232 cases in 2021, 12,684 cases in 2020 and 7,640 cases in 2019.

Table 4. Refusals to entry in Romania in 2022⁶⁵

Country	Number
Moldova	2,949
Ukraine	1,615
Turkey	736
Russia	501
Turkmenistan	216
Total	9,044

When the Border Police decides to refuse entry, it is immediately communicated in Romanian and English to the person concerned using a specific form provided in Part B of Annex V of the Schengen Borders Code.

The Aliens Act does not provide a special remedy for the decision to refuse entry. Therefore, the person concerned may lodge an action against the decision

⁶⁴ Source: JRS Romania, no date.

⁶⁵ Source: Nica, 2021; JRS Romania, no date.

before the Administrative Court with territorial jurisdiction over the area where the issuing body of the contested administrative act is located. Before appealing to the Administrative Court, the person must appeal to the issuing public authority within 30 days if they believe their rights have been breached. The complaint should be addressed to a hierarchically superior body, if applicable. The appeals were assessed within 30 days. Failure to fulfil this prior procedural step will make the appeal inadmissible. However, the complaint and appeal to the Administrative Court had no suspensive effect, indicating that the decision to refuse entry remained in force during the appeal process.

Foreigners against whom the decision to refuse entry has been made can voluntarily leave the border-crossing point within 24 hours. After 24 hours, if foreigners have not left voluntarily, the decision to refuse entry is enforced by the Border Police. The person is sent to the country of origin or another destination accepted by the person and the third state concerned, except Romania.

If foreigners declare to the Border Police authorities that they would be endangered or subjected to torture, inhuman, or degrading treatment in a state, they would have to go to after refusing entry, and they do not submit an asylum application, a special procedure is followed. The Border Police must immediately inform the GII-DAI, which will analyse the situation and determine whether the declaration is well-founded. If the declaration is well founded, removal under an escort enforces the decision to refuse entry.

Statistical data offered by the latest AIDA report show that in 2022, four appeals against the decision to refuse entry into Romania were processed at the level of the General Inspectorate of Border Police (IGPF).

6. International cooperation in order to fight illegal migration

Romania strongly emphasises collaboration with other European Union member states in law enforcement to ensure the security of the European area and its citizens and to counter cross-border crime and illegal migration effectively. The Romanian Border Police, as a specialised institution under the Ministry of Administration and Interior, is dedicated to enhancing international police cooperation within Europe and beyond.

To achieve rapid and efficient countering of illicit activities committed across multiple states, the Romanian Border Police recognise the importance of operational data and information exchange and participating in joint operations for complex cases. They fully apply European provisions for police cooperation to prevent and counter cross-border crimes efficiently.

The international police cooperation channels used by the Romanian Border Police include:⁶⁶

Exchange of Information through contact points and centres at the border, the latter serving as communication hubs for exchanging information between law enforcement authorities at the borders.

Exchange of Information through Liaison Officers / Home Affairs Attachés, which facilitate direct communication and cooperation between Romania and other countries.

Exchange of Information through the International Police Cooperation Center, which acts as an agency to facilitate information exchange and cooperation.

Exchange of Information through FRONTEX, the European Border and Coast Guard Agency, as a key partner in enhancing border security and information sharing.

Exchange of Information with Similar Structures in other States based on bilateral documents and protocols, which lays out the framework for cooperation.

Periodic reunions among the chiefs of border police structures from neighbouring states are organised to further strengthen cooperation and security at common borders. These meetings, visits, and experience exchanges at the expert level helped improve collaboration and knowledge sharing.

The main legal instruments for cooperation are:

International Treaties and Conventions, that promote law enforcement cooperation and information sharing.

Border Treaties related to border management and security play a role in enhancing cooperation with neighbouring countries.

Documents for International Operational Cooperation, establishing cooperation plans to fight cross-border and organised crime at the bilateral and multilateral levels.

FRONTEX,⁶⁷ the European Agency for the Management of Operational Cooperation at the External Borders of Member States of the European Union, was established in 2005 under the provisions of Article 2 of EU Council Regulation No. 2007/2004. The agency has been operational since its inception and is tasked with several key objectives, such as

⁶⁶ Consult in this regard information: Romanian Border Police (no date) *International Collaboration*.

⁶⁷ Available at: <https://frontex.europa.eu/> (Accessed: 23 October 2023).

Operational Coordination ensures operational coordination between the EU member states when managing their external borders. Coordination is essential for addressing common challenges and effectively managing border security.

