

# **Detention - Romania | DIP EUAA**

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## **Overview**

### **Relevant EU legislation**

Romania is bound by the recast Asylum Procedures Directive, the recast Reception Conditions Directive and the Dublin III Regulation and has transposed their provisions through the Law No 122/2006 on asylum ([Lege nr 122/2006 privind azilul in Romania](#)).

### **National legislation**

Romania has transposed the recast Reception Conditions Directive through the Law No 122/2006 on asylum ([Lege nr 122/2006 privind azilul in Romania](#)). Romanian legislation generally safeguards asylum applicants from detention. According to Law No 122/2006, Article 19<sup>2</sup>(1), no restrictive measures may be imposed against an

applicant for international protection for the sole reason of making an application for international protection in Romania. While individuals applying for international protection are typically not detained once they enter the official asylum procedure, they may be detained for an initial period of 20 days after they apply for asylum.

Law No 122/2006, Article 19<sup>2</sup>(1c) and (d), provides that the authorities, on the basis of an individual analysis, may order the placement in specially arranged closed spaces or in public custody:

- in order to complete the necessary formalities;
- to limit abuses of the asylum procedure;
- if the applicant poses a threat to national security.

Public custody may be ordered:

- in the Dublin procedure (Law No 122/2006, Article 19<sup>13</sup>(1)(a) and Article 19<sup>14</sup>);
- if the applicant has been taken into public custody for the purpose of removal or expulsion from the territory of Romania and has submitted an application for international protection in order to delay or prevent the execution of the removal or expulsion measure, although prior to the disposition of such measures had the opportunity to submit such an application (Law No 122/2006, Article 19<sup>13</sup> (1)(b));
- in the case of third-country nationals who cannot be removed under escort within 24 hours and who are in one of the following situations (Government Emergency Ordinance No 194/2002, Article 101):
- present a risk of absconding from removal under escort;
- avoid or prevent the preparation of the return or the removal process under escort;
- are subject to expulsion.

## **Competent authority and stakeholders**

<b>Area</b>	<b>National authority/ stakeholder</b>	<b>Assistance to competent authority</b>
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<b>Detention decision</b>	The Prosecutor's Office near the Bucharest Court of Appeal   <i>Parchetul de pe lângă Curtea de Apel București</i>	n/a
<b>Administration and management of detention facilities</b>	The General Inspectorate for Immigration and the General Inspectorate of the Border Police are the authorities primarily responsible for detention	n/a
<b>Information provision in detention</b>	The General Inspectorate for Immigration and the General Inspectorate of the Border Police	n/a
<b>Interpretation services in detention</b>	An official interpreter or the representative	n/a
<b>Access to the procedure and provision of asylum information in detention</b>	The General Inspectorate for Immigration and the General Inspectorate of the Border Police	n/a
<b>Detention for the Dublin procedure</b>	The General Inspectorate for Immigration	n/a
<b>Processing of asylum applications of applicants who are in detention</b>	The General Inspectorate for Immigration	n/a
<b>Legal assistance and representation in detention</b>	A lawyer or a representative of a non-governmental organisation (Romanian or foreign)	n/a
<b>Review of detention</b>	Court of appeal where the place of accommodation is located	n/a

## Grounds for detention during the asylum procedure

## Grounds for detention in national law

## **Detention in the context of identification or verification of identity**

Article 8(3a) of the Reception Conditions Directive (recast) was transposed in the national law by Article 19<sup>^</sup>5(1a) of Law No 122/2006 ("*the applicant for international protection can be placed in a specially arranged closed space, with temporary restriction of freedom of movement, only in the following situations: a) to verify the declared identity; [...]*").

## **Detention to determine elements on which the application for international protection is based, in particular where there is a risk of absconding**

Article 8(3b) of the Reception Conditions Directive (recast) was transposed in the national law by Article 19<sup>^</sup>5(1b) of Law No 122/2006 ("*the applicant for international protection can be placed in a specially arranged closed space, with temporary restriction of freedom of movement, only in the following situations: [...] b) to establish the elements on which the application for international protection is based, which could not be obtained without taking the measure, especially if there is a risk of absconding*").

