

# Country Report: Romania



**2018  
update**

## Acknowledgements & Methodology

This report was written by Felicia Nica with support from the Jesuit Refugee Service (JRS) Romania, and was edited by ECRE.

The information in this report draws upon statistics provided by the General Immigration Inspectorate (IGI) interviews throughout 2018 with relevant stakeholders at IGI, UNHCR Romania and civil society organisations, including legal counsellors providing services in the different Regional Centres for Accommodation and Procedures for Asylum Seekers of the country (Timișoara, Șomcuta Mare, Rădăuți, Galați, Bucharest and Giurgiu), as well as visits to the Regional Centres of Bucharest and Giurgiu and the Public Custody Centre of Otopeni on 18-22 June 2018, the Regional Centre of Timișoara on 26-29 November 2018, and the Public Custody Centre of Arad on 15 January 2019.

The information in this report is up-to-date as of 31 December 2018, unless otherwise stated.

## The Asylum Information Database (AIDA)

The Asylum Information Database (AIDA) is coordinated by the European Council on Refugees and Exiles (ECRE). It aims to provide up-to date information on asylum practice in 23 countries. This includes 20 EU Member States (AT, BE, BG, CY, DE, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, PT, RO, SE, SI, UK) and 3 non-EU countries (Serbia, Switzerland, Turkey) which is easily accessible to the media, researchers, advocates, legal practitioners and the general public through the dedicated website [www.asylumineurope.org](http://www.asylumineurope.org). The database also seeks to promote the implementation and transposition of EU asylum legislation reflecting the highest possible standards of protection in line with international refugee and human rights law and based on best practice.



This report is part of the Asylum Information Database (AIDA) funded by the European Programme for Integration and Migration (EPIM), a collaborative initiative of the Network of European Foundations, and the European Union's Asylum, Migration and Integration Fund (AMIF). The contents of the report are the sole responsibility of JRS Romania and ECRE and can in no way be taken to reflect the views of the European Commission.



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## Glossary & List of Abbreviations

<b>Public custody centre</b>	Detention centre for persons facing removal or transfer under the Dublin Regulation. There are two such centres, located in Otopeni and Arad.
<b>Regional centre</b>	Regional Centre for Accommodation and Procedures for Asylum Seekers ("reception centre"). There are six such centres, located in: Timișoara, Șomcuta Mare, Rădăuți, Galați, Bucharest and Giurgiu.
<b>AIDRom</b>	Ecumenical Association of Churches from Romania   Asociația Ecumenică a Bisericii din România
<b>AJOFM</b>	County Employment Agency   Agenția Județeană pentru Ocuparea Forței de Muncă
<b>AJPIS</b>	County Agency for Payments and Social Inspection   Agenția Județeană pentru Plăți și Inspecție Socială
<b>AMIF</b>	Asylum, Migration and Integration Fund
<b>ANOFM</b>	National Employment Agency   Agenția Națională pentru Ocuparea Forței de Muncă
<b>CAS</b>	Health Insurance House   Casa de Asigurări de Sănătate
<b>CJAS</b>	County Health Insurance House   Casa Județeană de Asigurări de Sănătate
<b>CNRED</b>	National Centre for Recognition and Validation of Diplomas   Centrul Național pentru Recunoașterea și Echivalarea Diplomelor
<b>CNRR</b>	Romanian National Council for Refugees   Consiliul Național Român pentru Refugiați
<b>DGASPC</b>	Directorate-General for Social Assistance and Child Protection   Direcția Generală de Asistență Socială și Protecția Copilului
<b>EASO</b>	European Asylum Support Office
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>EDAL</b>	European Database of Asylum Law
<b>IGPF</b>	General Inspectorate of the Romanian Border Police   Inspectoratul General Poliția de Frontieră
<b>IGI</b>	General Inspectorate for Immigration   Inspectoratul General pentru Imigrări
<b>IGI-DAI</b>	General Inspectorate for Immigration – Directorate for Asylum and Integration   Inspectoratul General pentru Imigrări – Direcția Azil și Integrare
<b>IML</b>	Institute of Legal Medicine   Institutului de Medicină Legală
<b>IOM</b>	International Organisation for Migration
<b>IPJ</b>	County Police Inspectorate   Inspectoratul de Poliție Județean
<b>ISJ</b>	County School Inspectorate   Inspectoratul Școlar Județean
<b>ISR</b>	Social Reference Indicator   Indicator Social de Referință
<b>JRS</b>	Jesuit Refugee Service Romania
<b>LADO</b>	Liga Apărării Drepturilor Omului
<b>NAC</b>	National Authority for Citizenship
<b>NIML</b>	National Institute of Legal Medicine   Institutului Național de Medicină Legală
<b>ROI</b>	Regulation of Internal Order   Regulamentul de Ordine Interioară

## Statistics

### Overview of statistical practice

The General Inspectorate for Immigration (IGI)'s Directorate for Asylum and Integration (DAI) publishes statistical information in its annual reports.

### Applications and granting of protection status at first instance: 2018

	Applicants in 2018	Pending at end 2018	Refugee status	Subsidiary protection	Rejection	Refugee rate	Sub. Prot. rate	Rejection rate
<b>Total</b>	2,137	83	305	290	700	23.6%	22.4%	54%

Breakdown by countries of origin of the total numbers

Iraq	1,083	61	90	60	265	21.7%	14.5%	63.8%
Syria	364	14	115	210	5	34.8%	63.6%	1.6%
Iran	160	2	20	0	65	23.5%	0%	76.5%
Bangladesh	80	5	0	0	40	0%	0%	100%
Turkey	69	0	10	0	55	15.4%	0%	84.6%
Afghanistan	50	3	10	5	40	18.2%	9.1%	72.7%
India	43	3	0	0	25	0%	0%	100%
Palestine	36	0	10	0	10	50%	0%	50%
Pakistan	33	0	5	5	40	10%	10%	80%
Somalia	23	0	20	5	5	66.6%	16.7%	16.7%

Source: Applicants – IGI-DAI; Decisions – Eurostat. Rejection decisions include inadmissibility.

#### Gender/age breakdown of the total number of applicants: 2018

	Number	Percentage
<b>Total number of applicants</b>	2,137	-
Men	1,499	70.1%
Women	638	29.9%
Children	545	25.5%
Unaccompanied children	136	6.3%

Source: IGI-DAI

#### Comparison between first instance and appeal decision rates: 2018

Full statistics are not available. A total of 643 decisions were taken on appeals, of which 375 were negative.<sup>1</sup>

As regards onwards appeals, there were 320 decisions on appeals against Regional Court decisions in 2018, of which 46 were positive and 274 were negative.<sup>2</sup>

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<sup>1</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>2</sup> *Ibid.*



## Overview of the legal framework

### Main legislative acts on asylum procedures, reception conditions, detention and content of international protection

Title (EN)	Original Title (RO)	Abbreviation	Web Link
Act No. 122 of 4 May 2006 on Asylum in Romania <i>Last updated: 3 September 2016</i>	Legea nr. 122 din 4 mai 2006 privind azilul în România <i>Formă actualizată: 3 septembrie 2016</i>	Asylum Act	<a href="http://bit.ly/2g3FTjf">http://bit.ly/2g3FTjf</a> (RO)

### Main implementing decrees, guidelines and regulations on asylum procedures, reception conditions, detention and content of international protection

Title (EN)	Original Title (RO)	Abbreviation	Web Link
Government Decree No. 1251 of 13 September 2006 regarding the Methodological Norms for Applying Act 122/2006 <i>Last updated: 25 January 2016</i>	Hotărârea Guvernului nr. 1251 din 13 septembrie 2006 privind Normele Metodologice de aplicare a Legii 122/2006 <i>Formă actualizată: 25 ianuarie 2016</i>	Asylum Decree	<a href="http://bit.ly/2fJRiI0">http://bit.ly/2fJRiI0</a> (RO)
Government Emergency Ordinance No. 194 of 12 December 2002 regarding the regime for foreigners in Romania <i>Last updated: 9 November 2018</i>	Ordonanță de urgență nr. 194 din 12 decembrie 2002 privind regimul străinilor în România <i>Formă actualizată: 9 noiembrie 2018</i>	Aliens Ordinance	<a href="http://bit.ly/2x9zGrL">http://bit.ly/2x9zGrL</a> (RO)
Government Ordinance No. 44 of 29 January 2004 regarding the social integration of foreigners granted international protection or the right to stay in Romania as well as of the citizens of European Union and European Economic Area states <i>Last updated: November 2016</i>	Ordonanța Guvernului nr. 44 din 29 ianuarie 2004 privind integrarea socială a străinilor care au dobândit protecție internațională sau un drept de ședere în România, precum și a cetățenilor statelor membre ale Uniunii Europene și Spațiului Economic European <i>Formă actualizată: noiembrie 2016</i>	Integration Ordinance	<a href="http://bit.ly/2keDoz7">http://bit.ly/2keDoz7</a> (RO)
Ordinance No. 441 of 4 April 2008 for determining the attributions of the authorities responsible for implementing the data in the Eurodac system and for establishing the practical methodology of cooperation in the application of European regulations, with amendments and additions	Ordinului nr. 441/2008 din 4 aprilie 2008 pentru stabilirea atribuțiilor autorităților responsabile cu implementarea datelor în sistemul Eurodac și pentru stabilirea metodologiei practice de cooperare în vederea aplicării regulamentelor europene în domeniu, cu modificările și completările ulterioare	Ordinance 441/2008	<a href="http://bit.ly/2x7WsFr">http://bit.ly/2x7WsFr</a> (RO)

Regulation of Internal Order in the Regional Centres of Accommodation and Procedures for Asylum Seekers of 25 August 2016	Regulamentul de ordine interioară al centrelor regionale de proceduri și cazare a solicitanților de azil din 25.08.2016	ROI	<a href="http://bit.ly/2DefFYk">http://bit.ly/2DefFYk</a> (RO)
Regulation of Centres for Aliens Taken into Public Custody of 30 July 2014	Regulament centrelor de cazare a străinilor luați în custodie publică din 30.07.2014	Public Custody Centres Regulation	<a href="http://bit.ly/2DA2QHI">http://bit.ly/2DA2QHI</a> (RO)

## Overview of the main changes since the first report

The first report was published in **February 2018**.

### *Asylum procedure*

- ❖ **Access to the territory:** Reports from 2018 show a decrease in the number of collective expulsions to Serbia in comparison with 2017. However, at least 746 persons were collectively expelled from Romania to Serbia during the year. Issues on information provision and interpretation at the border continued to be reported. In relation to irregular exits to Hungary, whereas up to 2018, asylum seekers or other migrants apprehended while trying to irregularly cross the border into Hungary were only fined, the situation changed in 2018 when the Regional Court of Chişineu-Criş started delivering convictions with a sentence of six months' imprisonment, coupled with a two-year entry ban from the territory of Romania.
- ❖ **Interpretation:** The availability and quality of interpretation has remained an issue. In Rădăuţi, as in Giurgiu, IGI-DAI uses double interpretation from Kurdish to Arabic and from Arabic to Romanian. The interpreter for Kurdish was an asylum seeker and the interpreter for Arabic was not qualified. This was brought to the attention of the Regional Court in an appeal lodged by an asylum seeker against a negative decision taken by IGI-DAI, which acknowledged contradictions and vague statements due to double interpretation.
- ❖ **Appeal:** The previous practice of Regional Court Bucharest District 4, whereby asylum seekers were not heard in most of the cases, has changed in 2018 as some of the judges hear the asylum seekers *ex officio*. However, the hearing consists of asking the asylum seeker if he has something else to add or to clarify certain aspects. It was also reported by a lawyer that in 2018 some of the judges started to exercise their active role, in the sense that they ask questions to the asylum seeker.
- ❖ **Dublin:** Dublin procedures to Greece resumed as of the end of 2018. Practice on transfers to Bulgaria remained inconsistent in 2018. Several cases, both allowing and suspending transfers to Bulgaria, were delivered by the Regional Courts.

### *Detention of asylum seekers*

- ❖ **Detention of vulnerable applicants:** According to the amended Aliens Act, if the foreigner declares that he or she is a minor and cannot prove his or her age, but there are serious doubts about his minority, he or she will be considered an adult. In this situation, IGI requests an age assessment, with his or her prior consent. As a consequence the child will be treated as adult and placed in detention pending the age assessment, until his or her age is confirmed. In practice, vulnerable groups such as families and pregnant women have been detained in 2018.

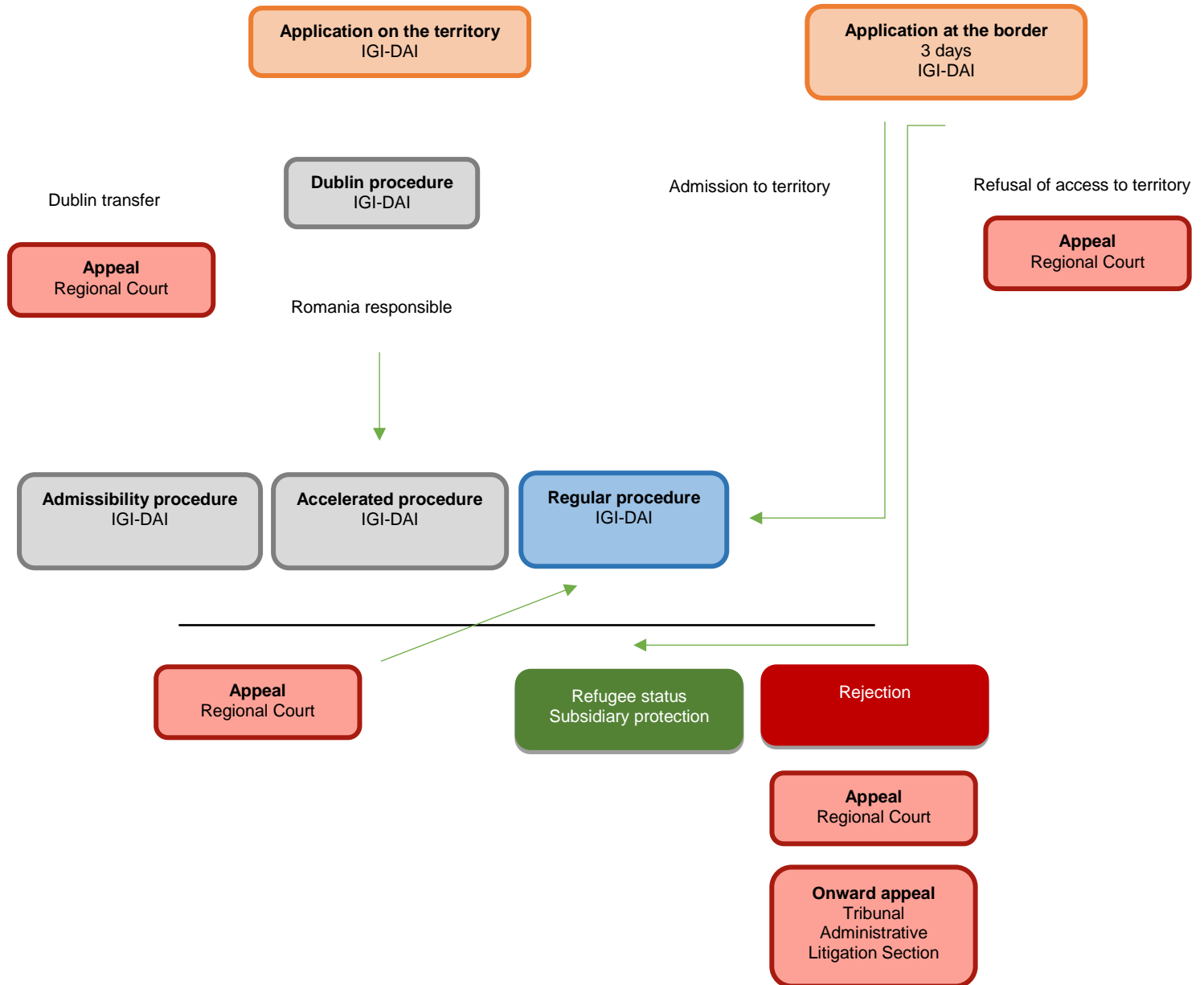
### *Content of international protection*

- ❖ **Civil registration:** Beneficiaries of international protection face difficulties in opening bank accounts at large banks in Galaţi, Rădăuţi, Timişoara. Banks are also reluctant to open bank accounts in Şomcuta Mare.
- ❖ **Housing:** A total of 121 beneficiaries of international protection were residing in the Regional Centres at the end of 2018. JRS implemented the project "A New House" in all the Regional Centres, funded through the AMIF national programme, which covered partially or entirely the rental fees and/or the utility costs for beneficiaries of international protection to reside in the centres until June 2018.

# Asylum Procedure

## A. General

### 1. Flow chart



## 2. Types of procedures

### Indicators: Types of Procedures

Which types of procedures exist in your country?

- |   |   |  |
|---|---|--|
| ❖ Regular procedure:                    | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ▪ Prioritised examination: <sup>3</sup> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ▪ Fast-track processing: <sup>4</sup>   | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| ❖ Dublin procedure:                     | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Admissibility procedure:              | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Border procedure:                     | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Accelerated procedure: <sup>5</sup>   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ Other:                                | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |

Are any of the procedures that are foreseen in the law, not being applied in practice? ☐ Yes ☒ No

## 3. List of authorities that intervene in each stage of the procedure

Stage of the procedure	Competent authority (EN)	Competent authority (SI)
Application <ul style="list-style-type: none"> <li>❖ At the border</li> <li>❖ On the territory</li> </ul>	General Inspectorate for Immigration – Directorate for Asylum and Integration (IGI-DAI)	Inspectoratul General pentru Imigrari – Directia Azil si Integrare (IGI-DAI)
Dublin	General Inspectorate for Immigration – Directorate for Asylum and Integration (IGI-DAI)	Inspectoratul General pentru Imigrari – Directia Azil si Integrare (IGI-DAI)
Refugee status determination	General Inspectorate for Immigration – Directorate for Asylum and Integration (IGI-DAI)	Inspectoratul General pentru Imigrari – Directia Azil si Integrare (IGI-DAI)
First appeal	Regional Court	Judecatorie Sectia Civila, materie: Contencios Administrativ si Fiscal
Onward appeal	County Tribunal Administrative Litigation Section	Tribunal Sectia de Contencios Administrativ si Fiscal
Subsequent application	General Inspectorate for Immigration – Directorate for Asylum and Integration (IGI-DAI)	Inspectoratul General pentru Imigrari – Directia Azil si Integrare (IGI-DAI)

## 4. Number of staff and nature of the first instance authority

Name in English	Number of staff	Ministry responsible	Is there any political interference possible by the responsible Minister with the decision making in individual cases by the first instance authority?
General Inspectorate for Immigration – Directorate for Asylum and Integration (IGI-DAI)	Not available	Ministry of Internal Affairs	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

The number of case officers in charge of processing asylum applications was 19 at the end of 2018.

<sup>3</sup> For applications likely to be well-founded or made by vulnerable applicants.

<sup>4</sup> Accelerating the processing of specific caseloads as part of the regular procedure.

<sup>5</sup> Labelled as “accelerated procedure” in national law.

## 5. Short overview of the asylum procedure

The General Inspectorate for Immigration (IGI), a government agency under the Ministry of Internal Affairs, is in charge of the asylum procedure through its Directorate of Asylum and Integration (DAI). IGI-DAI is also in charge of operating the Regional Centres for Asylum Seekers (“reception centres”) and specially designed closed spaces within the reception centres.

### Application

Access to the asylum procedure is ensured to any foreign national or stateless person who is on Romanian territory or at the border, from the time the person manifested his or her intention to request protection from the Romanian state, in writing or orally.<sup>6</sup> An asylum application may be made at the border or on the territory.

Apart from IGI-DAI there are also other authorities competent to receive asylum applications such as the Border Police operating offices, police units in which pre-trial detention and detention centres are established and operate, or structures of the National Administration of Penitentiaries within the Ministry of Justice.<sup>7</sup> IGI-DAI has to register the asylum application within a maximum of 3 working days if the application was made at the IGI,<sup>8</sup> or within a maximum of 6 working days if the application was made with the other competent authorities. In case of a mass influx of applications for international protection filed with any of the latter competent authorities, the registration of applications can be made within 10 working days from the date when the application was filed.<sup>9</sup>

### First instance procedure

The first instance is an administrative procedure carried out by IGI-DAI. Asylum seekers are photographed, fingerprinted and they are issued a temporary identity document,<sup>10</sup> which also includes a personal numeric code.<sup>11</sup> The temporary identity document is extended periodically. After the asylum application is registered a preliminary interview takes place for the purposes of determining the applicant’s personal data, family members, relatives or any other persons in a relationship family travel, the route from the country of origin to Romania, information on possible previous asylum procedures in another Member State or in a third country, as well as on identity or travel documents in his or her possession.<sup>12</sup> If there are indications that another Member State is responsible for assessing the asylum claim, the Dublin procedure is triggered, while the asylum procedure in Romania is suspended.

After the preliminary interview, the personal interview is conducted by a case officer of IGI-DAI. The law foresees a 30-day deadline to issue a decision, starting from the moment when the file is handed over to the case officer.<sup>13</sup> In the event of a negative decision, the applicant may appeal with suspensive effect to the Regional Court within 10 days since the decision it was communicated.<sup>14</sup>

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<sup>6</sup> Article 4 Asylum Act.

<sup>7</sup> Article 36<sup>1</sup>(2) Asylum Act, citing Article 35 Asylum Act.

<sup>8</sup> Article 36<sup>1</sup>(1) Asylum Act.

<sup>9</sup> Article 36<sup>1</sup>(3) Asylum Act, citing Article 35 Asylum Act.

<sup>10</sup> Article 17(1)(h) Asylum Act. Such a document is not issued to applicants: (i) who have applied for asylum at a border crossing point, as long as they have not been granted access to the territory by a decision of IGI-DAI; (ii) detained in public custody for reasons of national security and public order requesting asylum, as long as this measure is maintained; and (iii) who are taken into public custody due to a “significant risk of absconding” in a Dublin procedure.

<sup>11</sup> Article 17(1<sup>1</sup>) Asylum Act.

<sup>12</sup> Article 43(1) Asylum Act.

<sup>13</sup> Article 52(1) Asylum Act.

<sup>14</sup> Article 55(1) Asylum Act.

## Accelerated procedure

The Asylum Act provides for an accelerated procedure for manifestly unfounded applications, asylum applications of persons who, through their activity or membership of a particular group, pose a threat to national security or public order in Romania, and asylum applications of persons coming from a safe country of origin.<sup>15</sup> The accelerated procedure may be triggered during the regular procedure at the date when the case officer determines the existence of one of the grounds for applying an accelerated procedure.<sup>16</sup> A decision is issued within 3 days from the start of the accelerated procedure.<sup>17</sup> A negative decision in the accelerated procedure may be appealed within 7 days from the notification of the decision. If the appeal is filed within the deadline, it has automatic suspensive effect.<sup>18</sup> The decision of the court is irrevocable.<sup>19</sup>

## Border procedure

The law provides that the border procedure applies to asylum applications and subsequent applications made at a border-crossing point. The law stipulates a 3 day deadline to issue a decision in case of border procedure.<sup>20</sup> As well as in the accelerated procedure a negative decision may be appealed within 7 days from notification. The decision of the court is irrevocable.<sup>21</sup>

## Appeal

And the second phase of the asylum procedure consists of a two-instance judicial review procedure. The Regional Court has jurisdiction in asylum cases, as the first-instance judicial review. The County Tribunal, Administrative Litigation Section (Administrative County Court), has jurisdiction over the area of the Regional Court whose decision is appealed. These courts are not specialised courts dealing with asylum cases.

## B. Access to the procedure and registration

### 1. Access to the territory and push backs

#### Indicators: Access to the Territory

1. Are there any reports (NGO reports, media, testimonies, etc.) of people refused entry at the border and returned without examination of their protection needs? ☒ Yes ☐ No

Asylum seekers arrive in Romania mainly by land through the South-Western border with Serbia,<sup>22</sup> the Southern border with Bulgaria,<sup>23</sup> and also through the Northern border with Ukraine,<sup>24</sup> according to Romanian Border Police reports.

<sup>15</sup> Article 75(1) Asylum Act.

<sup>16</sup> Article 78 Asylum Act.

<sup>17</sup> Article 79 Asylum Act.

<sup>18</sup> Article 80(1) Asylum Act.

<sup>19</sup> Article 81(2) Asylum Act.

<sup>20</sup> Article 82 Asylum Act.

<sup>21</sup> Article 86(2) Asylum Act.

<sup>22</sup> Border Police, 'Cinci cetățeni străini, opriți de polițiștii de frontieră la granița cu Serbia', 28 December 2018, available in Romanian at: <https://bit.ly/2TsLhgh>; 'Opt cetățeni cubanezi, opriți la frontiera cu Serbia', 26 December 2018, available in Romanian at: <https://bit.ly/2TzBu9k>; 'Trei cetățeni albanezi și unul din Kosovo, opriți la frontiera cu Serbia', 23 December 2018, available in Romanian at: <https://bit.ly/2SGmCpB>; 'Nouă persoane oprite la frontiera cu Serbia', 5 December 2018, available in Romanian at: <https://bit.ly/2FeewjS>; 'Patru cetățeni albanezi, opriți la frontiera cu Serbia', 14 November 2018, available in Romanian at: <https://bit.ly/2CVpR6Z>; 'Trei cetățeni din Bangladesh, depistați în timp ce încercau să treacă fraudulos frontiera', 18 October 2018, available in Romanian at: <https://bit.ly/2QtrPPI>; 'Nouă cetățeni irakieni depistați în timp ce încercau să treacă fraudulos frontiera', 8 October 2018, available in Romanian at: <https://bit.ly/2Oreqvg>; 'Opt cetățeni străini, opriți la frontiera cu Serbia', 4 August 2018, available in Romanian at: <https://bit.ly/2PAgdKM>; 'Treisprezece cetățeni străini, opriți la frontiera cu Serbia', 21 June 2018, available in Romanian at: <https://bit.ly/2Aa7h9V>.