Assistance in Border Policemen Training includes establishing common training standards to enhance the professionalism and effectiveness of border security personnel.

Risk Analysis, in order to identify potential threats and vulnerabilities at the external borders in order to take proactive measures to address emerging challenges;

Research & development concerning the control and surveillance of external borders, by staying informed about the latest advancements in border security technology and methods, allows Member States to make informed decisions and adopt best practices.

Support for Joint Operations involves collaboration between multiple countries to address specific border security issues effectively.

By fulfilling these objectives, FRONTEX enhances the capacity of European Union member states to manage their external borders efficiently, address cross-border challenges, and ensure the safety and security of Europe and its citizens. The agency acts as a valuable platform for information exchange, collaboration, and coordination among EU countries on border management and security matters.

As mentioned previously, collaboration between liaison officers and home affairs attachments plays a crucial role in promoting and expediting cooperation between Romania and other states, particularly concerning criminality and border security issues. These officers are sent on missions to facilitate assistance in various areas as follows: (1) Exchange of Data and Information between Romania and other states to prevent and counter criminal activities effectively, identify potential threats, and coordinate efforts to address criminality across borders. (2) Police and Judiciary Assistance in criminal matters, including cooperation in investigations, extradition requests, and other law enforcement-related matters that require international collaboration. (3) Border Surveillance Responsibilities related to border security and management to prevent unauthorised border crossings and other border-related crimes.

The liaison officers⁶⁸ are primarily tasked with providing consultancy and assistance rather than carrying out concrete actions in preventing and countering

68 For more information, please consult: Romanian Border Police (no date) *International Collaboration* [Online]. Available at: <https://www.politiadefrontiera.ro/en/main/pg-international-collaboration-103.html> (Accessed: 23 October 2023).

criminality. They acted according to instructions from the competent authorities in their respective countries.

The Romanian Border Police engages in permanent cooperation with two types of liaison officers: (1) Romanian M.A.I. Liaison Officers Abroad (Romanian officials stationed in other countries to represent the interests of the Romanian Ministry of Administration and the Interior and facilitate cooperation with foreign law enforcement and security agencies). (2) Foreign Liaison Officers in Romania (working on accredited diplomatic missions and representing their respective countries' interests).

Cooperation between Romania and liaison officers primarily focuses on exchanging intelligence in critical areas, such as illegal migration, human trafficking, and cross-border criminality.

Romania has international collaboration and readmission agreements with the following countries:⁶⁹ Austria (since 2004), Bosnia and Herzegovina (since 2005), Bulgaria (since 2006), the Czech Republic (since 2002), Croatia (since 2000), France (since 2002), Germany (since 2006), United Kingdom (since 1995), Greece (since 1992), Hungary (since 2005), North Macedonia (since 2003), Italy (since 1991), Moldova (since 2006), Montenegro (since 2006), the Netherlands (since 2004), Poland (since 1993), Russia (since 2002), Serbia (since 2004), Slovakia (since 2005), Slovenia (since 2001), Switzerland (since 2003), Turkey (since 1998), Ukraine (since 1997) and the USA (since 2002).

7. The Practical Problem of “formalized push-back” operations or using readmission agreements in order to escape the effective granting of asylum rights

■ 7.1. Case study: Serbia⁷⁰

According to a recent study published by the international ONG KlikAktiv,⁷¹ there are serious concerns about the practice of readmissions of third-country nationals from Romania to Serbia, based on the Agreement between the European Community and the Republic of Serbia on the readmission of persons residing without authorization.⁷² The readmission agreement allows for the legal return of third-country nationals and stateless persons from EU member states to Serbia.

⁶⁹ Ibid.

⁷⁰ For more details see KlikAktiv, 2022a.

⁷¹ KlikAktiv is a grass-roots Serbian NGO which provides free legal and psychosocial support to people on the move, asylum seekers and refugees in Serbia. KlikAktiv is based in Belgrade, but conducts regular field visits to informal squats in border areas where hundreds of people on the move are forced to reside while they are trying to reach the European Union (EU).

⁷² OJ L 334, 19 December 2007, pp. 46–64.

However, how the agreement has been applied in practice raises human rights issues and violates principles related to asylum and non-refoulement.

