Applicants with special needs - Romania

Overview

Content updated and validated on: 29/08/2025

Relevant EU legislation

Romania is bound by the recast Asylum Procedures Directive and has transposed its provisions through the Law No 122 of 4 May 2006 concerning asylum in Romania (Lege nr. 122 din 4 mai 2006 privind azilul în România, (18 May 2006)) and further amendments.

Romania is bound by the recast Reception Conditions Directive and has transposed its provisions through the Law No 122 of 4 May 2006 concerning asylum in Romania (Lege nr. 122 din 4 mai 2006 privind azilul în România, (18 May 2006)) and further amendments.

National legislation

Law No 122 of 4 May 2006 concerning asylum in Romania (Lege nr. 122 din 4 mai 2006 privind azilul în România, (18 May 2006)) and further amendments.

Competent authority and other stakeholders

Competent authority: General Inspectorate for Immigration – Directorate for Asylum and Integration (IGI-DAI) (Inspectoratul General pentru Imigrări – Direcția Azil și Integrare (IGI-DAI))

Other authorities:

- Directorate General for Social Assistance and Child Protection (DGASPC) (Direcția Generală de Asistență Socială și Protecția Copilului)
- The National Authority for Persons with Disabilities

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- The National Authority against Trafficking in Persons (Autoritatea Națională Împotriva Traficului de Persoane)

Training initiatives

The General Inspectorate for Immigration provides specific training for asylum staff, through on-the-job training and training programmes within the training institutions of the Ministry of Internal Affairs, including training on processing of applications for international protection of vulnerable persons, mechanisms to identify and assist vulnerable persons (Article 12^1 of Law No 122/2006). Relevant training resources also include those developed by the EUAA.

The General Inspectorate for Immigration also provides the staff of other authorities competent to receive applications for international protection, with the relevant information and appropriate training for the performance of those tasks, within the training institutions of the Ministry of Internal Affairs (Article 12^2 of Law No 122/2006).

Special needs in reception

Identification of special needs

When an applicant with special reception needs arrives in Romania, the specialists of the General Inspectorate for Immigration are competent to carry out the vulnerability assessment without delay after the submission of the asylum application. This is based on an individual evaluation during the preliminary interview and the personal interview, to identify special needs and order appropriate measures to ensure their rights.

Other competent authorities provide specialized support, at the request of the General Inspectorate for Immigration (Article 5^1(3) and (4) Law No 122/2006 on asylum). For example, the Directorate General for Social Assistance and Child Protection (DGASPC) for minors.

Regarding unaccompanied minors, Article 40 of Law No 122/2006 on asylum in Romania foresees that after registering the asylum claim, the IGI-DAI immediately notifies the Directorate General for Social Assistance and Child Protection (DGASPC) territorially competent for the area in which the regional

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centres are located, to start the appointment procedure of a legal representative.

For unaccompanied minor applicants, the asylum procedure is suspended until a legal representative is appointed. During the period of suspension of the asylum procedure, the minor enjoys the rights provided in Articles 17 and 18 of Law No 122/2006 on asylum.

In reception centres, the General Inspectorate for Immigration monitors the situation of applicants with special needs and together with the competent authorities it ensures assistance for the entire asylum procedure.

Referral of applicants with special needs

If vulnerable persons with special needs are identified, the specialised staff of the General Inspectorate for Immigration makes evaluations for the purpose of identifying special needs and orders adequate measures to guarantee their rights during the asylum procedure.

In the administrative phase of the asylum procedure, documents drawn up before the acknowledgement of the applicant's special needs will be repeated and/or completed only if it is necessary for the examination of the application (Article 5^1(5) Law No 122/2006 on asylum).

New standard operating procedures were developed in Romania on the identification, needs assessment, assistance and referral of vulnerable persons (see EUAA, Asylum Report 2022, June 2022). The General Inspectorate for Immigration is in the process of reviewing, together with EUAA experts within the Operational Plan, the National Mechanism under the EU Pact on Migration and Asylum.

Reception and care of applicants with special needs and vulnerabilities

The category of vulnerable persons includes minors, unaccompanied minors, persons with disabilities, elderly persons, pregnant women, single parents accompanied by their minor children, victims of human trafficking, persons suffering from serious illnesses, persons with mental illnesses and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, or who are in other special situations (Article 5^1(2) Law No 122/2006 on asylum).