## 1.1. Push backs and border monitoring

While in the first 6 months of 2018 only 655 third-country nationals were apprehended for irregular entry,<sup>25</sup> in 2017, the border guards apprehended 5,846 foreign nationals who tried to irregularly cross the border, of which 2,840 entering the country and 3,006 exiting, a large part of them acting illegally at the border organised in groups of migrants, with the support of smugglers.<sup>26</sup>

Reports from UNHCR Serbia in 2018 show a decrease in the number of collective expulsions in comparison with 2017. However, 746 persons were collectively expelled from Romania to Serbia from 7 January to 31 December 2018.<sup>27</sup> At the same time, the Jesuit Refugee Service (JRS) representative stated that they did not receive any reports on push backs or collective expulsions.

### Information and interpretation at the border

The Asylum Act prescribes that if there are elements that lead to the idea that foreigners in pre-trial detention and detention facilities or in penitentiaries or at border crossing points or in the transit area intend to apply for international protection in Romania, the personnel of the authorities competent to receive asylum applications provide information on the possibility of submitting a request in this respect.<sup>28</sup>

According to the Border Police Border, there are available leaflets at border-crossing points on the rights and obligations of foreign nationals and of asylum seekers, in languages of international circulation.<sup>29</sup> According to the JRS representative, there are no available leaflets at the border-crossing points. However, JRS together with UNHCR Romania have worked on a new leaflet on the possibility to make an asylum application, but its content was not yet agreed upon by the authorities. In some of the border-crossing points, the Frontex and European Asylum Support Office (EASO) poster is displayed.

<sup>23</sup> Border Police, 'Patru cetățeni afgani, opriți să intre ilegal în România la P.T.F. Negru Vodă', 23 November 2018, available in Romanian at: <https://bit.ly/2RfIyfo>; 'Patru cetățeni din Pakistan și Afganistan, descoperiți ascunși într-un autocamion la P.T.F. Giurgiu', 23 November 2018, available in Romanian at: <https://bit.ly/2sfJkt2>; 'Doisprezece irakieni depistați la P.T.F. Bechet, ascunși într-un microbus', 12 November 2018, available in Romanian at: <https://bit.ly/2RbGMLt>; 'Nouăsprezece migranți depistați la P.T.F. Bechet, ascunși într-un microbus', 22 October 2018, available in Romanian at: <https://bit.ly/2RxxU5l>; 'Patru cetățeni afgani descoperiți ascunși într-un camion la P.T.F. Giurgiu', 10 October 2018, available in Romanian at: <https://bit.ly/2PAq17R>; 'Migranți depistați de poliștii de frontieră doljeni în timp ce încercau să intre ilegal în țară', 8 October 2018, available in Romanian at: <https://bit.ly/2CHDKa9>; 'Patru cetățeni afgani descoperiți ascunși într-un camion la P.T.F. Giurgiu', 28 September 2018, available in Romanian at: <https://bit.ly/2PzJlWq>; 'Cetățean irakian descoperit ascuns într-un camion la P.T.F. Giurgiu', 28 September 2018, available in Romanian at: <https://bit.ly/2IV64pw>; 'Un cetățean din Kazahstan, depistat în timp ce încerca să traverseze Dunărea cu o barcă din Bulgaria în România', 13 September 2018, available in Romanian at: <https://bit.ly/2RP56PN>; 'Doi cetățeni turci, mamă cu bebeluș de 5 luni, depistați în timp ce încercau să intre ilegal în țară', 3 September 2018, available in Romanian at: <https://bit.ly/2NK5sns>; 'Un cetățean din Afganistan și unul din Bangladesh ascunși într-un camion, descoperiți la P.T.F. Giurgiu', 7 September 2018, available in Romanian at: <https://bit.ly/2CLFQpl>; 'Douăzeci și cinci de migranți, depistați la P.T.F. Calafat ascunși într-un microbus', 13 August 2018, available in Romanian at: <https://bit.ly/2IYv8vM>; '26 migranți ascunși în remorca unui camion, descoperiți la P.T.F. Calafat', 7 July 2018, available in Romanian at: <https://bit.ly/2EuMe6e>; 'Trei pakistanezi ascunși într-un camion, printre pepeni, descoperiți la P.T.F. Calafat', 17 June 2018, available in Romanian at: <https://bit.ly/2OrhaZA>; 'Patru cetățeni afgani ascunși într-un camion, printre pepeni, descoperiți la P.T.F. Calafat', 17 May 2018, available in Romanian at: <https://bit.ly/2NK8w2W>; 'Șase cetățeni sirieni ascunși într-un autocamion, descoperiți la P.T.F. Giurgiu', 7 May 2018, available in Romanian at: <https://bit.ly/2q0U8u1>.

<sup>24</sup> Border Police, 'Doi cetățeni din Bangladesh, opriți la frontiera de nord a țării', 6 December 2018, available in Romanian at: <https://bit.ly/2sg8yHq>; 'Cetățeni din Bangladesh depistați de poliștii de frontieră botoșăneni', 1 October 2018, available in Romanian at: <https://bit.ly/2A9BC8j>; 'Patru cetățeni din Bangladesh, opriți la frontiera de nord a țării', 24 July 2018, available in Romanian at: <https://bit.ly/2Ci2NJW>; 'Grup de migranți, oprit la frontiera cu Ucraina', 20 July 2018, available in Romanian at: <https://bit.ly/2CiCZDq>; 'Trei cetățeni indieni, opriți la frontiera de nord a țării', 12 July 2018, available in Romanian at: <https://bit.ly/2IUXRSh>.

<sup>25</sup> Information provided by Border Police, 27 August 2018.

<sup>26</sup> Border Police, *Evaluation of the activity of the Romanian Border Police in 2017*, 15 February 2018, available in Romanian at: <https://bit.ly/2IRfEwc>.

<sup>27</sup> UNHCR, *UNHCR Serbia Update*, available at: <https://data2.unhcr.org/en/search>.

<sup>28</sup> Article 35^1 Asylum Act.

<sup>29</sup> Information provided by Border Police, 27 August 2018.



According to the JRS representative, even though the law foresees an obligation to provide information at border-crossing points, there is no established mechanism on how this should be provided. The reason behind this is the perception that an asylum application is an abuse of the asylum procedure in order to legally enter the country and to avoid the legal consequences of irregular entry.

On the other hand, according to the Bulgarian Helsinki Committee, “for the time being no push backs from Romanian authorities have been reported, however readmissions to Bulgaria seemed to be entirely automatic without informing the individuals who have entered from Bulgaria about their right to apply for asylum in Romania or providing an opportunity to do so, nor have they been interviewed about their intention or request.”<sup>30</sup>

NGOs have no access to border-crossing points at this stage, when third-country nationals have not yet made an asylum application. Furthermore, NGOs have access to asylum seekers at border-crossing points only if they are informed about their presence in these points by the Border Police directly or through UNHCR Romania. JRS provided two examples on how this information provision takes place in practice: the presence of three asylum seekers in the **Cluj Airport** was brought to their attention by UNHCR a week after they had arrived there; in another case, it was IGI-DAI that informed them of the presence of asylum seekers at the Serbian border.

Nevertheless, a JRS report published in July 2018 based on findings collected through interviews also raises issues concerning information provision.<sup>31</sup> It includes testimonies from 26 migrants who arrived in Romania. The testimonies describe how the Border Police and other officials fail to provide migrants with necessary information and have even given misleading information.<sup>32</sup>

- The report lays out the experience of a 16-year-old boy who was rescued by the Romanian Coast Guard in the Black Sea: “He was told to ‘go to court’ to apply for asylum, and while he did have a court hearing eventually, the hearing was about his stay in detention and not about accessing the asylum procedure. It was only after initiating a hunger strike that the authorities finally relented and gave him access to the asylum procedure.”<sup>33</sup>
- Furthermore, another man stated that he “did not apply for asylum because the authorities discouraged it, telling him that Romania was unable to host more asylum seekers.”<sup>34</sup>
- A group of Iraqi Kurds, who were granted tolerated status<sup>35</sup> in Romania even though they wanted to apply for asylum did not do so because they believed their tolerated status prevents them from seeking asylum. As a consequence some of them agreed to voluntary repatriation.
- A Pakistani national, who prior to his arrival in Romania had made an asylum application in Bulgaria and did not want to return there, explained why he did not make an asylum application in Romania: “I was told that once registered as an asylum seeker in another European country, there is a real risk to be sent back there.”<sup>36</sup> After his fingerprints were found in the Eurodac database he lodged an asylum application in Romania in order to avoid being transferred to Bulgaria. The asylum seeker declared: “[t]hey didn’t tell me anything about it. They sent me to detention and looked at me as an offender, since I crossed the border illegally. I had no proper interpreter, no lawyer, no information, and no time to understand my situation. Nobody gave me proper information on the possibility and consequences of asylum.”<sup>37</sup>

In relation to interpretation services for this purpose, the JRS representative reported that interpretation is rare. There were situations when the Border Police requested an interpreter’s assistance through the telephone, even though this method is not prescribed by law. In most of the cases the Border Police

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<sup>30</sup> Information provided by the Bulgarian Helsinki Committee, 20 November 2018.

<sup>31</sup> JRS, *Forgotten at the Gates of Europe: Ongoing Protection Concerns at the EU’s External Border*, June 2018, available at: <https://bit.ly/2NcY0VL>.

<sup>32</sup> *Ibid*, 17 and 19.

<sup>33</sup> *Ibid*, 17.

<sup>34</sup> *Ibid*.

<sup>35</sup> Article 106<sup>1</sup> Aliens Act - Toleration status is granted to third country nationals who do not have the right to stay in Romania and due to objective reasons, foreseen by the Aliens Act cannot leave Romania.

<sup>36</sup> JRS, *Forgotten at the Gates of Europe*, June 2018, 19.

<sup>37</sup> *Ibid*, 19-20.

relies on an officer who speaks a language widely used internationally. However, another JRS representative stated that an interpreter is provided when the person concerned so requests. The lack of interpreters at the border is still an unresolved issue.<sup>38</sup>

### The bipartite agreement on border monitoring

In Romania there is a framework of border monitoring, which takes place under a bipartite agreement between UNHCR and the General Inspectorate of the Romanian Border Police (*Inspectoratul General Politia de Frontiera*, IGPF). JRS Romania is the implementing partner of UNHCR, as described in the Memorandum of Understanding concluded. The border monitoring activities set out in the project comprise of the following:

- Regular border monitoring visits to designated border areas, including international airports, to monitor access to the territory and to the asylum procedure;
- Training sessions delivered at Border Police Schools;
- Establishment of a mechanism for regular exchange of information at the borders with Serbia, Hungary and Bulgaria;
- Development of protection information material for potential asylum seekers at the border, under UNHCR coordination, which contains up-to-date, accessible and age / gender diversity sensitive information;
- Provision of assistance to asylum seekers during border procedures, within the framework of UNHCR-IGPF agreement.

The border monitoring activity implies gathering data on entries and exits in and from Romania from public sources – media monitoring – official statistics and visits to designated border areas. During the visits to designated border areas, the implementing partner: visits the facilities in the transit zones designated for asylum seekers; interviews asylum seekers if are accommodated there at that time; and discusses with the authorities at the border crossing point, border sector or Territorial Inspectorate of Border Police. The discussions with the authorities usually cover trends, routes, number of entries and exits, particular cases and other relevant information.

Visits are usually conducted at border crossing points where a relevant number of entries or exits were registered. The number of visits conducted depends on the particular needs such on the number of arrivals, influx of migrants. In general, JRS conducts its monitoring visits separately from UNHCR, however there are periodic joint visits. UNHCR may also conduct visits separately from JRS. UNHCR conducts the same activities as the implementing partner and in addition it also conducts cross-border visits. In practice, cross-border visits are conducted jointly with JRS.

In case of regular monitoring visits, the Border Police is notified in advance. In case of emergency interventions regarding specific asylum cases, the Border Police is notified in the same day or shortly before the respective visit is conducted.

In 2018, JRS conducted 18 monitoring visits, of which 3 were conducted together with UNHCR, and 6 were conducted at **Otopeni Airport**.

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<sup>38</sup> *Ibid*, 26. For example, an Iranian Kurdish man in Romania told JRS that when he and others arrived via the Black Sea, the authorities rushed through their interviews with only an Arabic interpreter. He said he did not feel well informed about anything in Romania, saying: "[n]obody has spoken to me in my mother tongue yet." An Iraqi Kurdish man in Romania had similar problems, saying he felt uninformed because he had only received information in Romanian and Arabic.

## 1.2. Refusal of entry

According to Border Police, statistics 2,466 third country nationals were refused entry into Romanian territory in the first half of 2018. Only 23 appeals were lodged against decisions refusing entry.<sup>39</sup>

Pursuant to the Aliens Act, the refusal of entry is motivated by the Border Police authorities and it is immediately communicated to the person concerned using the form provided in Part B of Annex V of the Schengen Borders Code and the National Visa Centre within the Ministry of Foreign Affairs.<sup>40</sup> This form is available in English.<sup>41</sup>

According to the JRS representative, persons apprehended at the border with Bulgaria are not refused entry but are returned to Bulgaria based on the readmission agreement concluded between the two countries.<sup>42</sup>

As the Aliens Act does not foresee a special remedy against the decision of refusal of entry, general administrative law applies.<sup>43</sup> As a result, the person concerned may lodge an action against the decision refusing entry into the territory of Romania before the Administrative Court with territorial jurisdiction over the area in which the issuing body of the contested administrative act is located.<sup>44</sup>

Prior to lodging an appeal at the Administrative Court the person who considers that his or her rights have been breached by an administrative act issued by a public institution shall appeal at the issuing public authority within 30 days. The complaint should be address to the hierarchically superior body if it exists.<sup>45</sup> The appeal is assessed in 30 days.<sup>46</sup> An appeal lodged to the Administrative Court without fulfilling this prior procedural step will be declared inadmissible. The complaint and the appeal to the Administrative Court have no suspensive effect.

The applicant may request the suspension of the administrative act at the competent court, when lodging the prior appeal,<sup>47</sup> or when appealing to the court.<sup>48</sup>

The Aliens Act prescribes that the foreigner against whom the measure of non-entry to Romania has been taken has the possibility to voluntarily leave the border-crossing point within 24 hours at most. The term is calculated from the hour following that in which the measure of non-entry to Romania was ordered.<sup>49</sup>

Upon the expiration of the 24-hour term, the decision of refusal of entry to Romania is enforced by the Border Police, taking into account the person's state of health by sending him or her to the country of origin or to another destination that he or she accepts and he or she is accepted, except Romania.<sup>50</sup> This means that the foreigner against whom a decision of refusal of entry was taken has only 24 hours to lodge the prior appeal against the decision.

If the Border Police needs more than 12 hours to carry out the removal from the border-crossing point, the individual is accommodated in a space arranged for this purpose in the transit area, or, if this is not possible, to another location established outside the border-crossing point with transit area status.<sup>51</sup>

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<sup>39</sup> Information provided by Border Police, 27 August 2018.

<sup>40</sup> Article 8(4) Aliens Act.

<sup>41</sup> Information provided by Border Police, 27 August 2018.

<sup>42</sup> Act 61/2001 on the ratification of the Agreement between the Government of Romania and the Government of the Republic of Bulgaria on the readmission of its own citizens and aliens, available in Romanian at: <https://bit.ly/2G1aHjb>.

<sup>43</sup> Act 554/2004 on Administrative Litigation.

<sup>44</sup> Articles 6-18 Act on Administrative Litigation.

<sup>45</sup> Article 7(1) Act on Administrative Litigation.

<sup>46</sup> Article 7(4) in conjunction with Article 2(1)g) Act on Administrative Litigation.

<sup>47</sup> Article 14 Act on Administrative Litigation.

<sup>48</sup> Article 15 Act on Administrative Litigation.

<sup>49</sup> Article 9(1) Aliens Act.

<sup>50</sup> Article 9(2) Aliens Act.

<sup>51</sup> Article 9(3) Aliens Act.

The Aliens Act prescribes a special procedure in case the foreigner states to the Border Police authorities, that leaving the border crossing point is only possible to a state where he or she fears that his or her life is endangered or he or she will be subjected to torture, inhuman or degrading treatment and he or she does not submit an asylum application.<sup>52</sup> When this occurs the Border Police officers shall immediately inform IGI-DAI, which, within maximum of 10 days, analyse the situation of the foreigner and determine whether his or her declaration is well-founded.<sup>53</sup> If IGI-DAI finds that the person's statement is unfounded, it communicates this to the border police authorities, which will inform the person in this respect.<sup>54</sup>

If the foreigner's declaration is well-founded, IGI-DAI will enforce the decision of refusal of entry to Romania by removal under the escort of the foreigner. The provisions of the Aliens Act on removal under the escort, public custody of foreigners and toleration status on the territory of Romania apply accordingly.<sup>55</sup>

### 1.3. Apprehension for irregular exit to Hungary

While irregular entry or stay in Romania committed by persons who have been granted a form of protection is not punishable,<sup>56</sup> irregular exit from the country is punishable under the Criminal Code by imprisonment from 6 months to 3 years or a fine.<sup>57</sup>

Up to 2018, asylum seekers or other migrants apprehended while trying to irregularly cross the border into Hungary were only fined.<sup>58</sup> The situation changed in 2018 when the Regional Court of Chişineu-Criş started delivering convictions with a sentence of six months' imprisonment, coupled with a two-year entry ban from the territory of Romania and in some cases even legal expenses of 1,000 RON / 212 €. <sup>59</sup> At least 19 persons have been convicted, including a family with minor children. The family was apprehended in November 2018 and held in prison, while their four children were taken into care by the Directorate-General for Social Protection and Child Protection (DGASPC). The parents were released on 21 December 2018, after their appeal was admitted. According to the lawyer who represented them in the appeal the parents have not been reunited with their children yet.

## 2. Registration of the asylum application

### Indicators: Registration

1. Are specific time limits laid down in law for asylum seekers to lodge their application? ☐ Yes ☒ No
2. If so, what is the time limit for lodging an application?

Asylum applications are registered by the General Inspectorate for Immigration – Asylum and Integration Directorate (IGI-DAI) within a maximum of 3 working days if the application was made at the IGI,<sup>60</sup> within a maximum of 6 days if the application was made with the other competent authorities such as the Border Police operating offices, police units in which pre-trial detention and detention centres are established and functioning, or structures of the National Administration of Penitentiaries within the Ministry of Justice.<sup>61</sup>

<sup>52</sup> Article 9(5) Aliens Act.

<sup>53</sup> Article 9(6) Aliens Act.

<sup>54</sup> Article 9(7) Aliens Act.

<sup>55</sup> Article 9(8) Aliens Act.

<sup>56</sup> Article 11 Asylum Act.

<sup>57</sup> Article 262(1) Criminal Code.

<sup>58</sup> Only one case of imprisonment from 2016 for attempt to irregularly cross the border was reported by JRS representative.

<sup>59</sup> Regional Court Chişineu-Criş: Decisions 47/2018, 48/2018, 49/2018 and 50/2018, 29 March 2018; Decision 81/2018, 17 May 2018; Decisions 133/2018 and 134/2018, 27 September 2018.

<sup>60</sup> Article 36<sup>1</sup>(1) Asylum Act.

<sup>61</sup> Article 36<sup>1</sup>(2) Asylum Act, citing Article 35 Asylum Act.

In case of a mass influx of applications for international protection filed with any of the latter competent authorities, the registration of applications can be made within 10 working days from the date when the application was filed.<sup>62</sup>

Asylum applications made at a border-crossing point, those made with the units subordinated to the National Administration of Penitentiaries within the Ministry of Justice, as well as those lodged at the pre-trial detention and detention centres within the police units, are recorded in special registers.<sup>63</sup>

When a person expresses the intention to seek asylum at one of the structures of the Ministry of Internal Affairs of Romania, the asylum application is sent to the Regional Centres for Asylum Seekers, together with an outline of the asylum seeker's situation. In addition, authorities may also attach documents drawn up after the foreigner was apprehended or he or she presented him or herself to the competent authorities.<sup>64</sup>

According to the Border Police, a person who expresses the intention to seek asylum at the Romanian border is given a form, which he or she fills in, in the language which he or she knows. The form is registered in a special register of the Border Police structure. After registering the form, the person is informed, through an interpreter, about his or her rights and obligations. Subsequently, the form is submitted by fax to the territorially competent section of IGI-DAI.<sup>65</sup>

Asylum applications made at border-crossing points or airports are transmitted to IGI-DAI together with an information note on the asylum seeker, which includes the hour of arrival, documents in his or her possession, persons accompanying him or her and other elements which may contribute to resolving the case in due time.<sup>66</sup>

However, there were 2 cases of Pakistani nationals, who wanted to make an asylum claim in **Otopeni Airport** and **Cluj Airport** respectively and their claim was never registered by the Border Police. JRS had no access to them, even though the foreigners had contacted them.

According to JRS, in most of the cases asylum seekers are transported by the Border Police to IGI-DAI. Nonetheless, there are also cases when asylum seekers travel by train from the border to IGI-DAI. This occurred to asylum seekers apprehended at the border with Hungary, in **Oradea** County, which is further from Regional Centre **Timișoara**. However, if groups of asylum seekers are apprehended, they are transported to IGI-DAI by the Border Police.

There are no time limits set in law for making an application. According to Article 36(3) of the Asylum Act, competent authorities cannot refuse to register the asylum application on the grounds that it was filed at a later stage.<sup>67</sup> In addition, when assessing an asylum claim, IGI-DAI cannot reject it solely on the ground that it was filed late.<sup>68</sup>

According to IGI-DAI, asylum applications are registered in IGI-DAI database on the same day they are received, the registration number being assigned automatically. Simultaneously with the registration of the asylum application, the person is fingerprinted, photographed and issued a temporary identity document, which is extended periodically.<sup>69</sup> This practice is corroborated by information provided by JRS representatives in the Regional Centres. As a consequence, there have been no delays in registering an asylum application in any of the Regional Centres.

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<sup>62</sup> Article 36(1)(3) Asylum Act, citing Article 35 Asylum Act.

<sup>63</sup> Article 38(5) Asylum Act.

<sup>64</sup> Information provided by IGI-DAI, 21 August 2018.

<sup>65</sup> Information provided by Border Police, 27 August 2018.

<sup>66</sup> Information provided by IGI-DAI, 21 August 2018.

<sup>67</sup> Article 36(3) Asylum Act.

<sup>68</sup> Article 13(3) Asylum Act.

<sup>69</sup> Information provided by IGI-DAI, 21 August 2018.

If an unaccompanied minor expressed his or her intention to apply for asylum, in writing or orally, before the competent authorities, he or she will be registered as an asylum seeker in a special register, and the asylum application will be filed when a legal representative is appointed.<sup>70</sup> The identification data stated by the unaccompanied minor is recorded in the special register.<sup>71</sup>

If an unaccompanied child has expressed his or her intention to seek asylum, in writing or orally, before the competent authorities other than IGI-DAI, the respective authority will immediately inform IGI-DAI, which ensures the applicant's transport to the competent Regional Centre to assess the asylum application.<sup>72</sup>

According to the JRS representatives working in the Regional Centres there were no obstacles to the registration of applications in 2018. The Romanian National Council for Refugees (CNRR) stated that there are not aware of problems with regard to the registration of asylum applications.<sup>73</sup>

However, according to the JRS representative in **Timișoara** asylum seekers complain about the lack of interpreters at the stage of registration and lodging of the asylum application. The same issue was reported in **Giurgiu** and **Rădăuți** with the mention that IGI-DAI turns to asylum seekers or refugees accommodated in the centre for interpretation. In Rădăuți, asylum seekers still complain about the fact that the Border Police does not use interpreters who speak their native language at the border and, as a consequence, their names, date of birth and reasons for their asylum application are not recorded correctly. Therefore potential errors in the recording of personal information may arise during the assessment of their asylum application by IGI-DAI and contradictions may appear between the statements made at the border and those made during the personal interview.

On the other hand, in **Șomcuta Mare**, there is an interpreter when the asylum request is filled in. In **Galați** it was reported that there is generally an interpreter when the asylum application is registered and lodged, with the exceptions of asylum applications made during the night, when authorities resort to asylum seekers or refugees accommodated in the Regional Centre who speak the language concerned or English.

There were no cases where IGI-DAI refused to have the asylum application lodged.

After the asylum application is lodged, the applicant receives a "temporary asylum seeker identity document" (*Document temporar de identitate solicitant de azil*). This is a card containing a photograph, personal details and a registration number.<sup>74</sup>

In **Timișoara** it was reported that when groups of asylum seekers arrive in the centre they are not issued temporary identity documents immediately, only just before they are transferred to other Regional Centres. There were also cases where asylum seekers were issued temporary identity documents without a registration number. However, asylum seekers who continue their asylum procedure in Timișoara are issued temporary identity documents.

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<sup>70</sup> Article 39(3) Asylum Act.

<sup>71</sup> Information provided by IGI-DAI, 21 August 2018.

<sup>72</sup> Article 39(4) Asylum Act.

<sup>73</sup> Information provided by CNRR, 9 January 2018.

<sup>74</sup> A template can be found at: <https://bit.ly/2Q77KQ6>.

## C. Procedures

### 1. Regular procedure

#### 1.1. General (scope, time limits)

##### Indicators: Regular Procedure: General

- |  |   |
|--|---|
| 1. Time limit set in law for the determining authority to make a decision on the asylum application at first instance:     | 30 days   |
| 2. Are detailed reasons for the rejection at first instance of an asylum application shared with the applicant in writing? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Backlog of pending cases at first instance as of 31 December 2018:  | 83  |

The authority competent for taking decisions on asylum applications at first instance is the General Inspectorate for Immigration – Directorate for Asylum and Integration (IGI-DAI), which is a specialised authority in the field of asylum.