The mentioned report signals several problems related to the practical application of the readmission agreement between Serbia and Romania/EU as follows:

Deportation from EU member states to Romania based on the Dublin Regulation, where asylum seekers were deported from several EU member states (Austria, Germany, Belgium, and Slovakia) to Romania based on the Dublin Regulation., followed by deportation from Romania to Serbia, based on the readmission agreement signed between the two countries.

Lack of effective assessment of protection needs or asylum claims: Protection seekers deported to Romania did not have access to an effective asylum procedure in Romania even though they tried to request asylum. Instead, they were deported back to Serbia without their protection needs being adequate assessment.

Denial of access to the asylum procedure in Serbia: Protection seekers were denied access to the asylum procedure upon readmission. Instead, they were forced to reside in informal settlements (squats) on northern Serbian borders without proper documentation or basic necessities such as accommodation, food, and clothes.

Violating the right to seek asylum and the principle of non-refoulement by 'formalized push-backs' between Romania and Serbia violates the protection seekers' right to seek asylum and the principle of non-refoulement.

The practices in the report raise significant human rights concerns and highlight the need for proper protection of and respect for the rights of individuals seeking asylum and international protection.

7.1.1. The procedure of readmission according to readmission agreements between Serbia and EU/Romania

It should be noted that the readmission agreement includes a non-affectation clause stating that the agreement should not prejudice the rights, obligations, and responsibilities of EU Member States and Serbia arising from international law, including the Convention on the Status of Refugees and its protocol. This clause emphasises that individuals seeking international protection in an EU Member State cannot be readmitted to Serbia until the member state's authorities properly assess their asylum claims.⁷³

The criterion for readmission included proving that the concerned person had entered the requesting Member State from Serbia. The member states' authorities can use various means to establish this fact, such as testimonies, border police reports, and material evidence found among the concerned person's belongings.

73 Art. 17 of the EU-Serbia Readmission Agreement.

Once the request for readmission is submitted, the Serbian authorities have ten days to respond; if there is no reply, the transfer is deemed acceptable. The actual transfer must occur within three months after the request is approved.

Since many individuals on the move do not possess national travel documents, the Member State issues a European travel document for the return of illegally staying Third Country nationals. This document allowed them to cross borders legally and enter Serbia. However, this document is valid only for a single crossing and cannot be reused.

Individual protocols between Serbia and each EU member state accompany the agreement on readmission between the EU and Serbia. The protocol between Serbia and Romania specifies airport and land border-crossing points through which third-country nationals can be readmitted.⁷⁴ It also states that the requesting state (in this case, Romania) will cover all costs related to readmission.

The Report published by KlikAktiv highlights significant challenges and human rights concerns related to the asylum procedure and treatment of people on the move in Serbia. It sheds light on the difficulties those seeking international protection face and how certain practices exacerbate their vulnerability.

Many people on the move did not have access to asylum procedures in Serbia. Police stations in northern cities, where most people reside after readmission, refuse to register them as asylum seekers and ignore their asylum claims. This denial of access to the asylum procedure leaves individuals without a proper legal status and exposes them to various risks, including falling prey to smuggling networks, human trafficking, and exploitation.

Lack of access to necessities, such as food, heating, and clothing, forces people in need of international protection to stay in transit camps or informal settlements run by smugglers. These living conditions are often poor and can exacerbate the vulnerability of individuals seeking protection.

The Serbian police initiate a return procedure for people readmitted from EU member states by issuing decisions on returns. These decisions require individuals to leave Serbia voluntarily within 30 days. If they failed, a forced removal procedure was performed. Such decisions hinder individuals from applying for asylum in Serbia and prevent them from accessing the limited shelters available to asylum applicants. The lack of access to asylum procedures and exclusion from shelters leaves individuals with no other choice but to attempt re-entry into the EU. This practice puts them at risk of potential chain pushbacks to third countries or their countries of origin during the return process.

74 The protocol proclaims that a readmission of third country nationals can be done through the airports 'Henri Coandă' in Bucharest and 'Traian Vuia' in Timișoara, from the Romanian side and 'Nikola Tesla' Airport in Belgrade from the Serbian side. Besides airports, third country nationals can be returned on one of the following land border crossing points: 'Portile de Fier I - Djerdap I', 'Naidas - Kaludjerovo', 'Stamora Moravița - Vatin' and 'Jimbolia - Srpska Crnja.'

These practices raise serious concerns about individuals' protection and human rights, particularly those seeking international protection. Denying access to asylum procedures and proper legal status can expose them to exploitation and abuse, further violating their rights.