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According to Article 17 (1) lit. l of Law No 122/2006, applicants with special needs benefit from adaptation of accommodation conditions and assistance in accommodation centres, according to the need identified for a vulnerable person.

Reception facilities and other housing arrangements

Housing arrangements

Places for applicants with special needs/vulnerabilities are allocated in reception centres, including

- disabled people,
- elderly people,
- pregnant women,
- single parents with minor children,
- victims of human trafficking and persons who have been subjected to torture, rape or other serious form of psychological, physical, or sexual violence, such as victims of female genital mutilation.

Locations correspond to the 6 accommodation facilities.

A safe living environment in reception centres is ensured by offering security through the police officers in every centre, psychological and social counselling, the creation of community support networks and the provision of separate or family accommodation, as appropriate on a case-by-case basis.

Detention of vulnerable persons and applicants with special reception needs

Romanian law does not prohibit the detention of vulnerable applicants. However, in practice, applicants belonging to vulnerable groups are not to be subject to detention. They have the right to be accommodated in the accommodation centres of the General Inspectorate for Immigration along with their family members, if there are any.

Reception of unaccompanied minors

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According to Article 17(1) lit. l of Law No 122/2006 on asylum, applicants with special needs benefit from adaptation of accommodation conditions and assistance in accommodation centres, depending on their vulnerability.

In crisis situations (e.g. arrival of a high number of unaccompanied minors), as noted in Romania's contingency plan, the measures taken as safeguards or special measures include appointing representatives and designating persons who are able to temporarily fulfil the role of a representative.

Reception facilities and other housing arrangements

Housing arrangements

Places for vulnerable people are allocated in the reception centres:

- including minors,
- unaccompanied minors over 16 years old

Locations correspond to the 6 accommodation facilities.

Foster families are not used, as vulnerable people are allocated only to accommodation facilities.

Age assessments

According to Article 41 of Law No 122/2006 on asylum in Romania, in case of serious doubt about the minority of the applicant and if the unaccompanied minor cannot prove his/her minority, the General Inspectorate for Immigration may refer unaccompanied minors for age-determination examinations, which are carried out after their written consent is obtained, of the minor and of the legal representative.

The General Inspectorate for Immigration also informs the legal representative and the unaccompanied minor applicant, in a language that the latter understands or is reasonably supposed to understand, of the possibility of carrying out a forensic age assessment, on the methods of medical examination, the possible consequences of the outcome of that examination and the effects of any refusal to submit to a forensic examination.

There is no appeals procedure against an age assessment decision.

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Access to education

Children are enrolled in regular local schools within the same jurisdiction as the accommodation centre and follow the same classes as Romanian children.

Access to healthcare

Minors benefit from the same level of free medical assistance as Romanian minor citizens.

Transition to adulthood

Minors benefit from the same protection as minor Romanian nationals (Article 17(4) of Law No 122/2006).

Minor beneficiaries of international protection who reach the age of 18 and do not take part in the integration program are required to leave the centre. However, if the beneficiary is a student or part of the integration program, they may remain in the reception centre, even after reaching the age of 18.

Detention of unaccompanied minors

Romanian legislation does not foresee a minimum age for detention. Asylum applications submitted by unaccompanied minors are not the object of a border procedure, and, accordingly, unaccompanied minors are given access to the territory and ordinary procedures. Thus, unaccompanied minors are not detained in principle.

Special procedural guarantees

First instance determination for applicants with special needs

Article 5^1 of Law No 122/2006 on asylum in Romania provides that at the administrative stage of the asylum procedure, documents drawn up prior to the identification of special needs are repeated and/or supplemented only where necessary for the proper processing of asylum applications. Also, the General Inspectorate for Immigration monitors the situation of applicants with special

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reception needs and, together with the competent authorities, ensures that their assistance is provided throughout the asylum procedure.

Access to information

Applicants are informed about their rights and obligations through written materials, oral communication, and audio-visual resources in a language they understand, if necessary with the help of a translator/interpreter.

The materials that inform applicants about the asylum procedure are produced and developed by the General Inspectorate for Immigration (GII) in collaboration with various NGOs and interpreters.

Information materials may also be tailor-made for children or illiterate applicants. A distinct leaflet is designed specifically for unaccompanied minors.

In practice there have not been cases where information provision was needed in Braille or in sign language. However, within the Operational Plan with EUAA, the integration of information provision in Braille and the availability of a sign language interpret are under consideration. Furthermore, depending on the special need identified, GII will take all the necessary measures to provide the information in an adequate manner.