The law foresees a 30-day deadline to issue a decision, starting from the moment when the file is handed over to the case officer.<sup>75</sup>

The timeframe of 30 days provided in Article 52(1) of the Asylum Act shall be suspended during: (a) the Dublin procedure for determining the Member State responsible for examining an asylum application; (b) the **First Country of Asylum** procedure; (c) the **Safe Third Country** procedure; or, where appropriate, (d) the European safe third country procedure. When the reason for suspension no longer exists, the assessment period cannot be less than 20 days.<sup>76</sup>

If the assessment of the case requires additional documentation, as well as in other duly justified cases, which make impossible the carrying out of the activities necessary for deciding on the asylum application or lead to the non-observance of the guarantees recognised by the law due to causes not imputable to the applicant, the 30-day time limit shall be extended successively with further periods of no more than 30 days, not exceeding 6 months from the lodging of the asylum application in total.<sup>77</sup>

However, if the maximum timeframe of 6 months is exceeded, the applicant should be informed of the delay and shall receive, upon request, information on the reasons for the delay and the time limit for the decision to be taken on his or her application.<sup>78</sup>

The term of 6 months may be extended successively with new cumulative periods not exceeding 9 months where:<sup>79</sup>

- (a) The asylum procedure involves complex elements of fact and/or law;
- (b) A large number of applications for international protection are lodged, making it in practice very difficult to assess the claims at first within 6 months.

Exceptionally, in duly justified cases, a further extension may be applied for a maximum of 3 months.<sup>80</sup>

In practice, in the Regional Centres for Procedures and Accommodation for Asylum Seekers at **Rădăuți**, **Galați**, **Timișoara**, **Șomcuta Mare** (Maramureș) and **Giurgiu**, the 30-day term from the moment the case officer receives the file is respected in practice. In exceptional cases, the 30-day deadline to issue a decision was extended in one case in **Rădăuți**, where the asylum seeker waited for

<sup>75</sup> Article 52(1) Asylum Act.

<sup>76</sup> Article 52(4) Asylum Act.

<sup>77</sup> Article 52(2) Asylum Act.

<sup>78</sup> Article 52(3) Asylum Act.

<sup>79</sup> Article 52(5) Asylum Act.

<sup>80</sup> Article 52(6) Asylum Act.



his decision for 85 days from his first interview. The first interview was held on 23 of August 2018 and a second interview was held on 2 October 2018, the decision was communicated on 16 November 2018. During this time the asylum seeker had not been informed of the delay. According to the legal counsellor in **Giurgiu** there was an exception in the case of a person suffering from a mental illness, where IGI-DAI requested a medical examination.

According to IGI-DAI statistics, the average duration of the asylum procedure in 2018 was 50 days.<sup>81</sup> No breakdown by nationality such as Syria, Iraq or Afghanistan was available.

In practice, the average length of the asylum procedure from the moment of lodging the application until a final decision is taken at first instance differs from one centre to another as follows:

Average duration of the asylum procedure by Regional Centre: 2018	
Regional Centre for Procedures and Accommodation for Asylum Seekers	Average duration in days
Timișoara	90
Șomcuta Mare	21-30
Rădăuți	30-60
Galați	45-60
Bucharest	60-90
Giurgiu	30-40

**Timișoara:** According to the Director of IGI-DAI in Timișoara, the average duration of the asylum procedure is 45-60, whereas the JRS representative referred to 90 days. According to the JRS representative there have been cases in which the 90-day period has been exceeded. The asylum seekers had the interview two months after their applications were lodged; there were also cases where the interview was postponed.

**Bucharest:** According to a lawyer, the average duration of the asylum procedure in Bucharest decreased significantly from last year, when the procedure lasted 180 days.

According to CNRR, the average length of the asylum procedure is 30 working days from the time the application is handed over to the case officer until the decision is communicated. There are exceptions: in case of absence of the interpreter or where there is a need for an additional interview.<sup>82</sup>

## 1.2. Prioritised examination and fast-track processing

According to the law priority is given to asylum applications lodged by unaccompanied children.<sup>83</sup> IGI takes, in the shortest time, all the necessary measures for the appointment of a legal representative, which will assist the unaccompanied asylum-seeking child in all stages of the asylum procedure.<sup>84</sup> In practice, IGI-DAI instructs in writing the Directorate-General for Social Assistance and Child Protection to appoint a legal representative for the unaccompanied child, which will assist him or her during the asylum procedure. The notification is sent the next day or in a maximum of 3 days after the application was registered and the unaccompanied child was accommodated in one of the Regional Centres.

In case of vulnerable asylum seekers who are placed in specially designated closed spaces in the Regional Centres (see [Detention of Asylum Seekers](#)), the identity check and the assessment of their applications should be done with priority.<sup>85</sup> There have been no reported cases of this situation in practice.

**Șomcuta Mare:** The asylum application of vulnerable asylum seekers (pregnant women and elderly) were not examined with priority. However, it was noted that families with children were interviewed before single male asylum seekers. As for unaccompanied children, it could not be observed whether

<sup>81</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>82</sup> Information provided by CNRR, 3 December 2018.

<sup>83</sup> Article 16(1) Asylum Act.

<sup>84</sup> Article 16(2) Asylum Act.

<sup>85</sup> Article 19<sup>11</sup> Asylum Act.



their application is assessed with priority because they left the centre before receiving a decision at first instance.

**Rădăuți:** Some of the unaccompanied children received a first instance decision in around 15 days from the day of the interview, but it was due to administrative reasons such as summer holidays.

**Galați:** The length of the asylum procedure for an unaccompanied child is the same as the procedure for an adult. The assessment of their application depends on the availability of a legal representative. It should be noted that the same legal representative is appointed for all unaccompanied asylum-seeking children.

**Timișoara:** The IGI-DAI centre director stated that in a case of a single parent family the decision was given within 3 weeks. On the other hand, the JRS representative stated that in this case the decision was given in 45-60 days since the date of their asylum application. The length of the asylum procedure for an unaccompanied child in Timișoara is the same as the procedure for an adult, even though IGI-DAI takes all the necessary measures with priority – in a maximum of 3 days after the unaccompanied child has been accommodated in the centre – and the legal representative is assigned in 2-3 weeks. According to the director of IGI-DAI Timișoara, the asylum procedure of unaccompanied children may be delayed due to the bureaucratic procedures carried out by DGASPC.

**Giurgiu:** According to the JRS representative the asylum applications of minors were prioritised.

**Bucharest:** According to the JRS legal counsellor, the case of three unaccompanied asylum-seeking children, accommodated in the Regional Centre of Bucharest, was extended several times due to the lack of a legal representative and the lack of an interpreter who spoke their language. In their case, the first-instance procedure lasted 8 months, from October 2016 to May 2017.

According to Save the Children Romania, the examination of the asylum application of an unaccompanied child is directly related to the appointment of the legal representative from DGASPC. It was reported that in some cases the appointment of the legal representative may take a lot of time, around 1-2 months, therefore this practice cannot be labelled as priority examination in case of asylum application of unaccompanied child.

CNRR stated that they have no information on the use of prioritised or fast-track procedures.<sup>86</sup> According to IGI-DAI, no asylum claim was prioritised under in the sense of Article 31(7) of the recast Asylum Procedures Directive in 2018.<sup>87</sup>

### 1.3. Personal interview

#### Indicators: Regular Procedure: Personal Interview

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the regular procedure?  
❖ If so, are interpreters available in practice, for interviews?  
☒ Yes ☐ No  
☒ Yes ☐ No
2. In the regular procedure, is the interview conducted by the authority responsible for taking the decision?  
☒ Yes ☐ No
3. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

According to the law, an interview is conducted in order to establish the elements of an application for international protection.<sup>88</sup> Although the general rule is that an interview should be held in order to correctly assess the asylum claim, there are two situations where the interview is not mandatory:<sup>89</sup>

<sup>86</sup> Information provided by CNRR, 3 December 2018.

<sup>87</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>88</sup> Article 19^6(2) Asylum Act.

<sup>89</sup> Article 45(3) Asylum Act.

- When IGI-DAI may take a decision to grant refugee status on the basis of evidence in the file;
- When there are serious doubts about the capacity of the adult asylum seeker.

In practice, all asylum seekers are interviewed. There have been no reported cases where the interview was not conducted due to the situations mentioned above and there are no caseloads or nationalities which are not interviewed.<sup>90</sup> However, 1,359 decisions were taken without an interview in 2018.<sup>91</sup>

All personal interviews, assessments of the reasons invoked by the asylum seeker and decisions are conducted by a designated case officer of IGI-DAI.<sup>92</sup>

### 1.3.1. Interpretation

Article 45(2) of the Asylum Act sets out the rules regarding the right to have an interpreter during the personal interview. At the request of the applicant and when deemed necessary for presenting all the reasons for the asylum application, the interview shall be carried out by the case officer, with the support of an interpreter, in the language indicated by the applicant or in a language he or she understands and can communicate clearly. As far as possible, if the applicant so requests, both the case officer and the interpreter will be of the same gender as the interviewee.<sup>93</sup>

#### Availability of interpreters and double interpretation

In the Regional Centres of Galați, Timișoara and Rădăuți it has been reported that there are not enough interpreters available for the main nationalities of asylum seekers:

**Galați:** There is only one Kurdish interpreter and two Arabic interpreters and their services are used by IGI-DAI and also by the courts. As a consequence, quality control of their interpretation services is impossible to carry out. There have also been cases when the procedure was delayed due to the fact that the authorities had to hire an interpreter from another city.

**Rădăuți:** IGI-DAI frequently uses the same three interpreters – one for Arabic, one for Farsi / Dari / Urdu and one for Bengali. It was noted that the Bengali interpreter had no experience in interpretation in asylum cases or good command of Romanian.

**Timișoara:** There is a lack of interpreters for different dialects. The director of IGI-DAI Timișoara also mentioned that there should be more Kurdish and Arabic interpreters in the centre.

**Giurgiu:** There is a lack of interpreters, especially for different dialects. However, efforts are made in order to solve this issue.

In **Rădăuți**, IGI-DAI uses double interpretation from Kurdish to Arabic and from Arabic to Romanian. The interpreter for Kurdish was an asylum seeker and the interpreter for Arabic was not qualified. This aspect was also brought to the attention of the court in an appeal lodged by an asylum seeker against a negative decision taken by IGI-DAI, which acknowledged contradictions and vague statements due to double interpretation. The Regional Court Rădăuți dismissed the appeal by relying on the fact that “the asylum seeker was expressly asked by the case officer if he agrees with the interpreters” and quoting respective paragraphs from the transcript: “Q: Do you agree that the present interpreters perform the translation? A: Yes, but I would like also for the Kurdish language speaker X to also participate”. The applicant’s criticisms regarding the double interpretation were found to be “exaggerated and taken out of context, given that the applicant said he understood well the Kurdish asylum seeker used as interpreter, insisting on bringing him at the interview”. The Court also emphasised that “the number of Kurdish interpreters who are speaking Romanian, is very low at national level. Attempts were made to bring a

<sup>90</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>91</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>92</sup> Article 48 Asylum Act.

<sup>93</sup> Article 45(2) Asylum Act.

Kurdish interpreter at the administrative phase of the procedure, but each time they refused due to pecuniary and long travel distance (Bistrita Năsăud, Cluj, Bucharest).<sup>94</sup>

In that case, the Court used the services of the same Arabic interpreter, but it did not use the services of the Kurdish asylum seeker, but of another interpreter. In the meantime, the Kurdish asylum seeker has been granted a form of protection and still provides services to IGI-DAI and now also to courts.

The issue of double interpretation was mentioned in another decision of the Regional Court Rădăuți. As regards the alleged contradictions, the appellant stated that: “[i]f there were contradictions, he should have been asked to explain these contradictions and clarify the confusion at the time of the interview, or before the decision was issued, these being crucial for the assessment of the case. At the same time, the participating interpreter at the interview did not translate from Kurdish to Romanian; instead two interpreters were used to translate from Kurdish to Arabic and from Arabic to Romanian, neither of them having attended training courses for interpreters. Therefore it is possible that some relevant information has been lost as a result of the double interpretation.”<sup>95</sup>

Double interpretation is also used in **Giurgiu**, even though its effectiveness is questionable. The shortcomings of double interpretation were also referred to in a decision of the Regional Court of Giurgiu.<sup>96</sup> The appellant, an Ethiopian national of Oromo ethnicity, claimed that “over 80% of the information included in the interview did not correspond to his statements, the reason being the faulty interpretation, as two interpreters participated in the interview and the relevant information he provided was incomplete or omitted by one of the translators”. The appellant was heard, his statement being recorded separately and attached to the case file. The Regional Court of Giurgiu dismissed the case, the appellant lodged an onward appeal and on 13 June 2018 the Administrative Country Court of Giurgiu allowed the onward appeal, quashed the decision of the Regional Court and remitted the case for re-examination. The Regional Court of Giurgiu heard again the appellant on 8 October 2018, with the help of an interpreter.

Stakeholders interviewed also reported that there is a limited number of female interpreters in the asylum-procedure. For example in the Regional Centre of **Galați** there is only one woman interpreter for Arabic, in **Giurgiu** there are two female interpreters for English and Russian, in **Rădăuți** there is one interpreter for English, in **Șomcuta Mare** and **Timișoara** there are no women interpreters for rare languages; they are only available for English, Spanish, Russian and French, and Vietnamese in Timișoara. That said, the director of IGI-DAI in Timișoara stated that they might collaborate in the future with a female interpreter for Arabic.

There is equally a limited number of female case officers at IGI-DAI. In **Bucharest** and **Timișoara** there is only one female case officer and four male case officers per city. However, the female case officer in Timișoara mainly deals with Dublin cases. In the rest of the Regional Centres, there are no female case officers. In **Giurgiu** and **Șomcuta Mare**, there are only two male case officers. In **Galați** there are four case officers and all are male. In **Rădăuți** there are three male case officers.

## Quality and conduct

A number of problems regarding the quality of the interpretation and the conduct of interpreters are reported. Interpreters are not sufficiently trained and as a consequence they are not impartial, while associated problems were pointed out with these deficits:

- Some interpreters do not refrain from making comments, they express doubt at the asylum seekers' declarations; e.g. “I was there, there are no Taliban”, “I know better”;
- Some interpreters have private conversations with the asylum seeker and do not translate the conversation, or they express emotions;

<sup>94</sup> Regional Court Rădăuți, Decision 2201/2018, 7 June 2018. Unofficial translation by the author.

<sup>95</sup> Regional Court Rădăuți, Decision 3595/2018, 14 November 2018. Unofficial translation by the author.

<sup>96</sup> Regional Court Giurgiu, Decision 5170/2018, 24 October 2018. Unofficial translation by the author.

- Asylum seekers are complaining about an interpreter, who tells them during the personal interview: “more briefly, I do not have all day at your disposal”, he is selecting the documents that the asylum seeker should present at IGI-DAI, he is translating only a summary of what is written on one page and not the whole interview (question and answer). Even though the asylum seekers wanted to be assisted by the legal counsellor at the interview, the interpreter told them that “the presence of the legal counsellor is not necessary because anyway you will be granted a form of protection”.

In **Timișoara**, it was reported that a Farsi interpreter of Afghan origin was hired to translate during the interview for asylum seekers from Iran and even though the asylum seekers requested another interpreter, the director of the Regional Centre Timișoara dismissed their request, saying that the interpreter will not be changed.

In relation to the problems with the quality of interpretation and conduct of interpreters CNRR stated that there are no means / modalities available for verifying the interpretation, and that appreciations are subjective.<sup>97</sup>

According to Save the Children Romania, interpretation is a shortcoming for asylum seekers, in the sense that IGI-DAI ensures interpretation only during the preliminary and personal interview and for all the rest of situations interpretation is ensured by NGOs or by other asylum seekers or beneficiaries of international protection from the community. Usual practice consists of volunteering other asylum seekers or beneficiaries to translate.

It was noted that only CNRR has funds for the services provided by interpreters. In addition, UNHCR funding may be extended to cover interpreter fees, in certain situations.

All the stakeholders interviewed by the author have declared that they have never heard about a Code of Conduct for interpreters in the asylum procedure, except one legal counsellor who stated that when JRS signs a contract with an interpreter they also have to sign a Code of Conduct. CNRR, on the other hand, stated that the Code of Conduct is applied in practice and provides elements such as the rights and obligations of the interpreter, the position and attitude during the personal interview and counselling sessions, the importance of using correct terminology, the impartiality and confidentiality concerning the information the interpreter comes into contact with. This Code of Conduct was transmitted to IGI-DAI by CNRR and they believe it is applied by IGI-DAI.<sup>98</sup>

### 1.3.2. Recording

The law does not prescribe audio / video recording of the personal interview. Personal interviews and preliminary interviews are not audio / video recorded.

Court sessions are recorded according to the Civil Procedure Code.<sup>99</sup> The rules concerning the recording of court hearings are set out in Article 13 of Act 304/2004 on Judicial Organisation, which provides that:

- a. The court hearings are recorded by video or audio technical means or recorded by stenography. Recordings or transcripts are immediately transcribed;
- b. The clerk or the stenographer shall record all the affirmations, questions and submissions of those present, including the president of the court panel;
- c. Upon request, the parties may receive a copy of the transcript of the Registrars, minutes or notes of the Registrar.

Interviews are never conducted through video conferencing.

<sup>97</sup> Information provided by CNRR, 3 December 2018.

<sup>98</sup> *Ibid.*

<sup>99</sup> Article 231(4) Civil Procedure Code: The court will record the court hearings. If the parties are challenging the content of the clerk's notes, it will be verified and, if necessary, supplemented or rectified based on the records of the court hearing.

### 1.3.3. Transcript

The questions and the answers / statements are transcribed *verbatim* by the case officer conducting the interview. The transcript includes at least the following data: identification data of the applicant, the name of the case officer who performs the interview, the name of the interpreter and, as the case may be, of the legal representative, the counsellor and/or the lawyer assisting the applicant, the language of the interview, the reasons for the request for international protection and as well as the applicant's statement that all the data and information presented at the interview are correct. Where appropriate, the interview note shall also include the applicant's explanations of the failure to present elements to be considered when examining the asylum application and/or clarification of inconsistencies or contradictions in his or her statements.<sup>100</sup>

At the end of the interview, the transcript of the interview is orally translated by the interpreter to the applicant.<sup>101</sup> The applicant has the possibility to formulate observations and/or to offer clarifications relating to any errors of translation or misunderstanding, which will be recorded in the interview transcript.<sup>102</sup> After this, the transcript is signed on every page by all the persons present at the interview.<sup>103</sup> A copy of the transcript is given to the asylum seeker or legal representative, his or her lawyer or counsellor, as the case may be, which assisted him or her at the interview, after the document was signed.<sup>104</sup> If the applicant refuses to sign the transcript, the reasons for his or her refusal will be mentioned on the transcript. The applicant's refusal to sign the transcript does not prevent IGI-DAI from taking a decision on the asylum application.<sup>105</sup>

In **Timișoara**, asylum seekers complain that they are not notified in advance of the date of the interview. It was also reported that at the end of the interview, the transcript is not fully translated by the interpreter; the interpreter only informs the asylum seekers that they have to sign the transcript as it includes all of their statements. An asylum seeker from Iran said that in the first asylum procedure the interpreter did not translate the transcript at all. However, during the interview as part of the subsequent application, when the asylum seeker was assisted by a lawyer, the interpreter read out the transcript.

In **Galați** there have been no cases of asylum seekers complaining about the quality of the interpretation, transcript. According to the legal counsellor the transcript was read out during all the interviews she attended.

In **Giurgiu** the legal counsellor explained that that at the interviews she attended the transcript was read out by the interpreter and asylum seekers had the opportunity to formulate objections and even to make additional notes, which were subsequently inserted in the transcript.

In **Șomcuta Mare**, according to the legal counsellor, asylum seekers have never complained about the fact that the transcript was not read in total by the interpreter and have faced no impediments when wishing to clarify specific facts.

In **Rădăuți**, some of the asylum seekers have reported that the interpreter does not translate the whole transcript (questions and answers), but only makes a summary thereof. There were no problems reported regarding the formulation of observations at the end of the interview.

If necessary, the case officer may conduct another interview with the asylum seeker.<sup>106</sup>

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<sup>100</sup> Article 45(5) Asylum Act.

<sup>101</sup> Article 45(7) Asylum Act.

<sup>102</sup> Article 45(6) Asylum Act.

<sup>103</sup> Article 45(8) Asylum Act.

<sup>104</sup> Article 45(9) Asylum Act.

<sup>105</sup> Article 45(10) Asylum Act.

<sup>106</sup> Article 45(11) Asylum Act.

## 1.4. Appeal

### Indicators: Regular Procedure: Appeal

1. Does the law provide for an appeal against the first instance decision in the regular procedure?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
- ❖ If yes, is it
- ❖ If yes, is it automatically suspensive
2. Average processing time for the appeal body to make a decision: 2 months

The decision taken (admission or rejection) by IGI-DAI is communicated, immediately, to the asylum seeker in writing, through direct communication by the representatives of the IGI-DAI if the asylum seeker lives in the Centre, or by post at the last declared residence of the applicant.<sup>107</sup> The decision may be communicated to the lawyer or NGO representative representing the asylum seeker, if the asylum seeker has expressly requested this.<sup>108</sup>

The decision is accompanied by written information, in Romanian and in a language that the applicant understands or is reasonably supposed to understand, related to the admission or rejection of the asylum application and the conditions under which the decision may be appealed, as the case may be.<sup>109</sup> In practice, the justification of the decision is written in Romanian and is translated by the NGO representatives.

The decision taken by IGI-DAI may be challenged in a two-instance judicial review procedure.

### 1.4.1. Appeal before the Regional Court

The Regional Court (*Judecătoria Secția Civilă*) has jurisdiction in asylum cases, as the first-instance judicial review. The Regional Court is made up of a single judge. The judges are not specialised in asylum law. At most they have participated at national conferences organised by NGOs or UNHCR.

The appeal, as well as the other procedural acts regarding the resolution of the appeal, are exempt from legal taxes and legal expenses cannot be demanded.<sup>110</sup>

#### Time limits

In 2018, a total of 650 appeals against IGI-DAI decisions were filed before the Regional Courts.<sup>111</sup>

The deadline for lodging an appeal is 10 days from the day the decision was communicated.<sup>112</sup> The appeal has automatic suspensive effect, if it was lodged within the term prescribed by law.<sup>113</sup>

The law contains a procedural safeguard in case of appeals lodged after the time limit set out in law.<sup>114</sup> Therefore, in case of filing the appeal or onward appeal after the deadline, the applicant may request the suspension of the execution of the return decision. The request for suspension shall be settled within 7 days from its registration, by the competent court, which shall pronounce the decision in the council chamber, without the parties being summoned, by an irrevocable decision.<sup>115</sup> While this review is pending the foreigner cannot be removed from the country.<sup>116</sup>

<sup>107</sup> Article 54(1) Asylum Act.

<sup>108</sup> Article 54(1<sup>^</sup>1) Asylum Act.

<sup>109</sup> Article 54(1) Asylum Act.

<sup>110</sup> Article 65 Asylum Act.

<sup>111</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>112</sup> Article 55(1) Asylum Act.

<sup>113</sup> Article 55(2) Asylum Act.

<sup>114</sup> Article 69 Asylum Act.

<sup>115</sup> Article 69(1) Asylum Act.

<sup>116</sup> Article 69(2) Asylum Act.

If the court admits the request to suspend the execution of the removal decision, the foreigner has the right to remain in the country pending the outcome of the request for reinstatement of the legal term to appeal.<sup>117</sup> The foreigner will benefit from all the rights provided by Articles 17 and 18 of the Asylum Act from the moment the court admits the request for reinstatement of the legal term to appeal.<sup>118</sup>

The appeal has to be motivated in fact and in law.<sup>119</sup> It may be lodged at IGI-DAI, which has issued the decision or directly to the competent court.<sup>120</sup> The appeal has to be accompanied by a copy of the IGI-DAI decision and other documents or elements on which the appeal is based on.<sup>121</sup> The court carries out an assessment of both points of facts and law. The decision of the first instance court incorporates the reasons on points of facts and law on which it is based.<sup>122</sup>

In general, there are no problems in appealing a decision, if asylum seekers consult the legal counsellor of an NGO.<sup>123</sup> In **Bucharest**, when communicating the decision, IGI-DAI also provides the asylum seeker with the postal address of the Romanian National Council for Refugees (CNRR) in English. Asylum seekers are told by the representative of IGI-DAI, who communicates the decision, that they have to go to CNRR for legal counselling and assistance for lodging an appeal. This practice is in place since January/February 2017.

Article 62 of the Asylum Act provides that asylum cases should be dealt with priority before other civil matters.<sup>124</sup> The court should take a decision on the appeal within 30 days.<sup>125</sup> The court has to motivate its decision within 5 days since it was pronounced.<sup>126</sup>

IGI-DAI statistics refer to a 2-month average duration of the appeal procedure.<sup>127</sup> In practice, the average processing time for the first instance judicial court defers from county to county, as follows:

Average duration of the appeal procedure by Regional Court: 2018	
Regional Court	Number of days
Bucharest (District 4)	90
Galati	90
Baia-Mare	30-45
Giurgiu	90-120
Rădăuți	30
Timișoara	60

**Șomcuta Mare:** The JRS representative reported that there were cases where the appeal procedure lasted 8-9 months; the asylum seeker was heard three times, the interpreter was not present and the court hearings were once a month. The duration of the appeal procedure thus differs from case to case.

In one case, the Regional Court of **Giurgiu** “gave the floor to the parties in order to estimate the duration of the proceedings. The applicant’s representative estimated the length of the procedure to 2 to 3 court hearings. IGI-DAI’s legal counsellor estimated the length of the proceedings to a single hearing. According to Article 248 of the Civil Procedure Code, the court estimated the duration of the procedure to one month.”<sup>128</sup>

<sup>117</sup> Article 69(3) Asylum Act.

<sup>118</sup> Article 69(4) Asylum Act.

<sup>119</sup> Article 57(1)(c) Asylum Act.

<sup>120</sup> Article 56 Asylum Act.

<sup>121</sup> Articles 56(1) and 57 Asylum Act.

<sup>122</sup> Article 425(b) Civil Code.

<sup>123</sup> Information provided by CNRR, 9 January 2018.

<sup>124</sup> Article 62(1) Asylum Act.

<sup>125</sup> Article 64(2) Asylum Act.

<sup>126</sup> Article 64(3) Asylum Act.