Examples regarding abusive use of readmission procedures in the period July 2020 – May 2022.

August 2020 – The case of a Syrian family (a father, his 10-year-old son, and the father's cousin), where the Romanian Police had issued a European travel document for the return of illegally staying third-country nationals to be readmitted to Serbia, based on the readmission agreement. The family, caught by Romanian border police, asked for asylum, but their requests were ignored. People did not have access to legal aid or interpretation of the language that they could understand. The family spent six hours at the Romanian border police office and was handed over to the Serbian border police.

March 2021 – The case of a 26 year old man from Afghanistan caught by the Romanian border police near Timișoara. The person had access to the asylum procedure in Romania, obtained an ID card, and was later readmitted to Serbia in May 2021. The person was subjected to an accelerated procedure in Romania and did not have access to legal aid or any assistance from an interpretation, even though he did not speak English or Romanian. The person was subject only to a brief interview and did not have the real possibility of explaining their situation and reasons for living in Afghanistan. The asylum was then removed. The person was unaware of the possibility of contesting the solution in court because of language barriers. The Serbian Border Police refused to ensure the right to seek asylum and refused access to an asylum camp, even with a decision regarding its readmission to Serbia. Afghan citizens tried several times to enter Hungary illegally but were pushed back every time.

January 2021 – The case of an Afghan citizen caught by Romanian border police after a five-day detention in a Romanian asylum camp deported back to Serbia. The person had declared that, in Romania, they did not benefit from the right to seek asylum, and he had only the possibility to choose from being deported back to Afghanistan or back to Serbia after a short interview.

May 2021 – The case of a Syrian citizen residing in harsh conditions in a transit camp in Sombor (bad living conditions and forced labour in exchange for a place in the transit camp, food shortage, diseases, etc.). The person had reached Austria through Romania and Hungary, where they did not request asylum rights. After receiving official asylum-seeker documents from the Austrian authorities, the person was readmitted to Romania according to the provisions of the Dublin Regulation in January 2021. After a short interview without legal assistance or interpreter services, the person was placed in COVID-19 quarantine near Bucharest airport and readmitted to Serbia in February 2021. The person did not have

access to asylum proceedings in Serbia and was ordered to leave the territory within 30 days.

September 2021 – An Afghan citizen was deported from Belgium to Romania according to Dublin procedures and then readmitted back to Serbia.

The cases documented by KlikAktiv shed light on the challenges and the risks asylum seekers encounter when attempting to re-enter the EU through different routes. Most people on the move do not have material proof of their readmission procedures. Some lost documents during their journeys, while others deliberately destroyed documents to avoid potential problems if found by the police. This lack of documentation makes it challenging for individuals to confirm their previous readmission statuses. The fear of potential consequences or difficulties with the police may lead some individuals to destroy or discard their readmitted documents. This fear reflects the vulnerability of people on the move and highlights the risks they face when navigating migration routes and border controls.

It is essential to recognise the difficulties and complexities faced by people on the move and their vulnerability to exploitation, abuse, and human rights violations. The lack of material proof and fear of authorities underscore the need for proper legal protection and support mechanisms for individuals seeking international protection.

These documented cases highlight the broader issues of migration management, border control practices, and ensuring that individuals' rights and safety are respected at all stages of their journey. International cooperation and adherence to human rights principles are crucial for addressing the challenges people face on the move and providing them with the necessary protection and support.

8. Conclusions

Migration is a complex and multifaceted phenomenon driven by various factors, such as seeking better economic or educational opportunities, family reunification, climate change, and disasters. Irregular migration can lead to serious problems, including migrant deaths, smuggling, and human trafficking. However, properly managed migration can bring significant benefits and drive sustainable development for migrants and their host communities.

Romania, as a state situated at the confluence of several regional migration routes and an EU Member State situated at the external borders of the EU, meets several challenges related to properly administering the migration crisis.

Tackling and controlling illegal migration, especially on the Western Balkans Route, is one of the major objectives Romania has to fulfil to obtain the support of EU Member States regarding its access to the Schengen Area.

In this regard, Romania has to control illegal pushbacks and renounce the mechanism of using readmission agreements to mask illegal refusal to grant asylum rights. Among the actions Romania has to undertake together with its neighbours, we can mention the strengthening of border management, increasing the reception capacity and living conditions in regional reception centres, combating migrant smuggling, further enhancing readmission cooperation and returns, and reducing bureaucracy in visa policies.

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