Risk of absconding: Article 19<sup>^</sup>6 of Law No 122/2006 provides that an applicant in any of the following situations presents a risk of absconding:

- crossed or was caught trying to cross the state border of Romania illegally, after submitting the application for international protection;
- caught trying to illegally cross the state border of Romania, and the request for international protection was submitted after apprehension;
- there are reasons to believe that they intend to leave the territory of Romania, after submitting the application for international protection.

Also, Article 19<sup>^</sup>14 of Law No 122/2006 provides that an applicant in one of the following situations presents a high risk of evading the transfer procedure:

- illegally crossed the state border of Romania and was detected in the Eurodac system with one or more applications for international protection submitted on the territory of another Member State;

- illegally crossed the external border of EU Member States or associated states or was caught trying to cross or illegally crossed the state border of Romania, and the application for international protection was submitted after arrest;
- crossed or tried to cross the state border of Romania illegally after submitting the application for international protection in Romania;
- was found to have entered the territory of Romania illegally or to be in the territory of Romania without the right of residence and submitted a new application for international protection after the actual transfer to the responsible Member State;
- did not comply with one of the measures provided for in Article 19<sup>^2</sup> para (1a) and (b);
- after communication of the decision provided for in Article 120 para (2a), the applicant opposes the transfer to the responsible Member State.

## **Detention in the context of a procedure to decide on the applicant's right to enter the territory**

Article 8(3c) of the Reception Conditions Directive (recast) was transposed into national law by Article 87(1) of Law No 122/2006 ("*the foreigner who requests a form of protection in Romania remains in the transit zone of the border crossing point until he/she receives a decision approving entry into Romania or until the decision to reject the entry remains final, but no more than 20 days after entering the transit zone*"). Individuals applying for international protection at the borders can be detained in the transit area of the state border checkpoint for up to 20 days for an initial assessment of their application. They can be confined in special reception and accommodation centres found in the vicinity of the state border checkpoints, which have the same legal status as the transit area. Foreign nationals detained in transit zone facilities are considered not to have entered Romanian territory. If a decision has not been made on their application for protection within 20 days, the individuals should be released.

## **Detention in the context of a return procedure**

Article 8(3d) of the recast Reception Conditions Directive was transposed into national law by Article 19<sup>^13</sup> (1b) of Law No 122/2006 ("*if the applicant was taken into public custody with a view to removal or expulsion from the territory of Romania*

*and submitted an application for international protection in order to delay or prevent the execution of the removal or expulsion measure, although prior to taking such a measure, the applicant had the opportunity to submit such a request"). Public custody may be ordered for the purpose of a removal or expulsion from the territory of Romania if the person has submitted an application for international protection in order to delay or prevent the execution of the removal or expulsion measure, although prior to the disposition of such measures had the opportunity to submit such an application (Law No 122/2006, Article 19<sup>13</sup>(1b)).*

Public custody may be ordered for third-country nationals who cannot be removed under escort within 24 hours and who are in one of the following situations (Government Emergency Ordinance No 194/2002, Article 101):

- present a risk of absconding from removal under escort;
- avoid or prevent the preparation of the return or the removal process under escort;
- are subject to expulsion.

The Prosecutor's Office near the Court of Appeal in Bucharest issues an authorisation for taking a foreign national into public custody, after having received a request from the GII or one of its territorial units. The third-country national against whom public custody was ordered, may submit, within 5 days, a complaint to the court of appeal in the place of accommodation, which is obliged to resolve it within 3 days from the date of receipt. The court's decision is final. The complaint does not suspend a removal under escort (Government Emergency Ordinance No 194/2002, Article 101(10)). Persons detained based on a measure of a return can be held in public custody for up to 30 days. After the expiration of this period, if the person cannot be removed, the GII may request the local court of appeal to renew the period of public custody for up to 6 months (Government Emergency Ordinance No 194/2002, Article 101(6)).