<sup>127</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>128</sup> Regional Court of Giurgiu, Decision 1427/2018, 7 March 2018. Unofficial translation by the author.



## Hearing

The law establishes that the court may order the hearing of the asylum seeker when it considers that it is useful to settle the case.<sup>129</sup>

Some Regional Courts (**Galați, Giurgiu, Baia-Mare**) always hear the asylum seeker *ex officio*. In Galați, in some cases the judge asks the applicant if he or she has something to add, in other situations the judge asks questions. In Baia-Mare, on the other hand, it is an actual hearing.

In **Giurgiu** in 80% of the cases the judge asks the applicants if they have anything else to add, other judges ask questions and around 5% of the judges do not hear the asylum seekers. There have also been cases when the applicants had neither a lawyer nor an interpreter, thus their hearing was impossible.

In the Regional Courts of **Timișoara** and **Rădăuți** the hearing of the asylum seeker is requested either by the lawyer or the judge. According to a lawyer in Timișoara, in some cases the hearing can take several hours and all the parties ask questions to the asylum seeker; the judge, the applicant's lawyer and the legal counsellor of IGI-DAI. In Rădăuți, some of the hearings consist of asking the asylum seeker if he has something to add, while in other cases all the parties ask questions and only in few cases asylum seekers are given the opportunity to give full statements.

In the Regional Court of **Bucharest District 4**, the practice witnessed last year, when asylum seekers were not heard in most of the cases, has changed in 2018 as some of the judges hear the asylum seekers *ex officio*. However, the hearing consists of asking the asylum seeker if he has something else to add or to clarify certain aspects. It was also reported by a lawyer that in 2018 some of the judges started to exercise their active role, in the sense that they ask questions to the asylum seeker. According to CNRR, the Regional Court of Bucharest District 4 "generally orders the hearing of the asylum seeker (during the court hearing when evidence is to be requested and administered)".<sup>130</sup>

According to a lawyer, as a general rule the court conducts a hearing with the asylum seeker, albeit a very brief one. The hearing of the asylum seeker is usually requested by attorneys with expertise in the asylum field and not by attorneys paid from the legal aid scheme, assisting and representing asylum seekers for the first time and with limited knowledge in asylum law.

Hearings in asylum cases are not public.<sup>131</sup> This was respected in practice in all the courts.

The principle of confidentiality is generally respected by courts, with the exception of the Regional Courts of **Giurgiu** and **Rădăuți**.<sup>132</sup> Another improvement noticed at the Regional Court of **Bucharest District 4** by a lawyer is that from October/November 2018 the list of hearings displayed outside the court room is anonymised and no longer contains the name of the asylum-seeking appellants.

## Decision

At national level, there is a court portal,<sup>133</sup> but not all the asylum cases are published on this portal.

Practice regarding the publication of the decisions of the Regional Court varies. For example, the appeals reviewed by the Regional Court of **Rădăuți** and Administrative Country Court of Suceava are all published on the national portal. However, as opposed to 2017, the full name of the applicant is no longer included; only his or her initials, file number and the decision reached by the court in short i.e. acceptance or dismissal of the appeal. On the other hand, practice has not change at the Regional

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<sup>129</sup> Article 63 Asylum Act.

<sup>130</sup> Information provided by CNRR, 3 December 2018.

<sup>131</sup> Article 58 Asylum Act.

<sup>132</sup> *Ibid.*

<sup>133</sup> Ministry of Justice, *Portalul instanțelor de judecată*, available in Romanian at: <http://bit.ly/2hGMVhM>.



Court and Administrative Country Court of **Giurgiu**, where all the appeals are published and include full names, file number and the decision reached by the court in short.

In addition, some of the decisions of the Regional Courts of Rădăuți and Giurgiu are published on a website funded by the Supreme Council of Judges and the National Union of Public Notaries of Romania. Some of the names of the applicants are anonymised while others are not.<sup>134</sup>

The asylum cases reviewed by the Regional Court of **Baia-Mare** and the Tribunal of Maramureș are registered on another portal of the Court of Appeal,<sup>135</sup> which comprises the whole file scanned, including the decision from IGI-DAI, the appeal, documents presented by the parties, minutes of court sessions, court decisions etc. The file may be consulted only with a password communicated to the asylum seeker or his or her legal representative by the court.

The decisions of the Regional of **Timișoara** are not published on either of the portals. Even though the court communicates the password, the case files of asylum seekers are not recorded on the Court of Appeal portal. In the past there used to be a register for all the cases registered at the court, including asylum cases. At present, all the registers are abolished except one, which is used only for the asylum cases. In the register the clerk is writing the case file, initials of the asylum seekers name and the decision of the court. One of the lawyers stated that in order to learn the decision of the court he calls the public information office of the court.

The decisions of the Regional Court and Administrative Country Court of **Galați** are not published on the national portal. In order to obtain the decisions or to receive other documents from the case file the interested parties may file a request at the court's registry and the documents are sent via email to them.

The decisions of the Regional Court of **Bucharest District 4** are neither published on any portal nor written in the registers. The decisions may only be accessed at the court's archive.

The Regional Courts took 643 decisions in 2018, of which 375 were negative.<sup>136</sup>

#### 1.4.2. Onward appeal

The law prescribes the possibility to appeal against the decision of the Regional Court.<sup>137</sup> The competent court to review the onward appeal is the County Tribunal, Administrative Litigation Section (Administrative County Court), which has jurisdiction over the area of the Regional Court whose decision is appealed.<sup>138</sup> The Administrative County Court is made up of three judges.

In 2018, there were 260 onward appeals before the Administrative County Courts.<sup>139</sup>

The onward appeal has to be lodged within 5 days from the day the Regional Court decision was pronounced and has automatic suspensive effect if it is lodged in due time.<sup>140</sup> According to CNRR, although there are no problems in the exercise of this remedy in general, there are applicants who have been unable to lodge an appeal in time due to a lack of awareness of the deadline, knowledge of Romanian or possibility to be assisted by a lawyer.<sup>141</sup>

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<sup>134</sup> Romanian Legal Information Institute (Rolii), available in Romanian at: <https://bit.ly/2PKL4Yw>.

<sup>135</sup> Curtea de Apel Cluj, available in Romanian at: <http://bit.ly/2khDTbA>.

<sup>136</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>137</sup> Article 66 Asylum Act.

<sup>138</sup> Article 67 Asylum Act.

<sup>139</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>140</sup> Article 66(2) and (4) Asylum Act.

<sup>141</sup> Information provided by CNRR, 9 January 2018.

The average duration of the onward appeal procedure is 3 months.<sup>142</sup> In practice, this varies from one court to another:

Average duration of the onward appeal procedure by Administrative County Court: 2018	
Administrative County Court	Number of days
Bucharest (District 4)	90-180
Galați	90
Maramureș	21-30
Giurgiu	60-90
Suceava	45-60
Timișoara	90-120

The onward appeal does not look at facts, but examines if the decision which is appealed is compliant with the applicable rules.<sup>143</sup> As a consequence, the onward appeal has to include the grounds for illegality on which the appeal is based.<sup>144</sup> The decision has to be motivated within 10 days from the day it is communicated by the Regional Court.

In **Timișoara**, it was reported by one of the lawyers that the Administrative County Court of Timișoara sent subpoenas in which is envisaged that grounds for rebuttal have to be lodged, but the reasoned onward appeal is not communicated to the parties.

One of the lawyers in **Bucharest** stated that some of the judges of the Regional Court of Bucharest District 4 take up to two to three months to draft and communicate the reasoned decision. Therefore, the duration of the onward appeal procedure may reach 6 months.

The practice seen in 2017 in **Bucharest**, whereby in most of the cases lawyers paid from the legal aid scheme who assist and represent the asylum seeker in the first appeal did not appeal against the decision of the Regional Court has changed. Therefore, in 2018, according to a lawyer who is also the head of the Judicial Assistance Service of the Bucharest Bar Association, lawyers are starting to lodge onward appeals.

On the other hand, CNRR stated that in general CNRR lodges onward appeals if the asylum seeker presents the decision. CNRR has no knowledge of cases where the lawyer paid through the legal aid state scheme to represent the asylum seeker at the Regional Court has lodged an onward appeal.<sup>145</sup>

According to the Civil Procedure Code, the attorney who represented or assisted the party during the trial may even, without a mandate, take any act for the preservation of rights subject to a term and which would be lost by failing to do so on time and may also introduce any appeal against the judgment. In these cases, all procedural documents will be handled only by the party. Supporting the appeal may only be based on a new power of attorney.<sup>146</sup>

Therefore attorneys can appeal the Regional Court decision even without a mandate in this regard, in order to preserve the rights of their client, which are subject to a term and will otherwise be lost by failure to act in time. Nevertheless, the provision emphasises that the attorney may also appeal against a judgment without having a mandate. It also mentions that a new power of attorney is needed for representing / arguing the appeal in the higher court. Therefore the law makes a difference between declaring / filing an appeal and representing / arguing an appeal.

<sup>142</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>143</sup> Article 483(3) Civil Procedure Code.

<sup>144</sup> Article 486(1)(d) Civil Procedure Code.

<sup>145</sup> Information provided by CNRR, 3 December 2018.

<sup>146</sup> Article 87(2)(3) Civil Procedure Code.

## 1.5. Legal assistance

### Indicators: Regular Procedure: Legal Assistance

1. Do asylum seekers have access to free legal assistance at first instance in practice?  
☒ Yes ☐ With difficulty ☐ No  
❖ Does free legal assistance cover:  
☒ Representation in interview  
☒ Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?  
☒ Yes ☐ With difficulty ☐ No  
❖ Does free legal assistance cover:  
☐ Representation in courts  
☒ Legal advice

According to Article 17(1)(e) of the Asylum Act, the asylum seeker has the right to counselling and assistance from a representative of a Romanian or foreign NGO, in any phase of the asylum procedure. The asylum seeker has the right to be given, upon request, legal and procedural information, including information on the first instance procedure, in line with the provisions on public judicial assistance in civil matters, taking into account his or her personal situation.<sup>147</sup>

The law sets out the right of the asylum seeker to be provided, upon request, according to the legislation on public judicial assistance in civil matters, taking into account the personal situation of the foreigner, information on the reasons for the decision to reject the application for asylum, the procedure for challenging the ordinance through which the measure of placement in a specially closed spaces was taken, as well as the possibility of challenge the decision which granted, reduced or withdraw the material reception conditions.<sup>148</sup>

### 1.5.1. Legal assistance at first instance

There are no restrictions or conditions for accessing legal counselling at first instance.

In the administrative phase of the procedure free legal counselling and assistance is provided by NGOs through projects funded by the national Asylum, Migration and Integration Fund (AMIF) scheme and UNHCR Romania. The Romanian National Council for Refugees (CNRR) provides specialised legal counselling and assistance to all asylum seekers upon request, in all 6 Regional Centres for Accommodation and Procedures for Asylum Seekers, through a project funded by the national Asylum, Migration and Integration Fund (AMIF) programme. CNRR's legal counsellors are present in the regional centres every week day for 8 hours per day. They have an office in the regional centre.

The Ecumenical Association of Churches from Romania (AIDRom), one of the implementing NGOs, provides legal counselling to asylum seekers accommodated in their two Accommodation Centres, one in **Timișoara**, which operates since August 2012 with a capacity of 15 places and one in **Bucharest**, which operates since 2015 with 18 places. They accommodate vulnerable persons, especially single mothers with children. The AIDRom centres located within these cities are funded partially by AMIF and partially by external donors. In addition, the legal counsellor of AIDRom also provides legal counselling and assistance in the IGI-DAI in **Bucharest (Tudor Gociu)**.

The Jesuit Refugee Service (JRS), through the project "Improving the situation of asylum seekers in Romania", also provides legal assistance and information in all the Regional Centres, which is complementary to the assistance afforded by CNRR. The project is funded by UNHCR Romania.

The legal counsellors provide information with respect to the rights and obligations, the house rules of the Regional Centre, the asylum procedure and steps to be followed. They also prepare asylum seekers for the personal interview and once the decision was communicated to them, they also explain the decision and the possibility to challenge it. Information and counselling is provided on other matters

<sup>147</sup> Article 17(1)(s) Asylum Act.

<sup>148</sup> *Ibid.*

related to the asylum procedure requested by the asylum seeker. The legal counsellor may assist the asylum seeker during his or her personal interview if he or she so requests.

Under the project funded by UNHCR, JRS may appoint a lawyer if the asylum seeker is a vulnerable person or a person of interest for UNHCR or if it is a case that might lead to a practice altering-decision.

Legal representation by a lawyer under the Legal Aid Act includes representation in the administrative phase of the procedure.<sup>149</sup> According to Article 35 of Legal Aid Act, legal aid may also be extra-judicial and consist in consultations, filing of applications, petitions, referrals, initiation of other related legal steps, as well as representation before public authorities or institutions other than judicial or with jurisdictional powers, with a view to achieving the individual's legitimate rights or interests. This was confirmed by the National Union of Romanian Bar Associations.<sup>150</sup>

In all other cases, the asylum seeker has to pay the lawyer's fee if he or she wishes to be represented by a lawyer during the personal interview.

### 1.5.2. Legal assistance in appeals

In court proceedings, legal aid may be provided by NGOs (CNRR and JRS) which have limited funds for legal representation. In addition, if the case of the asylum seeker is not eligible for a lawyer contracted through NGOs, legal counsellors may draft a request for legal state aid. Although CNRR stated that only in a limited number of cases the request for legal aid has been rejected,<sup>151</sup> according to the answer provided by the Regional Court of **Giurgiu**, out of 61 appeals received by the court as of the end of October 2018, an application for legal aid was made in 17 cases, and 13 legal aid applications were rejected.<sup>152</sup> Only in two cases did the applicant lodge a review of the application for legal aid, which was also rejected.<sup>153</sup> According to CNRR, the reasons for the dismissal of the requests is that the applicants had had access to legal counselling.<sup>154</sup>

In most of the cases, asylum seekers turn to legal counsellors for drafting and lodging the appeal against a negative decision of IGI-DAI. NGOs (CNRR and JRS) have funds also for attorney's fees, which can assist asylum seekers in the court proceedings. Therefore, if the representative of the NGO which assisted the asylum seeker examines the case and considers that it is eligible for a lawyer, he or she sends a request using a standard form to their headquarters in Bucharest for approval and, if it is approved, the asylum seeker will be assisted by one of the lawyers from the roster of the organisation.

According to a lawyer, who is also the head of the Judicial Assistance Service of the Bucharest Bar Association, lawyers paid through the state legal aid scheme are becoming more involved, with some of them requesting guidance from the head of the Judicial Assistance Service. However, only a few lawyers request an adjournment of the hearing in order to prepare for the case.

In 2018, the Bar Associations in Romania did not organise any training on asylum law for the lawyers registered in the legal aid register and other interested lawyers. Nevertheless, JRS Romania organised a training for the lawyers registered in the legal aid register in **Bucharest**.

The legal counsellor in **Giurgiu** stated that some of the lawyers paid through the state legal aid scheme do not read the case, are unprepared for the court hearings, and are not knowledgeable in asylum law. There are certain aspects that can be improved, especially when it comes to communication between the applicant and lawyer appointed *ex officio*. One of the problems identified is the language barrier. Nonetheless, lawyers paid through the legal aid scheme are not willing to make use of an interpreter when he or she is available, in most of the cases at the first court hearing, when the lawyer meets for

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<sup>149</sup> Government Emergency Ordinance 51/2008.

<sup>150</sup> Information provided by the National Union of Romanian Bar Associations, 8 January 2018.

<sup>151</sup> Information provided by CNRR, 3 December 2018.

<sup>152</sup> Information provided by the Regional Court Giurgiu, 2 November 2018.

<sup>153</sup> Regional Court Giurgiu, Decisions 4448/236/2018/a1 and 4447/236/2018/a1.

<sup>154</sup> Information provided by CNRR, 3 December 2018.

the first time its client and the interpreter is also present. Another aspect that can be improved is that lawyers should request evidence that can substantiate solid arguments before the court.

In the Regional Centre of **Galați**, legal representation through the state legal aid scheme is ensured by lawyers who have participated in seminars and conferences organised by NGOs. Only 5% of the asylum seekers complained that the lawyers paid through the legal state aid scheme did not do anything for them. Lawyers who represented the applicants in the appeal always file an onward appeal, even those who are paid through the state legal aid scheme.

In **Șomcuta Mare**, legal representation through the state legal aid scheme is ensured by the same 5 lawyers, one of whom has attended CNRR seminars for lawyers. They keep in touch with the asylum seekers through the NGOs present in the centre. However, the appeal is drafted by the legal counsellor of CNRR and the JRS representative, and lawyers meet their client for the first time at the court hearing. This might also occur because there is no interpreter who may translate for them. A new trend was noticed in 2018 whereby the Bar Association appointed the same lawyer in the appeal and onward appeal procedures.

In **Timișoara**, from a large number of attorneys appointed by the Bar Association through the legal aid scheme, only one or two attorneys are knowledgeable in asylum law, according to the director of the Regional Centre of Timișoara. The rest of the lawyers paid through the legal aid scheme are not knowledgeable or effectively involved.

In **Rădăuți**, the lawyers paid through the state legal aid scheme are not knowledgeable in asylum law.

CNRR reported that the asylum cases are assigned *ex officio* to lawyers randomly. In general, lawyers are not specialised in asylum law and communication with asylum seekers is deficient.<sup>155</sup>

Two different lawyers in **Bucharest** mentioned that one of the most important aspects that should be considered and addressed by the institutions and organisations working with asylum seekers is to ensure continuity of legal assistance through the entire asylum procedure. One of the attorneys stated that there are asylum seekers leaving the Regional Centre and moving into the city who often lose contact with the NGOs. This situation may hinder their asylum procedure since they have no knowledge of the law and, if they are assisted by an attorney paid from the legal aid scheme, there is no certainty that they will file an onward appeal.

This issue still persists in practice. It was reported that the communication between lawyer and client is not facilitated in any way, and no interpreter is ensured for this. There are situations where the lawyers lose contact with the asylum seeker, including due to delays between the lodging of the onward appeal and the reasoned decision of the Regional Court is communicated to the asylum seeker, which can reach two to three months. There are also situations when asylum seekers move out of the Regional Centre and do not know that they have to inform the court of their new address. Hence the decision is communicated at the old address without reaching the asylum seeker, and as a result the onward appeal is not motivated in the timeframe prescribed by law and ends up being dismissed. Another issue reported by a lawyer is that lawyers do not follow the state of play of the proceedings and as a result they do not keep their clients reasonably informed about their case.

A lawyer referred to a case, assisted by an NGO, where the onward appeal was not lodged within the deadlines prescribed by law. The request for deadline extension was rejected on the ground that the asylum seeker had received legal assistance from the NGO.

There are lawyers who are effectively involved in representing their client regardless of the amount of financial compensation, and others who complain about the small amount of their fee. The fee paid through the state legal aid ranges from 130 to 300 RON / 28 to 66 € per judicial instance. Lawyers working with the NGOs are aware of the way the funding schemes work in this area. The low level of

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<sup>155</sup> Information provided by CNRR, 9 January 2018.

remuneration is an obstacle in the sense that it seldom attracts new practitioners to this field and those who have experience in asylum cases are also specialised in a more financially-rewarding field (civil or commercial law) which enables them to continue to also have asylum cases.

Since the fees available are part of projects, their level cannot be easily raised or decided based on a sustainable plan. The costs are subject to the evaluation of the team deciding on AMIF funding within the government structures, it often reflects an indicator calculus which may be quite rigid and any potential changes in the level of remuneration are subject to the “project echo” effect – from the moment an application and a budget are drafted and until the last cost contained in this is spent a large period of time may pass, even 2.5 years in some cases.

## 2. Dublin

### 2.1. General

#### Dublin statistics: 2018

Outgoing procedure			Incoming procedure		
	Requests	Transfers		Requests	Transfers
<b>Total</b>	249	27	<b>Total</b>	1,856	181
Bulgaria	182	2	Germany	1,355	111
Germany	28	16	Austria	205	25
United Kingdom	7	2	France	180	:
Netherlands	:	2	Czechia	:	9

Source: IGI-DAI, 5 March 2019.

In 2018, Romania issued 249 and received 1,856 requests under the Dublin Regulation. The following criteria were used:

Outgoing and incoming Dublin requests by criterion: 2018		
Dublin III Regulation criterion	Outgoing	Incoming
Family provisions: Articles 8-11	20	25
Regular entry: Articles 12 and 14	13	29
Irregular entry: Article 13	4	56
Dependent persons and humanitarian clause: Articles 16 and 17(2)	7	9
“Take back”: Article 18	205	1,737
<b>Total outgoing and incoming requests</b>	<b>249</b>	<b>1,856</b>

Source: IGI-DAI, 5 March 2019. 446 information requests were also received.

#### Application of the Dublin criteria

To prove family links, the asylum seeker is not required to present original documents or to undertake DNA tests. In general, they present copies of the family book, birth certificate, residence permit of the relative with whom they would like to be reunited and, in the case of unaccompanied children, the relative’s desire to be reunited with the unaccompanied child, expressed in writing. According to the legal counsellors, family unity is the most frequently applied criterion in practice, with the majority of cases concerning reunion with family outside Romania.



One case reported in **Timișoara** concerned an unaccompanied child from Afghanistan who lodged the asylum application in September 2017 and was taken under the care of DGASPC in November 2017. IGI-DAI closed his file believing that he left the centre. The legal counsellor notified IGI-DAI of the error and his case was reopened in December 2017, when the Dublin procedure was also triggered. After four requests sent to the United Kingdom to “take charge” of the child, who has an uncle living there, the UK accepted the request in November 2018.

The Regional Court of **Rădăuți** rejected an appeal against a transfer to Bulgaria in one case concerning a mother and three minor children from Iraq.<sup>156</sup> Their appeal was assessed jointly with the appeal of the husband who had received a decision of transfer to Austria, as the country responsible with his asylum application. The legal counsellor of IGI-DAI stated, during the court hearing and also in the written submissions, that a request had been sent to Austria on 30 October 2017 to take back the husband and to take charge of his family in order to ensure family unity on humanitarian grounds under Article 17(2) of the Dublin Regulation and that the Austrian authorities accepted to take back the husband, but refused to take charge of his family. According to IGI-DAI, the Austrian authorities pointed out that Bulgaria was the responsible Member State, as most of the family members had been fingerprinted here. However, neither of the decisions of IGI-DAI communicated to the applicants mentioned that a request had been sent to Austria to take charge of the applicant’s family. In the decision regarding the father on 9 August 2017 it was clearly stated the Austrian authorities had accepted to take him back. IGI-DAI triggered a Dublin procedure to Bulgaria on the ground that the Bulgarian authorities had notified their acceptance to take back the mother and children on 25 October 2017. IGI-DAI submitted a “take charge” request for the father as well, motivated on the basis of the principle of family unity, which was accepted by Bulgaria on 12 December 2017.

The most frequent criteria for outgoing requests were “take back”, mainly addressed to Bulgaria. Similarly, the majority of incoming requests to Romania concern “take back” cases.<sup>157</sup>

### The dependent persons and discretionary clauses

Romania issued 7 outgoing requests and received 8 incoming requests based on the humanitarian clause in 2018, and received one incoming request based on the dependent persons clause. The sovereignty clause was not applied in 2018.<sup>158</sup>

## 2.2. Procedure

### Indicators: Dublin: Procedure

1. On average, how long does a transfer take after the responsible Member State has accepted responsibility? 2 months

Article 119 of the Asylum Act states that where, after lodging an application for international protection and before taking a decision in the national asylum procedure, IGI-DAI discovers proof or circumstantial evidence which indicates the responsibility of another Member State to examine the application under the Dublin Regulation, it shall initiate the Dublin procedure.

All asylum seekers are fingerprinted, photographed and checked against the Eurodac database. In practice, there were cases when asylum seekers refused to be fingerprinted, but after they were explained that this is necessary in the asylum procedure and if they refused they would be detained, they agreed to it. In case the applicant does not comply with the obligation to be photographed and fingerprinted,<sup>159</sup> measures of constraint may be applied. The use of these measures of constraint must be non-punitive, proportionate, applied only for the necessary period and only when there is no other way of determining the asylum seeker to cooperate with the staff of IGI-DAI.<sup>160</sup>

<sup>156</sup> Regional Court of Rădăuți, Decision 375/2018, 29 January 2018.

<sup>157</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>158</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>159</sup> In accordance with Article 19(a) Asylum Act.

<sup>160</sup> Article 18(3) Asylum Decree.

## Individualised guarantees

Practice does not indicate that the Romanian Dublin Unit requests individual guarantees prior to a transfer.

In a first instance decision of 18 June 2018 concerning an asylum seeker from Turkey, IGI-DAI Regional Centre **Rădăuți** denied access to asylum procedure in Romania and ordered his transfer to Bulgaria. It was simply noted that due to the fact that Bulgaria is a signatory state of the Refugee Convention and an EU Member State, IGI-DAI reasonably considered that the asylum seeker enjoys his rights and procedural guarantees during the entire asylum procedure in Bulgaria. The decision also mentions that “the access to asylum procedure was not restricted; there is no mention that the Bulgarian authorities did not fulfil their obligations undertaken at European and international level related to reception conditions and assessment of asylum claims”.<sup>161</sup> The asylum seeker challenged the decision and his appeal was admitted by the Regional Court Rădăuți on 8 August 2018. IGI-DAI conducted two interviews with the applicant and at the end of November 2018.