Personal interview

The interviewing of vulnerable applicants for international protection is carried out by officers specialised in this regard, who will take into account the special situation of these persons (Articles 46 and 48(2) of Law No 122/2006).

To the extent possible, if the asylum applicant so requests, both the official and the interpreter shall be of the same gender as the interviewed person (Article 45(2) of Law No 122/2006).

According to Article 45(3) of Law No 122/2006, interviewing asylum applicants is not mandatory in the following situations:

a) the GII can decide to grant refugee status based on the evidence already on file;

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b) when it is found that the asylum applicant is in one of the situations under Article 42 (in case the asylum applicant lacks judgment). In such a case, additional efforts are made to obtain as much information as possible to resolve the case.

When it is possible to carry out an interview to determine protection, the custodian will inform the asylum applicant regarding the purpose and the possible consequences of the personal interview and takes necessary steps to prepare the applicant for the interview (Article 42(5)). The interviewing of an asylum applicant lacking judgment is carried out in the presence of the guardian or, as applicable, his/her custodian (Article 42(6).

Legal assistance

The project PROMISE, implemented by Terre des Hommes Romania, aimed at increasing the protection system for children, especially for unaccompanied minors. In this context, the project had as primary activity to create a network of lawyers and counsellors specialised on minors' rights and to train them especially with regard to unaccompanied minors.

Guarantees for unaccompanied minors

The relevant legal provisions on special procedural guarantees for unaccompanied minors in the asylum procedure are the following:

- Article 16 of Law No 122/2006 on asylum in Romania provides that the General Inspectorate for Immigration takes steps to appoint, as soon as possible, a legal representative to assist the unaccompanied minor during the asylum procedure.
- Article 40(1) of Law No 122/2006 provides that after the registration of the unaccompanied foreign minor as an asylum applicant, the General Inspectorate for Immigration will immediately notify the competent authority for child protection (territorial competence according to the area where the accommodation centre is located), in order to initiate the procedure of appointment of a legal representative. The legal representation of the unaccompanied minor, once established, continues to operate as long as he/she benefits from international protection in Romania.
- Article 40(2) of Law No 122/2006 provides that in the case of the unaccompanied minor asylum applicant, the asylum procedure is

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suspended until a legal representative is appointed. During the suspension of the asylum procedure, the minor benefits from the rights provided for in Articles 17 and 18.

Making, registering and lodging an asylum application

The types of special procedural guarantees that are in place to ensure that unaccompanied minors are given fair access to the asylum procedure are the following:

- Article 16 of Law No 122/2006 on asylum in Romania provides that the General Inspectorate for Immigration takes steps to appoint, as soon as possible, a legal representative to assist the unaccompanied minor during the asylum procedure.
- Article 39(2) to (4) of the same law provides that minors submit the asylum application through the legal representative and, in the case of a minor who has reached the age of 14, the application for asylum may be lodged in person. When an unaccompanied minor indicated his/her wish to obtain asylum, in writing or orally, before the competent authorities, he/she is registered as an asylum applicant and the application for asylum is lodged at the time of appointment of the legal representative. If the intention to obtain asylum, in writing or orally, was expressed before other competent authorities than the General Inspectorate for Immigration, the territorial body of the specialised structure of the Ministry of Internal Affairs or the Ministry of Justice, will immediately inform the General Inspectorate for Immigration, which will ensure that the applicant is transported to the structure responsible for examining the asylum application.

Information provision

The General Inspectorate for Immigration is responsible for the provision of information to unaccompanied minors. It:

- Ensures that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself or herself for the personal interview (Article 16 of Law No 122/2006 on asylum in Romania).

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- Provides legal and procedural information to the representatives of unaccompanied minors, in addition to the information provided to the applicant in line with national law [Article 17(1)f) of Law No 122/2006: *"the right to be informed at the submission of an application or afterwards, within maximum 15 days from the submission of the application, in a language he/she understands or is reasonably assumed to understand, regarding the procedure to follow, the rights and obligations he/she has during the asylum procedure and regarding the consequences of not observing these obligations and the lack of cooperation with the competent authorities"*. The information is provided orally, in writing or audio.
- Informs the legal representative and the unaccompanied minor, in a language the latter understands, or which is reasonably assumed to understand, about the possibility of performing a forensic expert examination for evaluation of age (Article 41 of Law No 122/2006 on asylum in Romania).
- Collaborates with the local public administration authorities regarding all relevant procedures, as well as courts with regard to foster care and adoption.
- The unaccompanied minor is informed, as soon as possible, on the appointment of a legal representative. The representative shall perform his or her duties in accordance with the principle of the best interests of the child and shall have the necessary expertise to that end (Article 16 paragraph 2^1 of Law No 122/2006 on asylum in Romania).