The period may be extended exceptionally for an additional period not exceeding 12 months when the GII has been unable to carry out the removal of the alien under escort, due to:

- a) the applicant's actions that prevent the removal process under escort;

b) delays in obtaining the necessary documentation (Government Emergency Ordinance No 194/2002, Article 101(7)).

### **Detention in the context of national security and public order**

Article 8(3e) of the recast Reception Conditions Directive was transposed into national law by Article 19<sup>5</sup>(1c) of Law No 122/2006 (placement in an arranged closed space "*at the request of one of the national security bodies, which notes that the applicant for international protection is a danger to national security*") and Article 97(8) of Government Emergency Ordinance 194/2002 (public custody for reasons of national security and public order until there is a final decision in the asylum procedure). Law No 122/2006, Article 19<sup>2</sup>(1c) and (d) also provides that the authorities, on the basis of an individual analysis, may order placement in specially arranged closed spaces or in public custody if the applicant poses a threat to national security.

### **Detention for the purpose of a Dublin transfer**

Article 8(3f) of the recast Reception Conditions Directive was transposed into national law by Articles 19<sup>13</sup>(1a) and 19<sup>14</sup> of Law No 122/2006 (public custody may be ordered "*in the procedure for determining the responsible Member State, in order to ensure the transfer to the responsible member state*").

### **Less coercive measures (alternatives to detention)**

**Regular reporting to the authorities:** Law No 122/2006 provides two non-custodial measures: i) obligation to report to the headquarters of the GII; and ii) designated stay in a Regional Centre (Article 19<sup>2</sup>).

**Deposit of a financial guarantee:** There is no financial guarantee provided by law to be paid by the applicant.

**Obligation to stay at an assigned place:** The GII may designate a place of residence for the full duration of the asylum determination procedure, including

accompanied transportation to that place, on grounds of public order, national security, protection of public health and morality, and the protection of the rights and freedoms of others. Movement is restricted within the designated district of residence.

**Seizure of money for travel documents and tickets:** The expenses for a removal will be supported by foreigners who have the financial means.

## **Application for international protection and processing while in detention/impact on the asylum procedure**

According to Article 35 of Law No 122/2006, the following authorities are competent to receive an asylum application:

- a) the branches of the GII;
- b) the territorial units of the Romanian Border Police;
- c) the police units maintaining and operating detention facilities;
- d) the branches of the National Administration of Prisons within the Ministry of Justice.

The asylum application is sent as soon as possible to the GII for registration. The case officer interviews the asylum applicant at the place of detention and, in exceptional cases, videoconference is used (e.g. when the interpreter is not available locally). The decision is notified to the applicant through the authorities that received the application.

Throughout the duration of the asylum procedure, the applicant has the right:

- to legal counsel in any phase of the asylum procedure;
- to be provided, for free, during any phase of the asylum procedure, including during the court session where the restrictive measure was decided, with an interpreter able to ensure adequate translation;

- to contact and be assisted by an official of the United Nations High Commissioner for Refugees (UNHCR), during any phase of the asylum procedure;
- to be counselled and assisted by a representative of Romanian or foreign non-governmental agencies during any phase of the asylum procedure;
- to be informed, at the time of lodging the application or subsequently, within no more than 15 days from the lodging of the application, in a language which they understand or are reasonably supposed to understand, on the procedure to follow, their rights and their obligations to comply with during the asylum procedure, and the consequences of not complying with such rights and of not cooperating with the relevant authorities, and on the consequences of an explicit or implicit withdrawal of the application;

The asylum application submitted at the territorial branches of the Romanian Border Police from border check points shall be immediately forwarded to the relevant department of the GII, which shall analyse it and issue a decision within 3 days from receipt (Article 83 of Law No 122/2006).