In another decision taken on 5 January 2018 concerning a mother and three minor children from Iraq (see [Dublin: General](#)), IGI-DAI Regional Centre **Rădăuți** denied access to the asylum procedure in Romania and ordered their transfer to Bulgaria. The decision only mentions that “according to her statements given when the asylum application was registered and the information introduced by the Bulgarian authorities, which confirms that they made an asylum application there on 3 August 2017, as a consequence the asylum application was suspended”. The decision does not mention any other detail regarding the stage of their procedure or if individualised guarantees were requested. The Bulgarian authorities assumed responsibility to take back the asylum seekers. IGI-DAI explained its decision not to examine their application: “The access to asylum procedure was not restricted, there is no mention that the Bulgarian authorities did not fulfil their obligations undertaken at European and international level related to reception conditions and assessment of asylum claims.” No other explanation was given by IGI-DAI in their decision.<sup>162</sup>

In another decision of 5 January 2018, related to the previous one, concerning an asylum seeker from Iraq, the husband and father of the children, IGI-DAI Regional Centre **Rădăuți** denied access to the asylum procedure in Romania and ordered his transfer to Bulgaria. The Dublin Unit established that the asylum seeker had previously made an asylum application in Austria. The Austrian authorities assumed responsibility to take back the asylum seeker on 9 August 2017. Nevertheless IGI-DAI considered that if Bulgaria accepted to take back his wife and his minor children, given the principle of family unity, it would be best to transfer him to Bulgaria. Bulgaria accepted and his transfer was ordered.<sup>163</sup>

The decisions issued by IGI-DAI in **Galați** do not mention any information regarding the fact that individual guarantees were requested by the Romanian Dublin Unit or any information regarding the state of play of the applicant’s asylum procedure in the respective Member State. According to the Director of Regional Centre **Timișoara** the Dublin Unit does not seek individualised guarantees, but requests information regarding the stage of the procedure prior to a transfer.

## Transfers

According to Article 127 of the Asylum Act, an asylum seeker who is subject to the Dublin procedure has the same rights and obligations as an asylum seeker in the regular procedure until the date when the transfer is effectively carried out. This means that he or she has the right to stay in the regional centres until the date he or she is actually transferred to the responsible Member State.

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<sup>161</sup> IGI-DAI Rădăuți, Decision of 18 June 2018.

<sup>162</sup> IGI-DAI Rădăuți, Decision of 5 January 2018.

<sup>163</sup> IGI-DAI Rădăuți, Decision of 5 January 2018.



Nevertheless, IGI-DAI may reduce or withdraw the material reception conditions of asylum seekers, including asylum seekers subject to the Dublin procedure. The motivated decision may be challenged in court.<sup>164</sup>

The restrictive measures prescribed by law, which may be imposed on the asylum seeker subject to Dublin procedure are:

- (a) The obligation to report at IGI;<sup>165</sup>
- (b) Designation of his or her residence in a Regional Centre of Procedures for Asylum Seekers;<sup>166</sup>
- (c) Placement or, as the case may be, remaining in in public custody (detention).<sup>167</sup>

The only restrictive measure which cannot be applied to asylum seekers subject to Dublin procedure is placement in specially designated closed places, which are defined as alternatives to detention but in practice consist of detention rooms in the Regional Centres.<sup>168</sup> Reporting duties and residence in a specific place may be imposed in order to ensure the transfer.<sup>169</sup> Detention for the purpose of a transfer is discussed in [Grounds for Detention](#).

If, after the asylum seeker is placed in detention, one of the deadlines provided in Article 28(3) of the Dublin Regulation expires, the measure ceases to have effect. IGI draws up a notice on the cessation of the measure, which is communicated to the applicant.<sup>170</sup>

In general, asylum seekers subject to the Dublin procedure are not placed in detention.

According to IGI-DAI, the average duration of the Dublin procedure between the issuance of a request and the transfer is 4 months, except where a suspensive appeal has been lodged. The average duration of the process between acceptance of responsibility and transfer is approximately 2 months.<sup>171</sup> This is corroborated by information provided by the legal counsellors in **Bucharest** and **Giurgiu** interviewed by the author, who indicated that the average duration of the Dublin procedure is around 1-2 months.

According to the stakeholders interviewed by the author, once they are informed about the final decision of their Dublin transfer, most asylum seekers continue their journey to other countries.

**Timișoara:** According to the IGI-DAI director, there were two to three transfers to Bulgaria carried out in 3 months since the beginning of the procedure. One transfer to Germany was carried out within 8 months from the start of the procedure, while one transfer to the UK is still pending though the procedure started in December 2017.

**Rădăuți:** Transfers are carried out within 3-4 months.

**Bucharest:** Transfers are carried out within a maximum 1 to 2 months. No asylum seeker has waited for more than 6 months.

**Giurgiu:** The JRS legal counsellor reported that she is not aware of the average duration of the Dublin procedure or duration of transfers as the Dublin procedure does not fall under the project implemented by JRS. However, she mentioned that it depends on the correspondence with the Member State concerned, the exchange of documents and complexity of the case. On average, the Dublin procedure may take several months.

<sup>164</sup> Article 19^1(1)-(2) Asylum Act.

<sup>165</sup> Article 19^2(1)(a) Asylum Act.

<sup>166</sup> Article 19^2(1)(b) Asylum Act.

<sup>167</sup> Article 19^2(1)(d) Asylum Act.

<sup>168</sup> Article 19^2(3) Asylum Act.

<sup>169</sup> Articles 19^3 and 19^4 Asylum Act.

<sup>170</sup> Article 19^14(10) Asylum Act.

<sup>171</sup> Information provided by IGI-DAI, 5 March 2019.

**Galați:** According to the legal counsellor, there was a case of an asylum seeker whose transfer to the Czech Republic is still pending. No other Dublin cases were reported.

**Șomcuta Mare:** In the case of an outgoing “take charge” request to the UK for an unaccompanied child, sent in May 2018, the UK did not reply at all. A transfer to Austria was carried out in 2 weeks from the date of the final decision of the court.

Romania issued 249 requests and implemented 27 transfers in 2018, thereby indicating a transfer rate of 10.8%.<sup>172</sup>

### 2.3. Personal interview

#### Indicators: Dublin: Personal Interview

☐ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the Dublin procedure?  
☒ Yes ☐ No  
❖ If so, are interpreters available in practice, for interviews? ☒ Yes ☐ No
2. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

According to the law, if, during the preliminary interview, the answers of the asylum seeker are indicating the necessity to start the Dublin procedure, the preliminary interview is conducted pursuant to Article 5 of the Dublin Regulation.<sup>173</sup>

In **Bucharest** and **Șomcuta Mare** the Dublin interview is held during the preliminary interview by the officer in charge of fingerprinting and photographing the asylum seekers. In **Rădăuți**, the Dublin interview is held after the preliminary interview. In **Galați** the interview is conducted after the preliminary interview by the officer in charge of fingerprinting and photographing the applicants. In **Giurgiu**, the Dublin interview is conducted when, on the basis of the applicant's statements and other documents, the officers determine the need to start the Dublin procedure; this is usually decided after the applicant's preliminary interview. In **Timișoara** the Dublin interview is an annex to the preliminary interview. The annex comprises questions presence in the respective Member State, knowledge of any decision taken on their application, willingness to return there. The interview is carried out by the same officer who conducts the preliminary interview.

The interview in the Dublin procedure takes place faster than in the regular procedure, even on the same day as the preliminary interview. A copy of the transcript of the interview is not handed over to the asylum seeker after the interview. However, he or she may request it under the provisions of the Asylum Act.<sup>174</sup> The modalities are the same as the regular procedure as regards the other aspects.

<sup>172</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>173</sup> Article 43(3) Asylum Act.

<sup>174</sup> Article 17(1)(f<sup>1</sup>) sets out the right to have access, personally or through a representative, to the information contained in the personal file, unless the disclosure of the information or sources, from which it was obtained would jeopardise the national security, the organisations or persons who provided that information, or if it would be prejudicial to the examination of the application for international protection. Access to the information in the personal file is based on a request addressed to the specialised asylum structure of IGI. At the request of the applicant for international protection, copies of documents from the personal file may be issued free of charge, in accordance with the provisions of the present law.

## 2.4. Appeal

### Indicators: Dublin: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the Dublin procedure?

- ❖ If yes, is it
- ❖ If yes, is it suspensive

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/> Judicial	<input type="checkbox"/> Administrative
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Article 121 of the Asylum Act establishes the conditions of appeal in case of the Dublin procedure. The decision rejecting access to the asylum procedure in Romania and ordering the transfer of the foreigner to the responsible Member State may be challenged within 5 days since it was communicated. The transfer to the responsible Member State shall be suspended until the expiry of the legal deadline for filing the appeal.

In contrast with the regular procedure, lodging the appeal in the Dublin procedure does not have automatic suspensive effect. When appealing, the applicant may also request the suspension of the implementation of the transfer decision.<sup>175</sup> The request for suspension is decided urgently in the council chamber by final conclusion, and the parties are summoned.<sup>176</sup> The implementation of the transfer decision is suspended until the court decides on the request for suspension.<sup>177</sup>

In situations that could not have been taken into consideration at the moment of issuing the decision, the case officer may, *ex officio*, decide to suspend the transfer decision until the court has ruled on the appeal. The measure is communicated to the applicant, according to the provisions on communication of decisions in the regular procedure.<sup>178</sup>

The court shall settle the case within maximum 30 days.<sup>179</sup> The competent court is the Regional Court (*Judecatoria*) with territorial jurisdiction over the area in which IGI has issued the decision.<sup>180</sup> The decision of the court is final.<sup>181</sup>

If the court admits the appeal and decides that the application for international protection in Romania should be resumed and the applicant has already been transferred to the responsible Member State, IGI shall take the necessary steps to readmit him or her to the territory of Romania.<sup>182</sup>

According to case law in **Giurgiu**, the Regional Court never takes reception conditions, recognition rates or procedural guarantees into account when assessing the complaint against a Dublin transfer decision. The appeal is only a formality, there is only one hearing and the decision is a copy-paste of the IGI-DAI decision.

<sup>175</sup> Article 121(3) Asylum Act.

<sup>176</sup> *Ibid.*

<sup>177</sup> Article 121(4) Asylum Act.

<sup>178</sup> Article 121(5) Asylum Act.

<sup>179</sup> Article 121(6) Asylum Act.

<sup>180</sup> Article 121(2) Asylum Act.

<sup>181</sup> Article 121(7) Asylum Act.

<sup>182</sup> Article 121(8) Asylum Act.

## 2.5. Legal assistance

### Indicators: Dublin: Legal Assistance

☒ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?  
☒ Yes ☐ With difficulty ☐ No  
❖ Does free legal assistance cover:  
☒ Representation in interview  
☒ Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a Dublin decision in practice?  
☒ Yes ☐ With difficulty ☐ No  
❖ Does free legal assistance cover  
☐ Representation in courts  
☒ Legal advice

According to Article 127 of the Asylum Act, an asylum seeker who is subject to the Dublin procedure has the same rights and obligations as an asylum seeker in the regular procedure until the date when the transfer is effectively carried out. Hence they also have access to free legal assistance.

Asylum seekers have the same conditions to access legal assistance in the Dublin procedure as those subject to the regular procedure (see [Regular Procedure: Legal Assistance](#)). The only difference which might be problematic is the 5-day deadline to lodge an appeal against a Dublin decision. Nevertheless, legal counsellors have not reported any problems in filling appeals against negative decisions.

## 2.6. Suspension of transfers

### Indicators: Dublin: Suspension of Transfers

1. Are Dublin transfers systematically suspended as a matter of policy or jurisprudence to one or more countries? ☐ Yes ☒ No  
❖ If yes, to which country or countries?

**Greece:** Romania has resumed Dublin procedures to Greece as of 1 October 2018.<sup>183</sup>

**Bulgaria:** Practice on transfers to Bulgaria remained inconsistent in 2018.

The Regional Court of **Rădăuți** rejected the appeal of a male asylum seeker from Afghanistan against his transfer to Bulgaria. The Court dismissed the country reports provided by the applicant in relation to the situation in Bulgaria, on the basis that information dating back to 2017 was outdated. The applicant's allegations regarding the attitude of the citizens and actions of the authorities were disregarded by the Court because these were not proved by the assessments of the international bodies.<sup>184</sup>

The Regional Court of Rădăuți, in a case concerning a family of Iraqi Kurds (see [Dublin: General](#)), dismissed the appeal against a transfer to Bulgaria based on a reiteration of the arguments of the IGI-DAI first instance decision. These referred mainly to the EASO Special Support Plan to Bulgaria of December 2014, more specifically its first two paragraphs which were copied. IGI-DAI and the Court, respectively, referred to Council Decision (EU) 2015/1601 of 22 September 2015 establishing relocation from Italy and Greece and held that as long as no measure of this kind was adopted vis-à-vis Bulgaria, the situation in Bulgaria should not fall under Article 3(2) of the Dublin Regulation.<sup>185</sup>

The Regional Court of **Giurgiu** rejected the appeal of a male asylum seeker from Afghanistan on 17 January 2018. The applicant was not present at the court hearing. In its decision the Court simply

<sup>183</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>184</sup> Regional Court of Rădăuți, Decision 2692/2018, 8 August 2018.

<sup>185</sup> Regional Court of Rădăuți, Decision 375/2018, 29 January 2018.

mentioned the legal provision regarding the Dublin procedure and concluded that IGI-DAI's decision to transfer the applicant in Bulgaria was lawful.<sup>186</sup>

In another case concerning the transfer of a Bangladeshi national, the Regional Court of Giurgiu rejected the applicant's appeal by simply reiterating the provisions of Article 119 of the Asylum Act and stating that there was no doubt that the responsible Member State was Bulgaria. The Court also mentioned that the applicant does not want to return to Bulgaria because the authorities are misbehaving, without expanding this statement.<sup>187</sup>

In a different case, the Regional Court of Giurgiu rejected the appeal of a male asylum seeker from Iran against the decision of transfer to Bulgaria. The applicant declared that he was beaten up by the Bulgarian police and hospitalised for two days due to the injuries. In its assessment of the case the court noted that, "the applicant has already submitted an asylum application to the Bulgarian authorities under a different identity and instead of waiting for the assessment of his case, he illegally entered in Romania, and now the Bulgarian authorities have expressed their agreement to readmit the asylum seeker. Further on, the court wrongfully stated that Bulgaria was considered to be a "safe third country" by virtue of its status as an EU Member State. With regards to the applicant's claims, based on the documents submitted, the court ruled that they were "inconclusive, since the photo of him on a bed, holding a tube in his mouth, does not certify the hospitalisation and the existence of an injury..."<sup>188</sup>

The same court rejected the appeal of another asylum seeker from Bangladesh. In its assessment of the case the Court held that the allegations of the applicant regarding the inhumane and degrading treatment to which a person may be subjected by the Bulgarian authorities were unfounded, because Bulgaria is an EU Member State and part of the ECHR and it is one of the Member States that has the obligation to relocate a number of asylum seekers from Italy and Greece. In relation to the arguments invoked by the asylum seeker regarding the lack of effective access to the asylum procedure, the Court concluded that according to the Dublin Regulation Bulgaria has an obligation to ensure an effective remedy against a negative decision or to ensure the possibility for a subsequent application.<sup>189</sup>

The same court rejected the appeal of male asylum seeker from Guinea. The court considered that "the status of an EU Member State of the Bulgarian State is a guarantee of the legality and fairness of the judicial proceedings". Similar to its case law and the aforementioned ruling of the Regional Court of **Rădăuți**, the Regional Court of **Giurgiu** held that as long as Bulgaria was still one of the Member States which relocates asylum seekers from Italy and Greece, the situation in the country cannot fall under the Article 3(2) of the Dublin Regulation.<sup>190</sup>

On the other hand, in a decision of 8 August 2018, the Regional Court of **Rădăuți** annulled a transfer to Bulgaria concerning a vulnerable male applicant from Turkey of Armenian origin. Even though the applicant stated that he suffers from leukaemia and the medical records provided show he also suffers from Hodgkin's lymphoma which is in remission, and has physical traces of torture and walking problems, IGI-DAI indicated that "the applicant's criticism that the IGI did not identify him as a vulnerable person is unjustified taking into account that he was registered and treated for all his medical problems. Thus, a series of medical examinations were carried out, he was consulted by specialised doctors. IGI-DAI further concluded that "his medical problems are considerable old conditions of 10-12 years ago, they are not in an acute phase, and his general health status is good." The applicant clearly expressed that he does not want to return to Bulgaria as he will certainly be subjected again to torture, inhuman and degrading treatment, as it happened when he first arrived in Bulgaria. He was subjected to this treatment by the Bulgarian authorities, who kneeled him with his hands at the back of his head and hit him with their feet all over his body". He also mentioned that the reception conditions were "degrading- he was accommodated in a 5 square meter room together with other 10 people, he had no access to medical services, even though he needs specific treatment". IGI-DAI's rebuttal to this was the following:

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<sup>186</sup> Regional Court of Giurgiu, Decision 157/2018, 17 January 2018.

<sup>187</sup> Regional Court of Giurgiu, Decision 97/2018, 17 January 2018.

<sup>188</sup> Regional Court of Giurgiu, Decision 3461/2018, 18 May 2018. Unofficial translation by the author

<sup>189</sup> Regional Court of Giurgiu, Decision 2572/2018, 2 May 2018.

<sup>190</sup> Regional Court of Giurgiu, Decision 2946/2018, 18 May 2018.

“The fact that he was accommodated in degrading conditions cannot be considered torture by the authorities”. The Court found that “the applicant is in a precarious medical condition, visible even for a magistrate, he suffers from anxiety, depression, has strong reservations towards the authorities”. Taking into account this situation, the court appreciated that the mere transfer of the applicant from Romania to Bulgaria will seriously affect his health and his psychological condition”.

The Court added that “[t]he mere acceptance of the Bulgarian authorities to take over the applicant cannot be the sole basis for the transfer, without an analysis of the personal situation, IGI-DAI obviously failed when it determined that the state of the asylum seeker does not prevent his transfer to the responsible Member State, Bulgaria, ignoring the documents lodged and the psychological findings.”<sup>191</sup>

The Regional Court of **Galați** also annulled a transfer to Bulgaria concerning two Syrian brothers and the spouse of one on 16 July 2018. Before adjudicating the case, the Court sent a request to the Ministry of Foreign Affairs in order to obtain information on the current situation of the asylum seekers in Bulgaria, as the available information was from February-March 2017 and 2016. The Ministry of Foreign Affairs never replied to this request. The applicants stated that “in Bulgaria they were detained for a while and afterwards they were placed in a closed centre in Harmanli, where the conditions were hard even to describe and to accept, even for persons fleeing their country of origin due to difficult situations”. They also mentioned that they were beaten by the Bulgarian Border Police, even though they declared that they are from Syria and they claim asylum. They referred also to the hostile attitude of Bulgarian citizens towards asylum seekers. The court corroborated the statements of the asylum seekers regarding the reception conditions with the information provided by UNHCR of 2016 and the AIDA country report on Bulgaria of 2016. The Regional Court concluded by ruling that “taking into consideration the official information on the conditions in the closed centre in Harmanli, Bulgaria, where the applicants were accommodated, the poor reception conditions in the Dublin procedure are likely to cause a real risk of exposure to degrading treatment incompatible with the respect for family life.”<sup>192</sup>

## 2.7. The situation of Dublin returnees

The Asylum Act includes provisions concerning cases of express and tacit withdrawal of an asylum application.<sup>193</sup> An implicit or tacit withdrawal of an asylum application occurs when the applicant is not present on the scheduled time for the preliminary interview or personal interview, without presenting good reasons for his or her absence.<sup>194</sup> In case of tacit withdrawal, IGI-DAI writes a report regarding the absence of the asylum seeker from the interview.<sup>195</sup> In these cases, the decision to close the file shall be issued after the expiration of a period of 30 days from the date of the aforementioned report.<sup>196</sup>

When the asylum seeker expressly withdraws his or her asylum claim, this is considered an explicit withdrawal of the asylum application.<sup>197</sup> The asylum seeker shall be informed of the consequences of his or her withdrawal in a language he or she understands or is reasonably supposed to understand.<sup>198</sup>

For persons whose applications are considered to have been tacitly withdrawn, i.e. persons who have left Romania and moved on to another EU Member State, and the asylum procedure has been terminated, the asylum procedure may be continued if the person makes an asylum claim within 9 months of the decision to close the file, issued in case of implicit withdrawal.<sup>199</sup> If the time limit has expired, the asylum claim is considered a [Subsequent Application](#).

On the other hand, persons who have left the territory or have been removed from the EU to a third country or to the country of origin, as set out in Articles 19(2) and (3) of the Dublin Regulation, and their

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<sup>191</sup> Regional Court of Rădăuți, Decision 2693/2018 of 8 August 2018. Unofficial translation by the author.

<sup>192</sup> Regional Court of Galați, Decision 1327/2018, 16 July 2018. Unofficial translation by the author.

<sup>193</sup> Article 51 Asylum Act.

<sup>194</sup> Article 51(1)(b) Asylum Act.

<sup>195</sup> Article 51(3) Asylum Act.

<sup>196</sup> Article 51(5) Asylum Act.

<sup>197</sup> Article 51(1)(a) Asylum Act.

<sup>198</sup> Article 51(2) Asylum Act.

<sup>199</sup> Article 94<sup>1</sup> Asylum Act.

asylum procedure has been terminated by a decision closing the file, a new claim lodged in Romania is not considered a subsequent application.<sup>200</sup>

Therefore persons who expressly withdraw their asylum applications and have not left the territory of the EU or have not been returned to a third country or to the country of origin cannot continue their asylum procedure in case they return to Romania. As a consequence they will have to lodge a subsequent application.

It should be noted that the Asylum Act does not fully comply with Article 18(2) of the Dublin Regulation, which allows applicants whose claims have been withdrawn to have access to the procedure without lodging a subsequent application.

For persons returned to Romania who have previously received a negative decision in the administrative phase of the procedure and have not sought judicial remedy, the asylum procedure does not continue. They may only lodge a subsequent application.

According to the JRS representative in **Bucharest**, a number of asylum seekers were returned from Germany to Romania, as case law of German courts has mostly upheld the legality of Dublin transfers to Romania.<sup>201</sup> They all continued their asylum procedure in Romania. This is also confirmed by the legal counsellor from **Galați**, where Dublin returnees were transferred from Bucharest. In **Rădăuți** asylum seekers were returned from Germany, Belgium and the UK, they all continued their procedures.

Romania received 181 incoming transfers in 2018.<sup>202</sup>

### 3. Admissibility procedure

#### 3.1. General (scope, criteria, time limits)

An application is inadmissible where the applicant:

- a. Has been granted international protection by another Member State;<sup>203</sup>
- b. Comes from a **First Country of Asylum**;<sup>204</sup>
- c. Comes from a European safe third country which has agreed to his or her readmission;<sup>205</sup>
- d. Comes from a **Safe Third Country**;<sup>206</sup>
- e. Makes a subsequent application without new elements.<sup>207</sup>

The grounds relating to international protection granted by another Member State and safe country concepts were introduced in 2015. From the interviews and discussion with legal counsellors, there were no reported cases of first country of asylum, European safe third country and safe third country.

The law does not mention any specific time limits for taking a decision on the admissibility of the application.

IGI-DAI could not provide overall statistics on applications dismissed as inadmissible in 2018. However, one inadmissibility decision was issued on the basis of the “first country of asylum” concept, and one based on the “safe third country concept”.<sup>208</sup>

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<sup>200</sup> Article 94^1(1)(a) Asylum Act.

<sup>201</sup> See e.g. Administrative Court of Aachen, Decision 6 L 1154/18.A, 21 September 2018; Administrative Court of Aachen, Decision 6 L 1708/18.A, 5 December 2018. Contrast Administrative Court of Düsseldorf, Decision 22 L 4112/17.A, 8 March 2018.

<sup>202</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>203</sup> Article 50^1 Asylum Act.

<sup>204</sup> Article 95 Asylum Act.

<sup>205</sup> Article 96 Asylum Act.

<sup>206</sup> Article 97 Asylum Act.

<sup>207</sup> Article 91(b) Asylum Act, in conjunction with Article 88(2)(a)-(b).

<sup>208</sup> Information provided by IGI-DAI, 5 March 2019.



### 3.2. Personal interview

#### Indicators: Admissibility Procedure: Personal Interview

☐ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the admissibility procedure?

<input type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If so, are questions limited to nationality, identity, travel route?	<input type="checkbox"/> Yes <input type="checkbox"/> No
❖ If so, are interpreters available in practice, for interviews?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

Pursuant to Article 97<sup>1</sup> of the Asylum Act, the applicant is given the opportunity to present, in an interview, his or her personal situation in order to determine whether the safe country concepts are applicable. The responsible authority is IGI-DAI. The law does not prescribe for specific requirements for the interview as part of the admissibility assessment.

An inadmissibility decision on first country of asylum, European safe third country or safe third country is issued without a substantive examination of the applicant's request and shall be communicated under the general provisions of the law.<sup>209</sup> After communicating the decision, IGI-DAI informs the authorities of the European safe third country or, as the case may be, of the safe third country, in the language of that country, that the applicant's application has not been assessed on the merits.<sup>210</sup>

In case the conditions provided by the law are not fulfilled, IGI-DAI grants access to the asylum procedure on the basis of a reasoned decision and examines the asylum application on the merits.

### 3.3. Appeal

#### Indicators: Admissibility Procedure: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against an inadmissibility decision?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If yes, is it	<input checked="" type="checkbox"/> Judicial <input type="checkbox"/> Administrative
❖ If yes, is it automatically suspensive	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

The appeal in case of the first country of asylum, European safe third country and safe third country is the same as in the [Accelerated Procedure](#).<sup>211</sup> The deadline for submitting the appeal is 7 days from the notification of the decision. The appeal has suspensive effect if it is filed within the deadline.

There were no reported cases of appeals against first country of asylum, European safe third country and safe third country decisions in 2018.

### 3.4. Legal assistance

The rules and practice applicable in the [Regular Procedure: Legal Assistance](#) apply.

<sup>209</sup> Article 97<sup>1</sup>(2) Asylum Act.

<sup>210</sup> Article 97<sup>1</sup>(4) Asylum Act.

<sup>211</sup> Article 97<sup>1</sup>(3) Asylum Act.