Best interests of the child in the Dublin procedure

The principle of the best interests of the child is applied in all decisions regarding minors (Article 8 of Law No 122/2006 on asylum in Romania).

The principle of the best interests of the child is applied in all decisions regarding minors (Article 8, Law No 122/2006 on asylum in Romania). There are no specific provisions or guidance specifically for the purposes of the Dublin procedure.

Personal interview

According to Law No 122/2006 on asylum there is no minimum age for the personal interview.

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Interviews of unaccompanied minors are dealt with by specialised case officers (Article 47 of Law No 122/2006). A legal representative/temporary guardian (curator) for unaccompanied minors must be present during the personal interview. Prior to the personal interview, the legal guardian appointed by the General Directorate of Social Assistance and Child Protection after the registration of an unaccompanied minor's application, informs the unaccompanied minor about the purpose and possible consequences of the personal interview and undertakes the necessary steps to prepare the unaccompanied minor for the interview.

Interviews with unaccompanied minors are tailored according to their psychological profile and development. During the interview an unaccompanied minor's intellectual development and maturity are also taken into consideration.

The interviewers receive training for interviewing minors (e.g. national sessions organised by the trainers who attended EUAA modules etc.).

According to Article 45 (3) of Law No 122/2006, interviewing asylum applicants is not mandatory in the following situations:

a) the GII can decide to grant refugee status on the basis of the evidence already on file;

b) when it is found that the asylum applicant is in one of the situations under Article 42 (in case the asylum applicant lacks judgment). In such a case, additional efforts are made to obtain as much information as possible to resolve the case.

When it is possible carry out an interview to determine protection, the custodian informs the asylum applicant regarding the purpose and the possible consequences of the personal interview and takes the necessary steps to prepare the applicant to take the interview (Article 42(5)). The interviewing of an asylum applicant lacking judgment shall be carried out in the presence of the guardian or, as applicable, his/her custodian (Article 42(6)).

Legal representation during the asylum procedure

Article 16 of Law No 122/2006 on asylum in Romania provides that the General Inspectorate for Immigration takes steps to appoint, as soon as possible, a legal representative to assist the unaccompanied minor during the asylum procedure.

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Potential unaccompanied minors are referred to DGASPC (*Direcția Generală de Asistență Socială și Protecția Copilului* – under county councils) which will appoint a guardian.

The law does not provide a time limit to appoint a guardian. Usually, the person appointed as guardian is a staff of the DGASPC with legal or social assistance background.

The legal representative assists the unaccompanied minor applicant throughout the asylum procedure. The unaccompanied minor is immediately informed on the appointment of the legal representative. The representative performs his or her duties in accordance with the principle of the best interests of the child and must have the necessary expertise to that end (Articles 16 and 40 of Law No 122/2006 on asylum in Romania).

The asylum application of an unaccompanied minor is prioritized (Article 16(1) of Law No 122/2006 on asylum in Romania). The interests of minors are protected by their legal representative. Applications are submitted through the legal representative, or personally if he/she is 14 years old. It is not necessary to appoint a legal representative if the unaccompanied minor is about to turn eighteen within 15 days from handing in the asylum application (Article 16 (3) of Law No 122/2006 on asylum in Romania).

Legal assistance and counselling

The General Inspectorate for Immigration:

Provides legal and procedural information to the representatives of unaccompanied minors, in addition to the information provided to the applicant in line with national law (Art. 17(1)f) of Law No 122/2006: *"the right to be informed at the submission of application or afterwards, within maximum 15 days from the submission of application, in a language he/she understands or is reasonably assumed he/she understands, regarding the procedure to follow, the rights he/she has and the obligations he/she has during the asylum procedure and regarding the consequences of not observing these obligations and the lack of cooperation with the competent authorities"*).

Informs the legal representative and the unaccompanied minor, in a language the latter understands or which is reasonably assumed to understand about the possibility of performing a forensic expert examination for age assessment

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(Article 41 of Law No 122/2006 on asylum in Romania).

Collaborates with the local public administration authorities regarding all relevant procedures, as well as with the courts with regard to foster care and adoption.

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