The case officer, after conducting the interview and reviewing the reasons of the application for international protection against the situation on the country of origin, shall decide the following:

- a) to grant a form of protection and right of entry; or
- b) grant right of entry and access to the regular asylum procedure, if the asylum application cannot be rejected for one of the reasons under Article 76(1) (Manifestly unfounded asylum applications) or if evidence or circumstantial evidence arise, indicating that the responsibility to review the international protection application belongs to another Member State or if there are clues as to the applicability of the first country of asylum procedure, the safe third country procedure, or, as applicable, the European safe third country procedure, as applicable; or
- c) reject the asylum application as manifestly unfounded and deny right of entry.

In the situation mentioned above if the evidence on file warrants the issuance of a decision to grant access to the regular procedure, the asylum applicant is not

interviewed.

Asylum applications under Article 82 submitted by aliens who were previously subject to an asylum procedure in Romania are also subject to a border procedure. In these cases, the case officer based on a reasoned decision, the documentation submitted by the applicant, and in view of the status of his/her personal file, and after assessing the conditions under Article 88(2) (conditions regarding subsequent applications), shall issue a decision whereby it:

- a) grants right of entry and access to a new asylum procedure; or
- b) rejects the application as inadmissible and denies right of entry.

According to Article 84 of Law No 122/2006, applications of asylum applicants in need of special procedural guarantees are not subject to border procedures, except in cases where, for due reasons, the applicant may pose a threat to public safety or national security. The asylum applicant shall receive right of entry and access to the ordinary procedure.

If the asylum applicant is granted access to the territory, he/she will receive a temporary identity document.

If a foreigner applies for asylum while he/she is in public custody, GII assesses the international protection application and issue a legally and factually reasoned decision within 3 days on whether to grant access to the regular asylum procedure or reject the international protection application according to Article 75(1) of Law No 122/2006 (cases that can be assessed in accelerated procedure). If a decision to grant access to the regular procedure is not possible based on the elements on file, the asylum applicant is interviewed. The decision is notified to the applicant through the authority that received the application.

If a foreigner requests access to a new asylum procedure while he/she is in public custody, GII assesses the application and issue a legally and factually reasoned decision within 5 days on whether to grant access to the regular asylum procedure or reject the international protection as inadmissible. The decision is based on the documentation submitted by applicants and the elements on his/her file. The applicant is not interviewed. The decision is notified to the applicant through the

authority that received the application.

## **Procedural safeguards**

### **Access to information and interpretation**

Interpretation is foreseen by law at all stages of the application procedure, including while the applicant is in detention (Law No 122/2006, Article 17(1c)).

The detention order is issued by the court, at the request of the prosecutor, and the applicant is informed about the grounds of his/her detention, including the reasons in fact and in law.

According to Article 83 of the Government Emergency Ordinance No 194/2002 regarding the regime of aliens in Romania, the return decision is drawn up in writing in two copies, in Romanian and in a language of international circulation, and contains the reasons *de facto* and *de jure*, as well as information on possible remedies. The General Inspectorate for Immigration shall provide, at the request of the alien, a written or verbal translation of the main elements of the return decision, including information on possible remedies, in a language that the alien understands or is reasonably supposed to understand. The provisions of Article 83(5) does not apply to aliens who have illegally crossed the state border of Romania or another Member State of the European Union, the European Economic Area or the Swiss Confederation. In this case, along with the return decision, a sheet is also communicated, written in 5 of the most commonly used or understood languages by aliens on the territory of Romania, containing information explaining the main elements of the standard form of the return decision.

### **Legal assistance and representation**

According to Article 19<sup>6</sup>(2) of Law No 122/2006, the same right to free legal assistance provided in the regular procedure under Article 17(1e) is also provided in the procedure regarding detention. According to Article 17(1e) of Law No 122/2006, applicants for international protection have the right to be advised and assisted by a representative of non-governmental organisations (Romanian or foreign) at any phase of the asylum procedure.