## 4. Border procedure (border and transit zones)

### 4.1. General (scope, time limits)

#### Indicators: Border Procedure: General

1. Do border authorities receive written instructions on the referral of asylum seekers to the competent authorities? ☐ Yes ☒ No
2. Can an application made at the border be examined in substance during a border procedure? ☒ Yes ☐ No
3. Is there a maximum time limit for a first instance laid down in the law? ☒ Yes ☐ No  
❖ If yes, what is the maximum time limit? 20 days

According to the law, the border procedure applies to asylum applications and subsequent applications made at a border-crossing point. The asylum application made at the territorial border offices of the Romanian Border Police at a border crossing point is immediately submitted or forwarded to the competent structure of IGI-DAI which examines it and issues a decision within 3 days.<sup>212</sup> In addition to this, foreigners who have previously had an asylum procedure in Romania and have made a subsequent application at a border crossing point are also subject to border procedure.<sup>213</sup>

The substance of the application is assessed during the border procedure, if the case officer decides to do so based on the statements of the asylum seeker during the interview. According to the law, after an interview and an assessment of the reasons invoked for granting international protection and country of origin information, IGI-DAI may: (a) grant a form of protection; (b) grant access to the territory and the regular procedure if the application is not manifestly unfounded or if there are indications that [Dublin](#) or [Admissibility](#) grounds apply; or (c) reject the application as manifestly unfounded and not grant access to the territory.<sup>214</sup>

According to Article 87 of the Asylum Act, an asylum seeker shall remain in the transit area of the border-crossing point until a decision granting access to the territory or a final decision rejecting the asylum application is issued. This period cannot exceed 20 days.<sup>215</sup> However, if the asylum application is still pending after the 20-day deadline, the asylum seeker is granted access to territory.<sup>216</sup>

The asylum seeker may be accommodated in special reception and accommodation centres near the border-crossing points established by order of the Minister of Internal Affairs and having the legal status of a transit area.<sup>217</sup> Asylum seekers accommodated in these centres receive 3 meals a day free of charge, under conditions established by a Government Decision.<sup>218</sup> The asylum seeker subject to border procedure is not entitled to receive the material reception conditions afforded for meals.<sup>219</sup>

A new provision was included in 2015 which relates to the obligation to inform the asylum seeker. The asylum seeker shall be immediately informed in writing, in a language that he or she understands or is reasonably supposed to understand, on the border procedure, granting or not granting access to the territory, rights and obligations during the procedure, the possibility to challenge the decision issued by the case officer, as well as the possibility to request legal aid according to the law.<sup>220</sup> In practice, this obligation is not always fulfilled by the border guards according to the legal counsellor of JRS. According to UNHCR Romania the leaflets available at the border need to be updated in line with the legislative amendments adopted in 2015 and 2016. The leaflets have not been updated as of 2018.

<sup>212</sup> Article 82 Asylum Act.

<sup>213</sup> Article 83(3) Asylum Act.

<sup>214</sup> Article 83(1)(a), (b) and (c) Asylum Act.

<sup>215</sup> Article 87(1) Asylum Act.

<sup>216</sup> Article 87(5) Asylum Act.

<sup>217</sup> Article 87(2) Asylum Act.

<sup>218</sup> Article 87(3) Asylum Act.

<sup>219</sup> Article 87(4) Asylum Act.

<sup>220</sup> Article 87(7) Asylum Act.

In practice, asylum seekers subject to the border procedure are accommodated in specially designed places, which officially should exist at every border crossing point:

- **Moravița:** There are two rooms specially designed for the border procedure. There is no courtyard where asylum seekers may go out.
- **Timișoara “Traian Vuia” Airport:** There is a separate building designed for the border procedure. The building has three rooms, each of the rooms have 4 or 5 beds, 2 toilets, 4 showers and a kitchen. The building has a courtyard where people may go out, but only under supervision, as they are under a closed regime.
- **Bucharest Henri Coandă Airport / Otopeni:** There are three rooms in the basement; two are communicating and the third one is separated. Women are accommodated in the separate room. There is no possibility to go outside.

The legal counsellor of JRS was not aware of situations where asylum seekers were able to go outside; the airport premises are of such a nature as to render this impossible.

According to the director of the Regional Centre of **Timișoara** there was only one asylum application made at a border-crossing point in the South-Western part of Romania in **Moravița**. The person was granted access to territory and to regular procedure.

According to JRS, there were 10 or 11 asylum applications made at **Otopeni Airport** and assessed in the border procedure in 2018.

There were 15 asylum applications processed under the border procedure.<sup>221</sup>

## 4.2. Personal interview

### Indicators: Border Procedure: Personal Interview

☐ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the border procedure?

	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If so, are questions limited to nationality, identity, travel route?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
❖ If so, are interpreters available in practice, for interviews?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
2. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

As a general rule, a decision is taken by the case officer of IGI-DAI after an interview and assessment of the reasons invoked by the asylum seeker, checked against country of origin information.<sup>222</sup> However, the law also establishes the possibility to deliver a decision without conducting an interview, if it is possible to issue a decision to grant access to the regular procedure on the basis of the elements of the file.<sup>223</sup> In case of subsequent applications there is no interview. The decision is issued on the basis of a written application.

The interview is conducted at the border by a case officer of the territorially competent branch of IGI-DAI, under the same rules as the personal interview in the regular procedure. The only difference relates the place where the interview is conducted and to the swiftness of the procedure. According to the Director of the Regional Centre of **Timișoara** the personal interview in case of border procedure is the same as the personal interview in the regular procedure. The asylum seeker is asked about problems and reasons for fleeing. The case officers decides whether to go into details on the merits.

<sup>221</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>222</sup> Article 83(1) Asylum Act.

<sup>223</sup> Article 83(4) Asylum Act.

Access to legal representation by a lawyer or UNHCR during the interview in the border procedure is difficult given the 3-day time limit for issuing a decision. NGOs are aware of the cases subjected to the border procedure only if IGI-DAI informs them directly or through UNHCR.

### 4.3. Appeal

#### Indicators: Border Procedure: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the border procedure?

- |  |  |   |
|--|--|---|
| ❖ If yes, is it                          | <input checked="" type="checkbox"/> Yes      | <input type="checkbox"/> No             |
| ❖ If yes, is it automatically suspensive | <input checked="" type="checkbox"/> Judicial | <input type="checkbox"/> Administrative |
|  | <input checked="" type="checkbox"/> Yes      | <input type="checkbox"/> No             |

The asylum seeker has the possibility to challenge the decision issued by IGI-DAI within 7 days from the day the decision was communicated.<sup>224</sup> The competent court to decide on the appeal is the territorially competent Regional Court.<sup>225</sup> The provisions on submission of the appeal in the regular procedure apply accordingly.<sup>226</sup>

The court shall take a decision on the appeal within 5 days.<sup>227</sup> The decision has to be motivated and it is irrevocable. The court may decide: (a) to grant access to the territory and the regular procedure; or (b) to uphold the decision of IGI-DAI.<sup>228</sup>

If the court rejects the appeal, the General Inspectorate of the Romanian Border Police (IGPF) will take the necessary measures to remove the foreigner from the territory,<sup>229</sup> as the foreigner subject to the border procedure must leave Romania as soon as the asylum procedure has finished.<sup>230</sup> The border procedure is considered completed on the date when the decision of the court was delivered.

According to the legal counsellor of JRS, asylum seekers do not face any problems lodging an appeal. Asylum seekers subject to the border procedure were assisted by the NGOs and UNHCR.

### 4.4. Legal assistance

#### Indicators: Border Procedure: Legal Assistance

☐ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?

- |                                     |   |   |                             |
|-------------------------------------|---|---|-----------------------------|
| ❖ Does free legal assistance cover: | <input type="checkbox"/> Yes                                    | <input checked="" type="checkbox"/> With difficulty | <input type="checkbox"/> No |
|                                     | <input checked="" type="checkbox"/> Representation in interview |   |                             |
|                                     | <input checked="" type="checkbox"/> Legal advice                |   |                             |

2. Do asylum seekers have access to free legal assistance on appeal against a negative decision in practice?

- |                                    |   |   |                             |
|------------------------------------|---|---|-----------------------------|
| ❖ Does free legal assistance cover | <input type="checkbox"/> Yes                      | <input checked="" type="checkbox"/> With difficulty | <input type="checkbox"/> No |
|                                    | <input type="checkbox"/> Representation in courts |   |                             |
|                                    | <input checked="" type="checkbox"/> Legal advice  |   |                             |

According to the law, asylum seekers subject to border procedure have the same rights to free legal assistance as the asylum seekers subject to the [Regular Procedure: Legal Assistance](#).

What is particularly problematic for asylum seekers in the border procedure is the swiftness of the procedure and access to legal counselling. As the deadline for delivering a decision is only 3 days it is hard to get access to legal assistance; it depends on the willingness of IGI-DAI and the Border Police to

<sup>224</sup> Article 85(1) Asylum Act.

<sup>225</sup> Article 85(2) Asylum Act.

<sup>226</sup> *Ibid.*

<sup>227</sup> Article 86(1) Asylum Act.

<sup>228</sup> *Ibid.*

<sup>229</sup> Article 86(3) Asylum Act.

<sup>230</sup> Article 17(1)(a) Asylum Act.

inform the NGOs about these cases. Also an examination of applications cannot be effectively conducted within such a short time limit.

JRS conducts monitoring visits to **Otopeni Airport** twice a month and upon need. JRS may enlist a lawyer when necessary.

## 5. Accelerated procedure

### 5.1. General (scope, grounds for accelerated procedures, time limits)

Under Article 75(1) of the Asylum Act the grounds for assessing an asylum claim into an accelerated procedure are:

- a. Manifestly unfounded applications;
- b. Asylum applications of persons who, through their activity or membership of a particular group, pose a threat to national security or public order in Romania;
- c. Asylum applications of persons coming from a [Safe Country of Origin](#).

An asylum application is considered manifestly unfounded if the applicant:<sup>231</sup>

1. Has no well-founded fear of being persecuted or exposure to serious risk in the country of origin
  - Has not claimed any fear of persecution or risk of serious harm;
  - Has not provided data or information to support a fear of persecution or serious risk, or his or her statements do not contain circumstantial or personal details;
  - Clearly lacks credibility, meaning that his or her statements are incoherent, contradictory or flagrantly inconsistent with the situation in his or her country of origin;
2. Has misled the authorities or has submitted the application in bad faith by:
  - Filing an asylum application with a false identity or presenting false or falsified documents as authentic;
  - Deliberately submitting false information after the asylum application has been lodged;
  - In bad faith destroying, damaging or disposing of travel documents or a relevant document for his or her application, either to establish a false identity for the purpose of seeking and granting refugee status, or to obstruct the assessment of his or her claim;
  - Deliberately concealing previous asylum applications in one or more countries, especially when he or she used a false identity;
  - Making an asylum application for the obvious aim of preventing the enforcement of return, extradition or removal proceedings, after having been given the opportunity to make an asylum application;
  - Entering the territory of Romania unlawfully or prolonging his or her stay unlawfully and, without good reason, not presenting him or herself to the authorities, or not lodging the application as soon as possible given the circumstances of his or her entry.

According to stakeholders in **Galați, Rădăuți, Șomcuta Mare** and **Giurgiu**, most of the cases examined in the accelerated procedure are manifestly unfounded asylum applications. In practice, manifestly unfounded asylum applications are predominantly the applications made by economic migrants (Șomcuta Mare, Galați, Rădăuți), or applicants who lack credibility (Giurgiu). In Rădăuți, it was reported that only one application, made by a Bangladeshi national, was processed in the accelerated procedure. In Șomcuta Mare the accelerated procedure was applied to 8 applicants from India and one applicant from Pakistan.

In **Timișoara** the cases assessed in accelerated procedure are the asylum applications made in detention in the **Arad** Public Custody Centre. According to the director of IGI-DAI Timișoara, these asylum applicants were from Iraq. Their asylum applications were considered manifestly unfounded on the basis that they were economic migrants. In most cases they were granted access to the regular procedure by the Regional Court of Timișoara, according to the JRS representative.

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<sup>231</sup> Article 76 Asylum Act.

The responsible authority for taking decisions at first instance on asylum applications in the accelerated procedure is IGI-DAI.

The accelerated procedure may be triggered during the regular procedure at the date when the case officer determines the existence of one of the grounds for applying an accelerated procedure.<sup>232</sup> Article 79 of the Asylum Act provides that after the interview and assessment of the reasons invoked in support of the asylum application, a decision should be issued within 3 days from the start of the accelerated procedure. Therefore the trigger of the accelerated procedure may not coincide with the date of the personal interview. However, the cases where the accelerated procedure is triggered after the interview are very rare.

IGI-DAI reported 167 applications processed under the accelerated procedure in 2017, down from 382 in 2017.<sup>233</sup>

## 5.2. Personal interview

### Indicators: Accelerated Procedure: Personal Interview

☒ Same as regular procedure

1. Is a personal interview of the asylum seeker in most cases conducted in practice in the accelerated procedure?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If so, are questions limited to nationality, identity, travel route?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
❖ If so, are interpreters available in practice, for interviews?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2. Are interviews conducted through video conferencing? ☐ Frequently ☐ Rarely ☒ Never

The Asylum Act requires a personal interview of asylum seekers in the accelerated procedure. Article 79 of the Asylum Act clearly states that a decision is made after an interview and after examination of the reasons invoked by the applicant. In practice, the personal interview is always conducted IGI-DAI.

The same rules as in the [Regular Procedure: Personal Interview](#) apply.

## 5.3. Appeal

### Indicators: Accelerated Procedure: Appeal

☐ Same as regular procedure

1. Does the law provide for an appeal against the decision in the accelerated procedure?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
❖ If yes, is it	<input checked="" type="checkbox"/> Judicial <input type="checkbox"/> Administrative
❖ If yes, is it suspensive	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

The law provides for an appeal against a negative decision in the accelerated procedure, which must be submitted within 7 days from the notification of the decision. If the appeal is filed within the deadline, it has automatic suspensive effect.<sup>234</sup>

There were no problems reported in relation to lodging an appeal in the accelerated procedure, as the deadline for submitting an appeal against a negative decision in the accelerated procedure has been increased from 2 days to 7 days with the 2015 reform of the Asylum Act.

<sup>232</sup> Article 78 Asylum Act.

<sup>233</sup> Information provided by IGI-DAI, 14 February 2018.

<sup>234</sup> Article 80(1) Asylum Act.

## 5.4. Legal assistance

### Indicators: Accelerated Procedure: Legal Assistance

☒ Same as regular procedure

1. Do asylum seekers have access to free legal assistance at first instance in practice?  
☒ Yes ☐ With difficulty ☐ No  
❖ Does free legal assistance cover:  
☒ Representation in interview  
☒ Legal advice
2. Do asylum seekers have access to free legal assistance on appeal against a decision in practice?  
☒ Yes ☐ With difficulty ☐ No  
❖ Does free legal assistance cover:  
☐ Representation in courts  
☒ Legal advice

The law provides for access to free legal assistance for asylum seekers during the accelerated procedure in the same conditions as the asylum seekers subject to the [Regular Procedure: Legal Assistance](#). However, if asylum seekers are in detention in one of the two detention centres (**Arad** and **Otopeni**) there is no permanent access to legal counselling.

Whereas prior to 2015 the Aliens Ordinance required the release of foreigners from detention as soon as a first application for international protection was lodged, the Aliens Act now prescribes that an asylum seeker is only released when he or she is granted access to the regular procedure (see [Detention of Asylum Seekers](#)).

For the asylum seekers accommodated in the detention centre in **Arad**, legal advice is provided by the legal counsellor of the Regional Centre of Timișoara. In most of the cases, the legal counsellor provides legal counselling based on contact and information provided by the case officers who assessed the asylum applications, after the interview was held, when the decision was already communicated to them.

However, CNRR stated that there is a protocol concluded between CNRR and IGI on the communication / information on the submission of asylum applications at border-crossing points, integrated centres, in police custody, prisons or Public Custody Centres. The communication is made after the application is registered at IGI-DAI.<sup>235</sup>

According to the director of Regional Centre of **Timișoara**, they informed the legal counsellor a few times about the asylum applications made in Arad before the interview was conducted. The director invoked the short period of time between the registration of the application and the date of the interview. According to the director of the Public Custody Centre of **Arad** there is no legal counsellor to provide information to the asylum seekers in detention before the interview. It was also mentioned that asylum seekers tend to draft the appeal against the negative decision of IGI-DAI themselves.

The legal counsellor also mentioned that NGOs are not informed when an asylum seeker is granted access to regular procedure and is transferred to the Regional centre of Timișoara. This lack of information may be problematic as asylum seekers tend to believe that they are being granted international protection and not access to regular procedure. They therefore do not know that there are further steps to follow, such as a potential appeal, and there is a real risk of missing deadlines. Furthermore, the decision of the Regional Court may be notified at the detention centre if the applicant does not know that he or she has the obligation to inform the court of any changes of residence.<sup>236</sup>

<sup>235</sup> Information provided by CNRR, 3 December 2018.

<sup>236</sup> Article 172 Civil Procedure Code.



## D. Guarantees for vulnerable groups

### 1. Identification

#### Indicators: Special Procedural Guarantees

1. Is there a specific identification mechanism in place to systematically identify vulnerable asylum seekers? ☒ Yes ☐ For certain categories ☐ No  
❖ If for certain categories, specify which:
2. Does the law provide for an identification mechanism for unaccompanied children? ☒ Yes ☐ No

The law defines an applicant in need of special procedural guarantees as an applicant whose ability to benefit from the rights and fulfil his or her obligations is limited as a result of individual circumstances that may be due *inter alia* to age, sex, sexual orientation, gender identity, disability, serious illness, mental illness or disorder, or torture, rape or other serious forms of psychological, physical or sexual violence etc.<sup>237</sup> This clause may be interpreted as a non-exhaustive list of persons which may be considered in need of special procedural guarantees.

Article 5<sup>1</sup>(2) of the Asylum Act lists the following categories of vulnerable persons: minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons suffering from serious illnesses, people with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, or persons in other special circumstances.

#### 1.1. Screening of vulnerability

Romanian law provides that the assessment of who belongs to a category of vulnerable people is done after an asylum application has been lodged, as soon as possible, by specialists of IGI, based on an individual assessment. In order to carry out the individual assessment and take appropriate measures to ensure the rights and guarantees provided by this law, the competent authorities shall provide special support, at the request of IGI.<sup>238</sup>

The Asylum Decree completes this provision by stating that the specialised personnel of IGI cooperates with UNHCR and relevant NGOs to identify asylum seekers who may be included in the category of vulnerable persons referred to in Article 5<sup>1</sup>(2) of the Act.<sup>239</sup> In order to assess the vulnerability of asylum seekers, specialists within IGI, in cooperation, where appropriate, with experts from other institutions and authorities competent in the field, make an assessment of the special needs of foreigners.<sup>240</sup>

Depending on the specific needs of each asylum seeker identified as vulnerable person, IGI-DAI notifies and cooperates with authorities and specialised agencies in order to provide necessary assistance.<sup>241</sup> IGI-DAI may collaborate with NGOs to assist asylum seekers identified as vulnerable.<sup>242</sup>

There are no further explanations in the law on how the individual assessment is carried out in practice or who are the specialists conducting the assessments. The law also does not comprise guidelines on how the cooperation between the IGI-DAI and UNHCR, on the one hand, and IGI-DAI and NGOs on the other hand, should work in practice in order to adequately identify such persons.

In practice, there is a special form that is filled in from the moment an application is lodged, while the preliminary interview and personal interview also have questions related to vulnerabilities. IGI-DAI has

<sup>237</sup> Article 2(1)(b<sup>1</sup>) Asylum Act.

<sup>238</sup> Article 5<sup>1</sup>(3) Asylum Act.

<sup>239</sup> Article 5(1) Asylum Decree.

<sup>240</sup> Article 5(2) Asylum Decree.

<sup>241</sup> Article 5(3) Asylum Decree.

<sup>242</sup> Article 5(4) Asylum Decree.

internal guidelines on early identification but these guidelines are only for internal use and are not publicly available. According to the Director of Regional Centre of Timișoara, the identification mechanism has been developed together with UNHCR Romania. UNHCR Romania confirmed that in 2013 it worked together with IGI-DAI in developing a pilot mechanism to identify, refer and assist vulnerable asylum seekers, defined as such by the recast Reception Conditions and Asylum Procedures Directives. At that time all staff of IGI-DAI dealing with reception and procedures were trained by UNHCR and other agencies.

The Director of the Regional Centre of **Timișoara** stated that the identification mechanism in place to systematically identify vulnerable asylum seekers consists of six annexes, of which three are mandatory: the one filled when the asylum application is registered; one filled at the preliminary interview; and one filled at the personal interview. The other three annexes may be filled in, if necessary, by the medical, integration or legal department.

The majority of the stakeholders interviewed by the author in **Bucharest**, **Șomcuta Mare** and **Rădăuți** said that they are not aware of the content of the IGI-DAI identification mechanism in place to systematically identify vulnerable asylum seekers. The legal counsellor in **Galați** mentioned that there are 4 standardised forms, which are filled in at the first four stages of the asylum procedure: registration of the asylum application; photographing and fingerprinting; preliminary interview; and personal interview.

In **Timișoara**, the JRS representative knows that IGI-DAI has a registry with vulnerable persons. IGI-DAI and the NGOs agreed to inform each other of cases of vulnerability. Until now IGI-DAI has not referred any vulnerable asylum seeker to the NGOs. The NGOs have opened discussions about the vulnerable persons accommodated in the centre during coordination meetings. According to the JRS representative, **ICAR Foundation** has a mechanism in place to identify victims of torture, i.e. specialised personnel drafts medical reports which are attached to the applicant's case file.

In **Bucharest**, according to the medical doctor of the centre the vulnerable persons are identified by the doctor and the asylum seekers with psychological problems are identified by the psychologist of ICAR Foundation. The NGOs are informed by IGI-DAI if vulnerable persons are identified. The legal counsellor in Bucharest said in 2017 that IGI-DAI claimed to have a specific mechanism in place in this regard, but they were not informed about the procedural framework of this mechanism. The same was echoed by CNRR.<sup>243</sup>

The legal counsellor in **Timișoara** stated that vulnerable persons are identified by the NGOs who then immediately inform IGI-DAI. According to the director of the Regional Centre of Timișoara all the asylum seekers are screened for vulnerability.

The legal counsellor in **Giurgiu** stated that the identification mechanism is a multidisciplinary mechanism involving both IGI-DAI staff (case officers, doctor, officers who are collaborating with the NGOs) and NGO representatives. The mechanism is applied from the asylum seeker's arrival in the centre, when he or she is examined by the doctor. Vulnerability may also be identified during the following stages of the procedure.

On the other hand, the legal counsellor in **Șomcuta Mare** said that she never had to inform IGI-DAI about a vulnerable person because they were already identified by IGI-DAI. The vulnerabilities of these asylum seekers were visible; pregnant women, elderly, single-parent families.

According to the legal counsellor in **Galați** all asylum seekers are screened, as the annexes to which the legal counsellor and the director of the Regional Centre of Timișoara referred to are filled in for every person lodging an asylum application. According to the legal counsellor in Galați there were no asylum seekers with psychological problems in the centre in 2018.

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<sup>243</sup> Information provided by CNRR, 9 January 2018.



According to the legal counsellor in **Șomcuta Mare**, the screening of vulnerability is done by the medical department of IGI-DAI, where the asylum seekers are also asked about their medical history.

The legal counsellor in **Rădăuți** said that theoretically asylum seekers are screened but has no knowledge as to whether this is done in practice. It was reported that an asylum seeker who was identified as vulnerable by ICAR Foundation, and also held medical documentation attesting his health problems, was not identified as such by IGI-DAI.

Article 12<sup>41</sup> of the Asylum Act regarding the training of staff prescribes that training programmes *inter alia* incorporate methodology on assessment of asylum applications made by vulnerable persons and identification mechanisms and assistance for vulnerable persons.

## 1.2. Age assessment of unaccompanied children

The Asylum Act foresees that an age assessment can be carried out in case there are doubts as to the alleged age of the applicant or if the unaccompanied minor cannot prove his or her age.<sup>244</sup> In these cases, before a decision is delivered at first instance, IGI-DAI requests forensic expertise to assess the applicant's age, with the prior written consent of the minor and his or her legal representative.<sup>245</sup>

If the asylum seeker and/or the legal representative refuse to carry out the age assessment examination and no conclusive evidence regarding age is provided, the applicant shall be considered adult.<sup>246</sup> The person shall be deemed to have reached the age of 18 at the time of lodging the asylum application.<sup>247</sup> However, if a psychologist of IGI-DAI determines, after an evaluation, that the grounds for refusal to carry out the age assessments examination are well-founded, the asylum seeker will not be considered an adult.<sup>248</sup>

The law provides that the interpretation of the examination results shall be carried out taking into account the principle of the best interests of the child.<sup>249</sup>

The asylum application cannot be refused on the sole ground that the person did not consent to the age assessment and cannot prevent IGI-DAI from granting international protection to the respective asylum seeker.<sup>250</sup>

According to the law, IGI-DAI informs the legal representative and the asylum seeker unaccompanied minor in writing, in a language that the latter understands or is reasonably supposed to understand, about the possibility of carrying out an age assessment. This information should also include details of the medical examination methods, the possible consequences of the outcome of the examination and the effects of any refusal to undergo medical examination.<sup>251</sup> The law also prescribes that the medical examination shall be carried out in full respect of the minor's dignity, using the least invasive methods, allowing as far as possible a reliable result.<sup>252</sup>

The Asylum Act does not, however, prescribe for a method on how the age assessment should be carried out. When age assessment is ordered by IGI-DAI, this is carried out by the National Network of Legal Medicine, which comprises of the National Institute of Legal Medicine "Mina Minovici" in **Bucharest** (NIML) and 5 Institutes of Legal Medicine (IML) in **Iași**, **Cluj-Napoca**, **Craiova**, **Târgu Mureș** and **Timișoara**, and 36 County Legal Medicine Services and 11 Forensic Offices.<sup>253</sup>

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<sup>244</sup> Article 41(2) Asylum Act.

<sup>245</sup> *Ibid.*

<sup>246</sup> Article 41(3) Asylum Act.

<sup>247</sup> Article 41(4) Asylum Act.

<sup>248</sup> Article 41(5) Asylum Act.

<sup>249</sup> Article 41(6) Asylum Act.

<sup>250</sup> Article 41(7) Asylum Act.

<sup>251</sup> Article 16(4)(c) Asylum Act, in conjunction with Article 22 Asylum Decree.