In addition, according to Article 17(1s) of Law No 122/2006, applicants for international protection have the right to be provided, upon request, with legal and procedural information, including information on the procedure in the administrative phase, under the terms of the legislation on public judicial aid in civil matters, taking into account the personal situation of the applicant.

According to Article 17(1ş) of Law No 122/2006, the information provided includes:

- the reasons for the decision to reject the asylum application;
- the procedure for contesting the order by which the measure of placement in a specially arranged closed space was ordered;
- the possibility of contesting the decision by which the granting, limitation or withdrawal of the material reception conditions was ordered.

At the border crossing point, asylum applicants have the right to social and legal assistance, as well as humanitarian aid from NGOs acting in the refugee area and UNHCR's office in Romania.

Individuals in administrative detention at Arad and Otopeni Centre have access to regular legal counselling.

## **Length of detention**

Asylum seekers: Up to 20 days for an initial assessment of their case.

Dublin cases: Detention is ordered, in writing, by an ordinance motivated in law and in fact by the specifically designated prosecutor within the Prosecutor's Office attached to the Bucharest Court of Appeal, for a period of 30 days, upon the motivated request of the General Inspectorate for Immigration against the applicant who presents a high risk of absconding the transfer procedure (Law No 122/2006, Article 19<sup>14</sup>). The GII completes administrative formalities to take applicants for international protection into public custody within 24 hours from the date on which the need for this measure is established.

The extension of the period of detention is ordered by the court of appeal where the place of accommodation is located, upon a reasoned request from the GII, submitted at least 5 days before the expiry of the period of detention. The court must rule before the expiry of the period of detention previously ordered, and the court's decision is final. The judge sets the first trial date and summons the parties as soon as it finds that the reasoned request of GII meets the conditions provided by law. Presence is not mandatory.

Requests for extension of detention are exempt from the judicial stamp duty.

The period of detention of applicants for international protection may not exceed 6 months. This period may be exceptionally extended, for an additional period not exceeding 12 months, when the GII is, for reasons beyond its control, unable to carry out the transfer to the responsible Member State due to delays in obtaining the documentation necessary for the transfer to the responsible Member State.

The complaint against the measure of detention does not suspend the measure of detention nor the procedure for determining the Member State responsible.

Rejected applicants: Persons detained based on a measure of a return can be held in public custody for up to 30 days. If, after 30 days, they still cannot be removed from the country, the Immigration Office can request the local court of appeal to renew the period of public custody for up to 6 months (Government Emergency Ordinance No 194/2002, Article 101(6)). The period may be extended exceptionally for an additional period not exceeding 12 months, when the GII has been unable to carry out the removal of the foreigner under escort, due to: i) his/her actions that prevent the removal process under escort; ii) delays in obtaining the necessary

documentation (Government Emergency Ordinance No 194/2002, Article 101(7)). If the GII ex officio or at the request of the third-country national finds that there is no possibility of removal under escort during the period for which the measure of public custody was instituted, it orders the cessation of public custody and grants tolerated status.

The GII analyses the opportunity to maintain the public custody measure at intervals of a maximum of 3 months. In the case of families with minors taken into public custody, the analysis is performed at intervals of a maximum of 1 month.

Individuals with a measure of expulsion: Individuals detained based on a measure of expulsion can be held in custody for up to 2 years. If they are not deported within this period, they are to be granted tolerated status to remain in Romania and released (Government Emergency Ordinance No 194/2002, Article 106 (1)).

## **Judicial review of detention**

According to Article 101 of the [Emergency Ordinance No 194/2002](#), an applicant may file, within 5 days, a complaint with the court of appeal in whose territorial jurisdiction the place of accommodation is located. The court decides within 3 days from the date of receipt. The court's decision is final. The complaint against the measure of detention does not suspend the measure of detention (Law No 122/2006, Article 19<sup>14</sup>(8)).

## **Specific conditions relating to detention**

### **Conditions of detention**

According to Article 19<sup>16</sup> of Law No 122/2006, while being held in an accommodation centre for foreigners taken into public custody, applicants for international protection have the rights provided for in Article 17 of Law No 122/2006, except for those from paragraphs (1k), (o), (o<sup>1</sup>) and (q), those from Article 18, as well as the obligations provided for in Article 19, except for the one from (g).

**Access to outdoor space:** Limited access to outdoor spaces.

**Visitors/access to external communications:** Legislation does not stipulate visitation rights for people in detention. However, according to civil society reports, detainees receive visits from family members, friends, lawyers, NGOs and UNHCR staff. According to Article 104 of the Government Emergency Ordinance No 194/2002, detained individuals are offered the possibility of communicating with diplomatic and consular representatives of their country of origin.

**Access to education (school for minors, language courses, etc.):** Minors living in accommodation centres have free access to the mandatory educational system (Law No 122/2006, Article 18).

Minor aliens residing in Romania have access to compulsory school education under the same conditions as minors who are Romanian citizens.

The Ministry of Education establishes, according to the law, the limits and conditions for the recognition and equivalence of studies carried out in the country of origin, for the enrolment of foreign pupils in the national education system (Government Emergency Ordinance No 194/2002, Article 132)

**Opportunity to leave the detention facility:** In general, detainees are not allowed to leave the centre.

**Freedom of movement within the detention centre:** Limited to the internal rules of the centre.

**Access to legal advice/assistance:** At the border crossing point, asylum seekers have the right to social and legal assistance, as well as humanitarian aid from NGOs

acting in the refugee area and UNHCR's office in Romania.

Individuals in administrative detention at Arad and Otopeni Centre have access to regular legal counselling.

**Interpretation:** Interpretation is foreseen by law (Law No 122/2006, Article 17 (1)(c)).

Medical care: Foreigners accommodated in centres have the right to medical assistance, free medication and medical resources, as well as social assistance (Law No 122/2006, Article 17(1m)).

## **Detention of applicants with special needs**

### **Legislative overview**

Applicants with special 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 family members, if there are any.

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.

Unaccompanied minors are never placed in detention in public custody centres for foreigners but in DGASPC centres for family reunification or until adulthood. The designated prosecutor does not order measures to temporarily restrict freedom of movement for unaccompanied minors and accompanied minors.

The General Inspectorate for Immigration handles unaccompanied minors on Romanian territory through the following measures: a) Establishing their identity and

determining how they entered the country.

b) Regardless of how they entered Romania, they are accommodated in special child protection centres under the same conditions as Romanian minors.

c) Measures are taken to identify the parents, regardless of their place of residence, to facilitate family reunification.

d) Until their parents are identified, school-age minors have access to the education system.

e) The removal of an unaccompanied minor from the country can only be carried out after a prior assessment by the competent authorities, and only if the minor is sent to:

- Their identified parents, if they do not reside in Romania.
- Other family members, with their consent.
- A designated guardian.
- Suitable reception centers in the return country.

The procedure initiated by the GII is considered completed in one of these situations:

a) family reunification of the minor has been achieved; b) the minor has been handed over to the competent authorities of the country of origin; c) in the case of non-identification of the minor's parents or other family members; d) the minor is not accepted in the country of origin.

Access to leisure activities for children accommodated in public custody centers:

According to Order of Minister of Internal Affairs No 121/2014, Article 26, minors accommodated in the centre, who accompany one of the parents or their legal representative taken into public custody, benefit from a longer period of outdoor recreational activities, accompanied by at least one of the parent, according to the program established by the center's psychologist and doctor and approved.

Guarantees related to privacy when detaining female applicants:

According to Order of Minister of Internal Affairs No 121/2014, Article 29, foreigners are accommodated in separate rooms according to gender, except for foreigners

who are members of a family.