<sup>252</sup> Article 16(4<sup>41</sup>) Asylum Act.

<sup>253</sup> National Network of Legal Medicine, *Tipuri de expertize medico-legale*, available in Romanian at: <http://bit.ly/2ETRT4A>.

According to the Procedural Rules on expert assessments and findings and other forensic work for establishing the age of a person, the forensic findings and forensic expertise related to living persons, at the request of the judicial bodies, consist of clinical and complementary radiological, haematological, serological, bacteriological, anthropological, dermatological, genetic and other.<sup>254</sup> The Procedural Rules also prescribe that minors are examined in the presence of one of the parents or their legal representative or, in their absence, in the presence of an adult family member of the same sex.<sup>255</sup>

According to the stakeholders interviewed by the author the method used by IML to assess age in all cases is bone measurement.

According to the legal counsellor in **Galați**, in case an age assessment is requested by IGI-DAI, in most of the cases, the results of the examinations carried out by IML state that the age of the asylum seeker is between 17-19 years. In these cases, IGI-DAI always affords the benefit of the doubt to the asylum seeker and he or she is registered with the lowest age. The legal counsellor also mentioned that in one case the court considered an asylum seeker to be a minor based on his statements regarding the issuance of an Afghan identity card called “*tazkiras*” [taskera], even though the age assessment decision of IML stated that he was 20-22 years old.

The law does not prescribe the possibility to challenge the age assessment decision. However, it is possible to request a new expert opinion, which will be also conducted by IML and the cost should be covered by the person requesting it. There has been no such case in practice.

IGI-DAI conducted no age assessments in 2018.<sup>256</sup>

According to available information, no requests for age assessments were made in 2018 in **Timișoara**, **Rădăuți**, **Galați**, **Șomcuta Mare** and **Giurgiu**.

## 2. Special procedural guarantees

### Indicators: Special Procedural Guarantees

1. Are there special procedural arrangements/guarantees for vulnerable people?

☒ Yes

☐ For certain categories

☐ No

❖ If for certain categories, specify which:

### 2.1. Adequate support during the interview

Pursuant to Article 5<sup>1</sup>(4) of the Asylum Act, in cases where vulnerable persons with special needs are identified, specialised staff of IGI-DAI carry out assessments to identify specific needs and decide on appropriate steps to ensure the rights and guarantees provided by the law during the asylum procedure.

Romanian law provides an important safeguard in respect of procedural guarantees for vulnerable persons: in the administrative phase of the asylum procedure, documents drafted before the identification of special needs will be amended and/or supplemented only where it is necessary to adequately examine the asylum application.<sup>257</sup>

The law also foresees a specific monitoring obligation throughout the entire asylum procedure in line with Article 22(1) of the recast Reception Conditions Directive.<sup>258</sup>

<sup>254</sup> Article 26(a) Procedural Rules of 25 May 2000 on expert assessments and findings and other forensic work.

<sup>255</sup> Article 14(2) Procedural Rules of 25 May 2000 on expert assessments and findings and other forensic work.

<sup>256</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>257</sup> Article 5<sup>1</sup>(5) Asylum Act.

<sup>258</sup> Article 5<sup>1</sup>(6) Asylum Act. IGI-DAI monitors the situation of applicants with special needs upon reception and, together with the competent authorities, will ensure that assistance is given throughout the entire asylum procedure.

The interview of vulnerable asylum seekers shall be carried out by case officers specialised in this respect, who take into account the special situation of these persons.<sup>259</sup> The legal counsellor in **Giurgiu** stated that the case officers handle each case with diligence. For instance, if the asylum seeker is not feeling well, they will stop the interview. In another case, an LGBTI asylum seeker was assisted at the interview by a psychologist.

On the other hand, according to the legal counsellor in **Galați**, in case of asylum seekers who suffer from post-traumatic stress disorder (PTSD), mental disabilities or psychological problems, IGI-DAI does not request for medical examination. Not even the court orders a medical examination, even where requested by the applicant.

## 2.2. Exemption from special procedures

According to Article 75(2) of the Asylum Act, applicants in need of special procedural guarantees or with **Special Reception Needs** may only be subjected to the **Accelerated Procedure** or the **Border Procedure** if they represent a threat to national security or public order, due to their activity or membership to a certain group.<sup>260</sup> In practice, according to IGI-DAI, unaccompanied children or persons in need of special procedural guarantees are not channelled to the accelerated procedure or the border procedure.<sup>261</sup>

In one case, however, a mother and her 2-year-old daughter who arrived in Romania on 6 September 2017 by boat were detained in the detention centre of **Arad** for the purpose of return. While in detention, they made an asylum application on 18 September 2017 and received a negative decision under the accelerated procedure, rejecting their claim as manifestly unfounded even though they are considered vulnerable persons under Romanian law. During the personal interview the mother stated that she wanted to get to any European country because she had heard that women there have more rights. The case officer chose not to ask any question regarding this statement and as a consequence did not explore a lead which could have indicated past persecution. Furthermore, when the applicant said she had claimed asylum due to the problems she had with her husband's creditors, the case officer did not go into details. The same situation was noted when the mother declared that her in-laws threatened to take her daughter away from her. The asylum application was wrongfully assessed in an accelerated procedure, as the applicants were vulnerable persons and according to the Asylum Act vulnerable persons may only be subjected to an accelerated procedure if they represent a threat to national security or public order, due to their activity or membership to a certain group. The decision of IGI-DAI does not mention the applicants as being vulnerable persons.<sup>262</sup>

The asylum seekers were represented by a specialised attorney and the Regional Court of **Timișoara** granted them access to the regular procedure, while after deliberations they were also granted refugee status.

## 3. Use of medical reports

### Indicators: Use of Medical Reports

1. Does the law provide for the possibility of a medical report in support of the applicant's statements regarding past persecution or serious harm?  
☒ Yes ☐ In some cases ☐ No
2. Are medical reports taken into account when assessing the credibility of the applicant's statements?  
☒ Yes ☐ No

Romanian legislation explicitly refers to the use of medical reports in asylum procedures. Article 49<sup>1</sup> of the Asylum Act provides that, where IGI-DAI deems it relevant for the assessment of an asylum

<sup>259</sup> Article 46 Asylum Act.

<sup>260</sup> Articles 75(2) and 84 Asylum Act.

<sup>261</sup> Information provided by IGI-DAI, 14 February 2018.

<sup>262</sup> IGI-DAI, Decision No 2768610/h/MA.

application, subject to the applicant's consent, the asylum seeker will be subject to medical examination concerning signs that might indicate past persecution or serious harm.<sup>263</sup> The applicant's refusal to undergo such a medical examination shall not prevent IGI-DAI from taking a decision on the application for international protection.<sup>264</sup>

Medical examinations shall be carried out by the legal medicine institutions, and the result shall be transmitted immediately to IGI-DAI. Coverage of expenses is ensured by the Ministry of Internal Affairs through the budget allocated to IGI in this respect.<sup>265</sup> If the medical examination is requested by IGI-DAI, it is therefore paid by IGI-DAI.

When no medical examination is carried out, IGI-DAI informs applicants that they may, on their own initiative and at their own cost, arrange for a medical examination concerning signs that might indicate past persecution or serious harm.<sup>266</sup> The results of the medical examination are assessed by IGI-DAI in corroboration with other elements of the application for international protection.<sup>267</sup>

Moreover, as a general rule, an applicant is not expected to provide written evidence but he or she is obliged to hand over to the authorities all the documents at his/her disposal which are relevant to his or her personal situation.<sup>268</sup> The Asylum Decree provides that the examination of the asylum application must be carried out individually and taking into account *inter alia* the relevant documents submitted by the applicant, including information on whether he or she has been subjected to persecution or the possibility of being persecuted or of being exposed to a risk of serious harm.<sup>269</sup> This means that the asylum seeker may submit relevant documents with regard to past persecution but also with a view to the possible future persecution and serious harm.

According to the legal counsellor in **Giurgiu**, if an asylum seeker claims to be a victim of torture, he or she is requested to bring documents proving this allegation. If the asylum seeker presents physical signs of torture, he or she is referred to the medical doctor. If he or she presents mental health issues, he or she is referred to ICAR Foundation.

In addition, the Asylum Act foresees that where there are serious doubts regarding the adult's asylum seeker legal capacity, specialised staff at IGI-DAI request a medical examination in this regard.<sup>270</sup> If the medical examination reveals lack of legal capacity of the asylum seeker, the case officer, in charge of the case, requests the appointment of a counsellor, under the same conditions as for Romanian citizens.<sup>271</sup> The asylum procedure is suspended until the appointment of a counsellor. During this period of suspension, the applicant benefits from the rights set out in the law.<sup>272</sup> The asylum application of an asylum seeker who has no capacity is filed by the counsellor after his or her appointment.<sup>273</sup> When conducting the personal interview, the counsellor will inform the asylum seeker of the purpose and possible consequences of this interview and will take the necessary steps to prepare the applicant for the interview.<sup>274</sup> The interview of an asylum seeker without capacity shall be carried out in the presence of the counsellor.<sup>275</sup>

According to the NGO personnel in **Galați, Rădăuți, Șomcuta Mare, Bucharest** and **Timișoara** there were no cases in which a medical examination under Article 49<sup>1</sup> was requested by IGI-DAI in 2018. In **Giurgiu**, IGI-DAI requested a medical examination prescribed in one case concerning a person

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<sup>263</sup> Article 49<sup>1</sup>(1) Asylum Act.

<sup>264</sup> Article 49<sup>1</sup>(2) Asylum Act.

<sup>265</sup> Article 49<sup>1</sup>(3) Asylum Act.

<sup>266</sup> Article 49<sup>1</sup>(4) Asylum Act.

<sup>267</sup> *Ibid.*

<sup>268</sup> Article 19(c) Asylum Act.

<sup>269</sup> Article 16(1)(b) Asylum Decree.

<sup>270</sup> Article 42(1) Asylum Act.

<sup>271</sup> Article 42(2) Asylum Act.

<sup>272</sup> Article 42(3) Asylum Act.

<sup>273</sup> Article 42(4) Asylum Act.

<sup>274</sup> Article 42(5) Asylum Act.

<sup>275</sup> Article 42(6) Asylum Act.

suffering from paranoid schizophrenia. The examination was carried out by IML. The asylum seeker was diagnosed with paranoid schizophrenia and on 13 February 2019 there was a court hearing for the appointment of a counsellor, who will assist him during the asylum procedure.

IGI-DAI accepts medico-legal expert opinions issued by officially recognised experts enrolled on the lists drawn up by the Ministry of Health and the Ministry of Justice, with the approval of the Board of Forensics.<sup>276</sup> ICAR Foundation is the NGO which currently provides psycho-social services to asylum seekers, through the project “Adaptable and accessible health services for asylum seekers in Romania” in partnership with AIDRom, funded through the AMIF national programme. According to the project description, psycho-social specialists identify vulnerable asylum seekers such as families in need, the elderly, persons with chronic illnesses, unaccompanied minors, victims of physical or psychological violence, and their needs. “Consequently, tests will be conducted to evaluate the general state of health of newly arrived asylum seekers, and general practitioners will provide medical examinations weekly.”<sup>277</sup> Through this project additional tests and medical investigations will be provided, as well as drug and non-drug treatments, as recommended by collaborating doctors, in order to accurately respond to the medical needs of asylum seekers in Romania.

ICAR Foundation also prepares psychological reports for applicants in line with the requirements set out in the Istanbul Protocol. The psychologists of this NGO, however, are not officially recognised medico-legal experts and as a consequence their opinions are not fully recognised by IGI-DAI or courts when assessing the asylum seeker’s credibility. These reports are scrutinised in the sense that they have to be corroborated by other evidence.

In general, asylum seekers submit either to IGI-DAI or the court medical reports from the country of origin. Practice in 2018 in relation to these reports is reported as follows:

**Timișoara:** According to the Director of the Regional Centre of Timișoara medical reports are read by the case officers but they have to be corroborated by further evidence. Two lawyers from Timișoara reported that they had no cases where medical reports drafted by ICAR Foundation were submitted to IGI-DAI or the court.

**Șomcuta Mare:** There were no medical reports prepared by ICAR Foundation.

**Galați:** According to the legal counsellor, the medical reports are taken into account when assessing the credibility of the asylum seeker but have to be corroborated by other evidence. In practice, the psychological reports of ICAR Foundation were never taken into consideration. All the reports submitted to IGI-DAI or the court were medical reports from the country of origin of the asylum seeker. IGI-DAI and the court have never ordered a medical examination. According to the legal counsellor no medical reports drafted by ICAR Foundation or other medical reports were used in 2018.

**Rădăuți:** In a case concerning an asylum seeker from Turkey, a number of medical documents attesting *inter alia* that he suffered an aneurysm surgery and photocopies of a person that presented violent marks on hands and legs were attached to the case file and were mentioned in the first instance decision. IGI-DAI concluded that the documents presented did not prove that the applicant had suffered persecution, but only constituted evidence of his medical status.<sup>278</sup>

<sup>276</sup> According to Article 34 Regulation implementing Government Ordinance 1/2000 approved by Government Decree 774/2000 as last amended by Government Decree 1204/2002, a medico-legal expert: (a) is a Romanian citizen and is fluent in Romanian; (b) has full legal capacity; (c) is a graduate of a medical university; (d) has a postgraduate specialisation courses in forensics; (e) practices this specialisation; (f) has not been convicted of an offence committed in circumstances related to his or her profession; and (g) is certified as an medico-legal expert at the Board of Forensics, available in Romanian at: <http://bit.ly/2B34lah>.

<sup>277</sup> ICAR Foundation, *Health services for the improvement of reception and residence conditions for asylum seekers in Romania*, available at: <http://bit.ly/2jtR4Xw>.

<sup>278</sup> IGI-DAI, Decision of 16 November 2018.

**Bucharest:** There were cases from 2017 where asylum seekers who presented signs of burns or open wounds underwent medical examinations paid by ICAR Foundation or themselves. The medical reports were submitted to IGI-DAI or the court and as a consequence they were considered vulnerable persons and in the overwhelming majority of cases were granted a form of protection.

**Giurgiu:** If a medical report from the country of origin is attached to the case file, the decision mentions this, however it does not take into consideration medical reports when assessing the asylum seeker's credibility. No medical reports prepared by ICAR Foundation were issued in Giurgiu.

#### 4. Legal representation of unaccompanied children

##### Indicators: Unaccompanied Children

1. Does the law provide for the appointment of a representative to all unaccompanied children?

☒ Yes

☐ No

The law provides for the appointment of a legal representative to an unaccompanied child.<sup>279</sup> IGI-DAI shall take the necessary steps, as soon as possible, to appoint a legal representative to assist the asylum seeker unaccompanied minor during the asylum procedure, including during the admissibility and Dublin procedure as the case may be.<sup>280</sup>

The law prescribes it is not necessary to appoint a legal representative for the asylum seeker unaccompanied minor if he or she is to reach the age of the majority within 15 days of the filing of the asylum application.<sup>281</sup>

The law also foresees that IGI shall:

- a. Ensure that the legal representative is given the opportunity to inform the unaccompanied child about the significance and possible consequences of the personal interview and, as the case may be, about how to prepare for the personal interview;
- b. Provide procedural legal information and information on procedures for withdrawing international protection, both to the child and to his or her legal representative;
- c. Inform the legal representative and the unaccompanied child, in a language that the latter understands or is reasonably supposed to understand, about the possibility of carrying out an age assessment. This information should also include details of the medical examination methods, the possible consequences of the outcome of the examination and the consequences of any refusal to undergo this examination.<sup>282</sup>

##### 4.1. Timing of appointment

Neither the Asylum Act nor the Child Protection Act prescribe an exact time limit for the appointment of the legal representative. However, the Asylum Act prescribes that after registering the asylum claim of the unaccompanied child, IGI-DAI shall immediately notify the competent authority, the Directorate General for Social Assistance and Child Protection (DGASPC) territorially competent for the area in which the Regional Centre is located, in order to start the appointment procedure of a legal representative. The Asylum Decree complements these provisions, stating that the officer in charge with the registration of the asylum claim of the unaccompanied child shall immediately notify the relevant DGASPC branch office in order to initiate the procedure of appointment of a legal representative.<sup>283</sup> Once established, the legal representation of the unaccompanied asylum-seeking child continues to operate for as long as the child benefits from international protection in Romania.<sup>284</sup>

<sup>279</sup> Articles 16 and 40 Asylum Act.

<sup>280</sup> Article 16(2) Asylum Act.

<sup>281</sup> Article 16(3) Asylum Act.

<sup>282</sup> Article 16(4) Asylum Act.

<sup>283</sup> Article 21(3) Asylum Decree.

<sup>284</sup> Article 40(1) Asylum Act.



In the case of an unaccompanied child who has expressed the intention to apply for asylum, in writing or orally, he or she shall be registered as an asylum seeker and the asylum application will be lodged at the moment of appointment of the legal representative.<sup>285</sup> The asylum procedure is suspended until the appointment of a legal representative. During the period of suspension of the asylum procedure, the child benefits from the rights provided by law.<sup>286</sup>

In practice, the appointment of legal representatives takes place as follows:

**Timișoara:** The notification is sent as soon as possible to DGASPC and the legal representative is appointed within 2-3 weeks; they present themselves within a few days or even on the same day of the notification being sent. DGASPC appoints the same person as legal representative, who is a legal counsellor.

**Șomcuta Mare:** IGI-DAI sends out the notification to DGASPC the second day after the unaccompanied child is accommodated in the Regional Centre. In general, the legal representative is appointed as soon as possible; no delays in its appointment have been reported. DGASPC usually appoints the same social assistants as legal representatives for unaccompanied asylum-seeking children. The appeals against negative decisions are prepared by NGO representatives or attorneys.

**Galați:** IGI-DAI sends a notification to DGASPC for the appointment of a legal representative within a maximum of 3 days or even on the day of registration of the asylum claim of the unaccompanied child, if possible. The legal representative presents him or herself immediately. The legal representative is not a legal counsellor.

**Rădăuți:** IGI-DAI sends a notification to DGASPC for the appointment of a legal representative. The procedure of appointment is not delayed. As of 2018 a new legal representative is appointed for unaccompanied children.

**Bucharest:** As of 2017, the notification is transmitted to DGASPC when the unaccompanied asylum-seeking child is accommodated in the Regional Centre. In some cases, NGOs have to insist in order for DGASPC to provide an answer to IGI-DAI's request. Legal representatives were even appointed after 1.5 to 2 months in some cases.

Following the local elections of 2016 the Director of DGASPC changed and it was temporarily impossible to reach the institution. For two weeks, notifications were sent and left without any answer, while several redundancies were also reported in the period September-November 2016. As a result, 3 unaccompanied children had to wait for their decision from October 2016 until March-April 2017.

**Giurgiu:** As of 2018, DGASPC appoints two new legal counsellors to act as legal representatives.

According to Save the Children Romania, practice varies from case to case. There have been cases where DGASPC appointed the legal representative in 1-2 months. It was reported that in case of a number of unaccompanied children accommodated in the Regional Centre of **Bucharest**, some of whom were accommodated in the centre for months, IGI-DAI and NGOs were unaware of whether a legal representative was appointed, as they were not receiving the state financial allowance for children. As a consequence, Save the Children addressed DGASPC to inquire about their situation.

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<sup>285</sup> Article 39(3) Asylum Act.

<sup>286</sup> Article 40(2) Asylum Act.

## 4.2. Qualifications and duties of the legal representative

According to the Child Protection Act the legal representative is either the parent or person designated, according to the law, to exercise the rights and to fulfil the parental obligations towards the child.<sup>287</sup> This means that the legal representative substitutes the absent parents.

According to the Asylum Act, the interests of a child are defended by his or her legal representative.<sup>288</sup> The unaccompanied child is immediately informed of the appointment of the legal representative. The legal representative performs his or her duties in accordance with the principle of the best interests of the child and has the necessary expertise for this purpose.<sup>289</sup>

The Child Protection Act provides that, in order to adequately support the interests of the child, DGASPC designates a person with legal or social assistance background from its staff or an authorised private body, to support the rights of the child and to participate, together with the child to the entire refugee status determination procedure.<sup>290</sup>

The legal representative has to be present at the interview with the unaccompanied child,<sup>291</sup> and may intervene at the end of the interview.<sup>292</sup> The legal representative informs the unaccompanied child asylum seeker of the purpose and possible consequences of the personal interview and takes the necessary steps to prepare the child for it.<sup>293</sup> In the case of a child, the appeal is filed by his or her legal representative. A child who has reached the age of 16 may file the complaint in his or her own name.<sup>294</sup>

The legal representative also has to submit the request of enrolment of the unaccompanied child to preparatory courses.<sup>295</sup>

In **Bucharest**, it has been reported that a male beneficiary of international protection is appointed as a legal representative for several asylum-seeking children. This practice has been in place for 2-3 years. According to Save the Children, this did not occur in 2018.

With the exceptions of the legal representative in **Galați** and **Șomcuta Mare**, representatives consider that their mandate is only to assist the child in administrative and judicial procedures related to the asylum claim, i.e. to attend interviews and court hearings, and as a consequence this mandate ends when the asylum procedure is completed. Legal representatives consider that is not their mandate to ensure the well-being of the unaccompanied child.

According to the legal counsellor in **Giurgiu** the situation of legal representatives improved in 2018. The new legal representatives collaborate with the NGOs and ask for guidance and advice from NGO representatives. However, the appeals against negative decisions are prepared by JRS.

Several issues regarding legal representatives have been reported by NGO workers.

The legal representative who was appointed by DGASPC to represent unaccompanied children in **Rădăuți** was substituted by a male representative. The legal representative only attends the interviews and court hearings and does not file appeals against negative decisions.

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<sup>287</sup> Article 4(g) Child Protection Act.

<sup>288</sup> Article 39(1) Asylum Act.

<sup>289</sup> Article 16(2^1) Asylum Act.

<sup>290</sup> Article 77(3) Child Protection Act.

<sup>291</sup> Article 47(1) Asylum Act.

<sup>292</sup> Article 23(1) Asylum Decree.

<sup>293</sup> Article 47(2) Asylum Act.

<sup>294</sup> Articles 56(2) and 66(2) Asylum Act.

<sup>295</sup> Article 6(4) Asylum Decree.



On the other hand, in **Timișoara**, the legal representative only assists the unaccompanied child during the interviews, he appeals the negative decision of IGI-DAI and assists the child in the court proceedings, but does not fulfil any other task.

According to Save the Children Romania, the unaccompanied child usually meets for the first time his or her legal representative at the interview and not beforehand. The legal representative only shows up at interviews and court hearings, usually without establishing any relation with the minor. DGASPC considers that the legal representative does not need to replace the absent parent and does not fulfil the duties of a guardian. It was also mentioned that the duties of the legal representative end when the procedure is finalised. When a form of protection is granted to the unaccompanied child, a different legal representative is appointed, but with a gap as the child's best interests are not represented by anyone.

According to UNHCR Romania, the lack of active involvement of legal representatives in the asylum procedure is due to the lack of clarity of the current legislation regarding the duties of the legal representative. There is no coherence between the 2 legal acts (Asylum Act and Child Protection Act) and no guidelines regarding the role of the legal representative in the asylum procedure. This was confirmed by Save the Children.

Save the Children noted that legal representatives have attended several conferences organised by the NGOs active in the field of asylum. They are therefore are very much aware of all the concerns that are raised regarding the best interests of the child.

The issue of inefficient collaboration with DGASPC in the protection of unaccompanied children was discussed during a meeting between the Ombudsman's representatives and IGI. IGI stated that they are drafting a Protocol that will establish different aspects regarding the collaboration of the Regional Centres with DGASPC in order to remedy this situation.<sup>296</sup>

## E. Subsequent applications

### Indicators: Subsequent Applications

1. Does the law provide for a specific procedure for subsequent applications? ☒ Yes ☐ No
2. Is a removal order suspended during the examination of a first subsequent application?
  - ❖ At first instance ☒ Yes ☐ No
  - ❖ At the appeal stage ☐ Yes ☒ No
3. Is a removal order suspended during the examination of a second, third, subsequent application?
  - ❖ At first instance ☐ Yes ☒ No
  - ❖ At the appeal stage ☐ Yes ☒ No

A subsequent application is considered as an application following a final termination or rejection decision on the former application, subsequent application or in case of a decision on cessation or withdrawal of the international protection granted.<sup>297</sup> New elements or circumstances have to be submitted in order for a subsequent application to be admissible.<sup>298</sup>

Therefore the Asylum Act prescribes that access to a new asylum procedure shall be granted if one of the following conditions is met:<sup>299</sup>

- a. The applicant relies on new elements which could not be presented for reasons beyond his or her control and which occurred during or after the completion of the previous procedure. The applicant is obliged to prove the existence of new elements invoked and impossibility of their submission until the date of application for access to a new asylum procedure. The new

<sup>296</sup> Ombudsman, *Annual Report 2018*, 601-602.

<sup>297</sup> Article 88(1) b) Asylum Act.

<sup>298</sup> Article 88(2)(a)-(b) Asylum Act.

<sup>299</sup> *Ibid.*

elements invoked cannot be the result of actions brought by the applicant in order to obtain a form of international protection from the Romanian state;

- b. From the date of completion of the previous asylum procedure, there have been political, social, military or legislative changes in the country of origin, likely to have serious consequences for the applicant.

For persons whose applications are considered to have been tacitly withdrawn, i.e. persons who have left Romania and moved on to another EU Member State, and the asylum procedure has been terminated, the asylum procedure may be continued if the person makes an asylum claim within 9 months of the decision to close the file, issued in case of implicit withdrawal.<sup>300</sup> If the time limit has expired, the asylum claim is considered a subsequent application.

If the persons have left the territory of the EU or have been removed to a third country or the country of origin, as set out in Articles 19(2) and (3) of the Dublin Regulation, and their asylum procedure has been terminated by a decision closing the file, a new claim lodged in Romania is not deemed a subsequent application.<sup>301</sup>

Therefore persons who expressly withdraw their asylum applications and have not left the territory of the EU or have not been removed to a third country or to the country of origin cannot continue their asylum procedure in case they return to Romania. As a consequence they will have to submit new elements or circumstances.

The subsequent application should be submitted personally, with the exception of cases where the foreigner is in detention, is in pre-trial detention or serving a sentence.<sup>302</sup>

When a subsequent application is registered IGI-DAI shall inform the IGI-Migration Directorate regarding the granting of permission to remain on the Romanian territory, to the applicant.<sup>303</sup> The law foresees that if the subsequent application is personally submitted by the foreigner and the previous asylum application is finalised, the foreigner is allowed to remain on the territory of Romania for a period of 5 days from the date of the application for granting access to a new asylum procedure was registered.<sup>304</sup> The law does not impose a time limit on submitting a subsequent application or explicit limitation on the number of asylum applications that may be lodged. However, the right to remain does not apply in the case of a second subsequent claim and as a consequence the applicant is not granted access to territory.<sup>305</sup> The same applies where the documents from the file show that the application is made abusively in order to prevent the removal of the foreigner from the territory of Romania.<sup>306</sup>

The law provides for a safeguard against *refoulement*, stating that these cases shall apply only if the enforcement of the return decision is considered to be without prejudice to the principle of *non-refoulement*.

In these cases a decision is issued as soon as possible justifying the non-granting of the permission to remain on the Romanian territory. This decision shall be communicated directly to the applicant, who has been informed of the date on which he or she must present him or herself at IGI-DAI or by post.<sup>307</sup> This decision may be appealed within 2 days from the day it is communicated.<sup>308</sup> The competent court is the Regional Court territorially competent for the area in which IGI-DAI issued the decision.<sup>309</sup>

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<sup>300</sup> Article 94<sup>1</sup>(1)(b) Asylum Act.

<sup>301</sup> Article 94<sup>1</sup>(1)(a) Asylum Act.

<sup>302</sup> Article 88(1)(a) and (3) Asylum Act.

<sup>303</sup> Article 40(1) Asylum Decree.

<sup>304</sup> Article 89(1) Asylum Act.

<sup>305</sup> Article 89(2)(b) Asylum Act. A foreigner submits a subsequent application after a previous application of this type has been rejected as inadmissible or if, after granting access to a new asylum procedure, his or her application has been rejected as manifestly unfounded.

<sup>306</sup> Article 89(2)(a) Asylum Act.

<sup>307</sup> Article 89(3) Asylum Act.

<sup>308</sup> Article 89(4) Asylum Act.

<sup>309</sup> Article 89(5) Asylum Act.

The assessment of the subsequent application is done solely on the basis of a written submission. The law does not provide for a preliminary interview. IGI-DAI delivers a decision within 5 days from the date when the application was registered, on the basis of the reasoned application, of the documentation submitted by the foreigner and in relation to the elements existing in his or her personal file.<sup>310</sup> The case officer may issue a decision by which: (a) grants access to a new asylum procedure; or (b) dismisses the application as inadmissible.

The decision is communicated to the foreigner immediately, in writing, by direct communication by the representatives of IGI-DAI or by post, to the last declared residence thereof. The decision communicated shall be accompanied by written information in Romanian language and in a language that the applicant understands or is reasonably supposed to understand, of the admission or rejection solution of his or her application and the conditions under which the decision can be challenged.<sup>311</sup> The decision may also be communicate, to the lawyer or representative of the NGO who legally represents the applicant, to the extent that the applicant has expressly stated this.<sup>312</sup>

Rejected subsequent applications may be appealed before the territorially competent Regional Court within 10 days of communication.<sup>313</sup> Judicial review of rejected subsequent applications has no automatic suspensive effect.<sup>314</sup> The foreigner may ask for permission to stay on the territory of Romania. The application for permission to remain on the territory of Romania is solved as a matter of urgency by the competent court, which shall pronounce a final decision, in the council chamber, with the parties being summoned.<sup>315</sup> In this case the foreigner has the right to remain on the territory of Romania until the court has ruled on this request.<sup>316</sup> The permission to remain on the territory of Romania shall be granted until the moment of the court's pronouncement on the appeal.<sup>317</sup>

Under Article 94(1) of the Asylum Act the court assesses the appeal without hearing the foreigner, within 30 days, and delivers a reasoned decision, by which it either (a) rejects the complaint, or (b) admits the complaint, grants access to a new asylum procedure and orders IGI-DAI to examine the application in the regular procedure. The decision of the court is irrevocable.<sup>318</sup>

In **Galați**, in some cases the foreigners were heard by the court. In **Giurgiu**, according to the legal counsellor, in most of the cases the applicant does not submit new elements and practically the application is the same with the previous ones.

Even though foreigners who make a subsequent application have the right to be counselled and assisted by a representative of NGOs, Romanian or foreign, at any stage of the procedure, the projects funded by the national AMIF programme do not cover counselling and assistance for these applicants, because they are not considered to be asylum seekers. CNRR representatives provide counselling and assistance on a voluntary basis. Under the project funded by UNHCR, JRS may also provide counselling and assistance to persons who apply for subsequent application and may appoint an attorney if it is a case that might lead to a practice-altering decision.

In **Timișoara** all the subsequent applications lodged in 2018 were dismissed by IGI-DAI. Only in one case concerning a family (husband and wife) from Iran did the Regional Court of Timișoara grant access to the regular procedure. In **Galați** there were two subsequent applications, one from Iraq and one from Moldova. The latter was deemed admissible. In **Rădăuți**, and **Șomcuta Mare** there were no subsequent applications in 2018. In **Giurgiu** all the subsequent applications lodged in 2018 were also dismissed.

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<sup>310</sup> Article 91(1) Asylum Act.

<sup>311</sup> Article 91(3) Asylum Act.

<sup>312</sup> Article 91(4) Asylum Act.

<sup>313</sup> Article 93(1) and (2) Asylum Act.

<sup>314</sup> Article 93(3) Asylum Act.

<sup>315</sup> Article 93(4) Asylum Act.

<sup>316</sup> Article 93(5) Asylum Act.

<sup>317</sup> Article 93(6) Asylum Act.

<sup>318</sup> Article 94(2) Asylum Act.

According to the legal counsellor there were many subsequent applications lodged by Pakistani nationals, some lodged by Sri Lankan nationals and also by Iraqis.

A total of 230 persons lodged subsequent applications in 2018:

Subsequent applicants: 2018	
Country	Number
Iraq	78
India	31
Pakistan	20
Iran	18
Afghanistan	13
Other	70
<b>Total</b>	<b>230</b>

Source: IGI-DAI, 5 March 2019.

## F. The safe country concepts

### Indicators: Safe Country Concepts

1. Does national legislation allow for the use of “safe country of origin” concept? ☒ Yes ☐ No
  - ❖ Is there a national list of safe countries of origin? ☐ Yes ☒ No
  - ❖ Is the safe country of origin concept used in practice? ☐ Yes ☒ No
2. Does national legislation allow for the use of “safe third country” concept? ☒ Yes ☐ No
  - ❖ Is the safe third country concept used in practice? ☒ Yes ☐ No
3. Does national legislation allow for the use of “first country of asylum” concept? ☒ Yes ☐ No

### 1. Safe country of origin

Article 77(1) of the Asylum Act defines the concept of “safe countries of origin” as the EU Member States, as well as other states established by order of the Ministry of Internal Affairs, on the basis of a list proposed by IGI, taking into account a number of criteria, *inter alia*:

- a. The observance of human rights and fundamental freedoms, as provided for and guaranteed by the ECHR, as subsequently amended, hereinafter referred to as the European Convention and/or the ICCPR, and/or the Convention against Torture, in particular the rights from which no derogation is permitted, in accordance with Article 15(2) ECHR;
- b. The functioning of democratic principles, political pluralism and free elections, as well as the existence of functional democratic institutions ensuring the guarantee and respect of fundamental human rights;
- c. Effective mechanisms for reporting violations of human rights and fundamental freedoms;
- d. Compliance with the principle of *non-refoulement*, in accordance with the provisions of the Geneva Convention;
- e. Existence of stability factors.

When designating safe countries of origin, the government has to consider information sources from other Member States, EASO, UNHCR, the Council of Europe and other international organisations.<sup>319</sup> IGI shall periodically review the situation in third countries designated as safe countries of origin and, on

<sup>319</sup> Article 77(2) Asylum Act.

the basis of the resulting information, update the list.<sup>320</sup> The asylum application of a person who comes from a safe country of origin is rejected as manifestly unfounded, unless the factual situation or the evidence presented by the applicant shows the existence of a well-founded fear of persecution or a risk of serious harm. In this case, the applicant shall be given access to the regular procedure.<sup>321</sup>

No applications were rejected on the basis of the safe country of origin concept in 2018.<sup>322</sup>

## 2. Safe third country

Article 96 of the Asylum Act states that a European safe third country is a European country which is not a Member State of the European Union and:

- a. Has ratified and respected the provisions of the Refugee Convention without any geographical limitation;
- b. Has an asylum procedure provided for by domestic legislation;
- c. Has ratified the ECHR and complies with its provisions, including standards on effective remedies.

The concept of European safe third country may be applied only if the applicant has attempted to enter or has illegally entered Romania from such a country and this country has agreed to his or her readmission.<sup>323</sup>

Under Article 97(1) of the Asylum Act, a safe third country is considered to be a country in respect of which there are sufficient guarantees that the rights of an applicant for international protection are respected on its territory in accordance with the following principles:

- a. Life and freedom are not threatened for reasons of race, religion, citizenship, membership of a particular social group or political opinion;
- b. There is no serious risk for the purposes of this law;
- c. The principle of *non-refoulement* in accordance with the Refugee Convention is respected;
- d. The prohibition of expulsion to a state where the person may be subjected to torture or cruel, inhuman or degrading treatment is respected;
- e. There is a possibility to request refugee status and, if this status is granted, to benefit from protection in accordance with the Refugee Convention.

Pursuant to Article 97(2), IGI-DAI rejects an asylum application as inadmissible where these criteria are applicable, where the third country has agreed to readmit the applicant and where there is a link between the applicant and the third country, on the basis of which it may reasonably be expected that the country is safe in his or her personal situation.

Although the law prescribes that a list of the safe third countries shall be published in the Official Gazette,<sup>324</sup> there is no such list available therein. NGO practitioners are also unaware of the existence of such a list. The Director of the Regional Centre of Timișoara also had difficulties talking about the content of this list, mentioning that the list is published by the Ministry of Foreign Affairs. UNHCR stated that there is no list of safe third countries and the concept has not been applied in practice according to information available to them.

According to the law, ratification and respect for the provisions of the Refugee Convention without any geographical limitation is one of the criteria which has to be fulfilled by the country in order to be considered a European safe third country. This criterion does not figure in the conditions for a “safe third country”.

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<sup>320</sup> Article 77(3) Asylum Act.

<sup>321</sup> Article 77(4) Asylum Act.

<sup>322</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>323</sup> Article 96(2) Asylum Act.

<sup>324</sup> Article 97^2 Asylum Act.

When claims are rejected as inadmissible on the ground of European safe third country, safe third country or first country of asylum, IGI-DAI must inform the authorities in the respective country in the language of the safe third country stating that the claim of the applicant was not examined on the merits.<sup>325</sup>

One application was dismissed on the basis of the safe third country concept in 2018.<sup>326</sup>

### 3. First country of asylum

Article 95 of the Asylum Act provides that if the applicant has previously crossed a third country which has granted him or her protection, this country is considered a first country of asylum on the basis of the following criteria:

- a. Life and freedom are not threatened for reasons of race, religion, citizenship, membership of a particular social group or political opinion;
- b. There is no serious risk of harm;
- c. The principle of *non-refoulement* in accordance with the Refugee Convention is respected;
- d. The prohibition of expulsion to a state where the applicant is at risk of torture or cruel, inhuman or degrading treatment is respected;
- e. The protection granted subsists.

The law only refers to “protection”, without specifying whether the applicant must be granted refugee status or enjoy sufficient protection as per Article 35 of the recast Asylum Procedures Directive.

The criteria listed under Article 38(1) of the recast Asylum Procedures Directive with regard to “safe third country” also apply with regard to the first country of asylum concept.

One application was dismissed on the basis of the first country of asylum concept in 2018.<sup>327</sup>

## G. Information for asylum seekers and access to NGOs and UNHCR

### 1. Provision of information on the procedure

#### Indicators: Information on the Procedure

1. Is sufficient information provided to asylum seekers on the procedures, their rights and obligations in practice? ☒ Yes ☐ With difficulty ☐ No
- ❖ Is tailored information provided to unaccompanied children? ☐ Yes ☒ No

#### 1.1. General information on rights, obligations and the procedure

The Asylum Act provides that the asylum seeker has the right to be informed, at the time of submission of the asylum application or later, within 15 days from the filing of the application, in a language which he or she understands or is reasonably supposed to understand, regarding the procedure, his or her rights and obligations during the asylum procedure, the consequences of non-compliance with these obligations and the lack of cooperation with the competent authorities, as well as the consequences of an explicit or implicit withdrawal of the asylum application.<sup>328</sup>

Competent officials are also obliged to inform asylum seekers about how they can contact non-governmental organisations and UNHCR, and how to obtain legal assistance and representation.<sup>329</sup>

<sup>325</sup> Article 97^1(4) Asylum Act.

<sup>326</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>327</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>328</sup> Article 17(1)(f) Asylum Act.

<sup>329</sup> Article 2(2) Asylum Decree.

The information is to be provided in writing by the official responsible for receiving the asylum application, according to template established by order of the Director-General of IGI.<sup>330</sup> Where necessary for the proper understanding of the information, this may also be communicated orally at the preliminary interview.<sup>331</sup>

In practice, the modalities of information provision in the different Regional Centres are as follows:

**Timișoara:** According to the JRS representative, IGI-DAI provides information when the asylum application is filled and when the asylum seekers are fingerprinted and photographed. Unfortunately, there is no interpreter at this stage and, if the asylum seeker does not speak English, the whole interaction is limited to sign language and direction on where to sign different documents drafted in Romanian. The director of the Regional Centre stated that the information is provided in writing when the asylum application is registered; IGI-DAI has leaflets in 10 languages. He also mentioned that on the day following their arrival, integration officers hold an information session with the newly arrived applicants, with the help of an interpreter or an asylum seeker who speaks English.

With regard to children, the JRS representative reported that she has not seen any difference in interactions with IGI-DAI compared to adults.

On the other hand, the NGO representatives stated that they are not aware of information sessions being held by the integration officers for new arrivals. They only know of a weekly meeting with all the residents and the NGO representatives. During this meeting the integration officers inform the asylum seekers of the rules of the centre, their rights and obligations.

CNRR also distributes leaflets on the asylum procedure, rights and obligations, and have also developed leaflets on the specially designed closed spaces of the centre (see [Place of Detention](#)).

**Șomcuta Mare:** Asylum seekers receive leaflets with their rights and obligations. The leaflets are available Romanian, English and Arabic but not in Kurdish, which concerns the majority of asylum seekers in the current period. In 2018 no information sessions were held with asylum seekers. Unaccompanied children are counselled by an IGI-DAI officer together with the legal representative and with the help of an interpreter at the preliminary interview. Counselling serves to explain to children the fact that they will benefit a legal representative, and the scope of the representative's mandate.

**Rădăuți:** Asylum seekers receive leaflets on their rights and obligations and the house rules (ROI) when they arrive in the centre. At the access control point of the centre, there is information on the NGOs present. In general, asylum seekers are referred to NGOs by IGI-DAI staff. In contrast to 2017, information sessions were not held in 2018. Subsequently, the information about asylum seekers' rights and obligations and the procedure is provided by the NGOs individually or during a group counselling session, as the case may be.

**Galați:** Asylum seekers received leaflets on the procedure, their rights and obligations upon registration. These leaflets are user-friendly and easy to read. In cases of groups of asylum seekers arriving in the centre, the director of the Regional Centre or other officers present general information on the procedure, rights and obligations, with the assistance of an interpreter. In case of asylum seekers who are not arriving in groups the general information is provided with the help of a person accommodated in the centre who speaks English. IGI-DAI also informs NGO representatives of new arrivals. Subsequently, NGOs repeat the information provided by IGI-DAI to ensure it is effectively understood by applicants.

**Bucharest:** In 2017, in the Regional Centre **Stolnicu**, the legal counsellor reported that the obligation of IGI-DAI to inform the asylum seekers is not respected in practice, as asylum seekers state that the information they receive is minimal and not necessarily related to the procedure. Due to an explicit lack of interpreters, IGI-DAI cannot provide information to each beneficiary, especially when asylum seekers

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<sup>330</sup> Article 2(1) Asylum Decree.

<sup>331</sup> *Ibid.*



speaking different dialects. Therefore the information provided after lodging an asylum application is limited to: the obligation on the individual to present him or herself at the interview or to extend their visa, the fact that he or she will be accommodated in the Bucharest Regional Centre or that he or she must go through the medical check-up, which often does not take place. Whenever this information is provided, it is given orally and often with the help of other asylum seekers present in the centre who are available to help out or with interpreters who are there for the interview and have free time.

In 2017, unaccompanied children were counselled by the integration officer regarding the fact that they will have a legal representative, that a social investigation will be conducted, and that they may or may not be moved to a DGASPC centre. In addition, NGOs provided them with more information and monitoring them as they are vulnerable persons and receive more attention.

IGI-DAI previously had leaflets, which were prepared by UNHCR or CNRR. However, these have not been distributed for more than two years. There are also posters with rights and obligations related to the asylum procedure, translated into several languages, but in most of the cases asylum seekers do not read them.

NGOs provide information through counselling sessions, posters and sometimes leaflets. However, due to the fact that the asylum seekers in most of the cases are not reading the leaflets, NGOs are focusing on individual or group counselling.

**Giurgiu:** According to the legal counsellor, during the sessions in which she participated, asylum seekers receive leaflets on their rights and obligations in English or Arabic after going through medical check-up. During the preliminary interview, asylum seekers are offered general information regarding the asylum procedure and their rights and obligations. According to the legal counsellor, JRS brought a monitor that plays the rights and obligations in different languages; this is placed in the hallway. JRS, ICAR Foundation and AIDRom representatives organise collective information sessions when a new group of asylum seekers arrives in the centre.

The majority of respondents pointed out that the written information they receive from IGI-DAI or NGOs is not very effective as most asylum seekers are illiterate or have difficulty reading through information which is lengthy, complex and as a result difficult to comprehend. Thus, asylum seekers prefer face-to-face counselling with an NGO representative in order to understand the steps of the asylum procedure. The information leaflets are not adapted to the asylum seekers' level of education or knowledge. Usually the leaflets reiterate the provisions of the Asylum Act.

In practice, respondents reported that there is no specifically tailored information provided to unaccompanied asylum-seeking children. In most of the cases they are informed in the same way as adults, while they are also informed that they will have a legal representative. In general, unaccompanied children do not understand what this means. UNHCR also stated that there is a lack of accessible and adequate information materials for asylum-seeking children. The JRS representative confirmed that this problem persists as of 2018.

## 1.2. Information on the Dublin procedure

IGI-DAI has the obligation to inform the asylum seeker of the content of the common leaflet drawn up by the European Commission.<sup>332</sup> The competent officer of IGI-DAI communicates the information contained in the common leaflet, drawn up according to Article 4(3) of the Dublin Regulation.<sup>333</sup> If the applicant is an unaccompanied minor, the designated officer shall provide him or her, in a manner appropriate to his or her level of understanding, with the information contained in the special information leaflet drawn up by the European Commission, supplemented with additional specific information for Romania.

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<sup>332</sup> Article 118 Asylum Act.

<sup>333</sup> Article 118(1) Asylum Act.



**Bucharest:** The information provided on the [Dublin: Procedure](#) is basic, as IGI-DAI lacks staff, time and interpreters. The information is provided by the integration officer. In 2017, asylum seekers received more detailed information about the Dublin procedure from NGOs.

**Giurgiu:** Asylum seekers receive the common leaflet at the preliminary interview and, if they have questions regarding the Dublin procedure, the officer answers them. They are briefly informed on the way the responsible Member State is determined and are told that they have to wait for a period of 1-3 months for a final answer. However, asylum seekers request more information about this procedure from NGOs.

**Șomcuta Mare:** Asylum seekers are informed at the beginning of the Dublin procedure about what this procedure entails. Generally information is provided when a specific issue arises.

**Rădăuți:** Asylum seekers receive the common leaflet and an information note stating that the Dublin procedure was triggered and specifying the Member State to which a request was sent.

**Galați:** JRS reported that the majority of the asylum seekers are well informed about the Dublin procedure. They receive general information about the Dublin procedure and the common leaflet upon registration. Asylum seekers subject to the Dublin procedure are provided with the common brochure. Where family unity criteria are applicable, asylum seekers are informed by IGI-DAI of the documents they have to present. If they require more information, they are referred to NGOs.

In practice, asylum seekers in most of the Regional Centres are informed orally and in writing of the fact that the Dublin procedure has started, and they are handed the common leaflet. The information is provided with the help of an interpreter in all the centres, with some exceptions reported by the counsellor in **Bucharest** in 2017. In Bucharest asylum seekers are informed about the country to which a Dublin request was addressed in this regard. The legal counsellor in Bucharest stated that for this kind of procedure IGI-DAI does not use an interpreter to communicate the information to the asylum seeker, but the majority of them understand the procedure and that they will be transferred to the responsible Member State eventually.

In **Timișoara**, if, after checking the fingerprints in Eurodac, IGI-DAI finds a match with the data introduced by another Member State, the asylum seeker is informed orally that he or she is subject to the Dublin procedure. IGI-DAI mentions the country which country has been contacted. They also receive leaflets, which according to the Director of the centre often end up in the bin.

In **Șomcuta Mare**, asylum seekers are also informed orally and in writing that the Dublin procedure has started and about the country contacted. In **Rădăuți**, IGI-DAI informs asylum seekers in writing that they are subject to the Dublin procedure, provides them the common leaflet, and specifies the Member State which has been contacted, with the assistance of an interpreter. In **Giurgiu**, they are also informed orally of the fact that a Dublin procedure has been initiated, while the authorities sometimes also mention the country contacted. In **Galați**, however, asylum seekers are informed in writing about the country which has been contacted.

If the applicant is an unaccompanied child, the appointed official shall inform him or her, in a manner appropriate to his or her level of understanding, the information contained in the special information brochure drawn up by the European Commission according to Article 4(3) of the Dublin Regulation, supplemented with additional specific information for Romania. The legal representative of the unaccompanied child confirms by signature that the information has been provided.<sup>334</sup>

Respondents were unaware of the use of a special information leaflet for unaccompanied children pursuant to Article 4(3) of the Dublin Regulation. This may be due to various reasons e.g. the lack of cases of unaccompanied children in **Șomcuta Mare**, or the fact that unaccompanied children were not subject to the Dublin procedure in **Galați** and **Giurgiu**. In **Galați**, the legal representative is also present

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<sup>334</sup> Article 118(2) Asylum Act.

when the information is provided to the unaccompanied child. The legal representative also explains to the child what the Dublin procedure entails and what documents he or she has to present to the authorities.

Save the Children mentioned that information on the Dublin Regulation is mainly provided to children by the NGOs in the Regional Centres.

## 2. Access to NGOs and UNHCR

### Indicators: Access to NGOs and UNHCR

1. Do asylum seekers located at the border have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No
2. Do asylum seekers in detention centres have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No
3. Do asylum seekers accommodated in remote locations on the territory (excluding borders) have effective access to NGOs and UNHCR if they wish so in practice? ☐ Yes ☒ With difficulty ☐ No

According to the Asylum Act, asylum seekers located at the border or in detention centres have the right to be counselled and assisted by a representative from non-governmental Romanian or foreign organisations and to contact and receive assistance from an official of UNHCR at any stage of the asylum procedure.

In practice, asylum seekers located at the border have difficulties in accessing NGO services and assistance. Access depends on whether the Border Police or IGI-DAI inform the NGOs of the presence of asylum seekers at the border-crossing check points. In relation to asylum seekers detained in detention centres, access to such services is not systematically ensured as NGOs, namely CNRR, do not have regular office hours in these centres.

In cases of asylum seekers accommodated outside the reception centres, access to NGOs is determined by the information which was provided to them by the authorities and NGOs, if they exchanged contact details.

UNHCR Romania is contacted by the asylum seekers accommodated in one of the Regional Centres through their implementing partner JRS or directly via email, phone or walk-in interviews at its office.

## H. Differential treatment of specific nationalities in the procedure

### Indicators: Treatment of Specific Nationalities

1. Are applications from specific nationalities considered manifestly well-founded? ☒ Yes ☐ No  
❖ If yes, specify which: Syria
2. Are applications from specific nationalities considered manifestly unfounded?<sup>335</sup> ☐ Yes ☒ No  
❖ If yes, specify which:

Romania mainly awards refugee status and subsidiary protection to applicants from countries such as **Syria** and **Iraq**, who made up for the majority of positive decisions in 2017. However, the trend with regard to Iraqi nationals changed during 2017 and IGI-DAI also started rejecting applicants from this country. The recognition rate for Iraq was 66.4% in 2017 but dropped to 35% in 2018. In **Timișoara** it was reported that Syrian nationals are granted a form of protection while all claims by Iraqi nationals are rejected. This practice was also reported in **Rădăuți**.

<sup>335</sup> Whether under the “safe country of origin” concept or otherwise.

## Reception Conditions

### A. Access and forms of reception conditions

#### 1. Criteria and restrictions to access reception conditions

##### Indicators: Criteria and Restrictions to Reception Conditions

1. Does the law make material reception conditions to asylum seekers in the following stages of the asylum procedure?
 

❖ Regular procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Dublin procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Admissibility procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Border procedure	<input type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Accelerated procedure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ First appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Onward appeal	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input type="checkbox"/> No
❖ Subsequent application	<input type="checkbox"/> Yes	<input type="checkbox"/> Reduced material conditions	<input checked="" type="checkbox"/> No
  
2. Is there a requirement in the law that only asylum seekers who lack resources are entitled to material reception conditions?
 

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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Asylum seekers who do not have means of subsistence are entitled to reception conditions from the moment they have expressed their intention to apply for asylum until the completion of the asylum procedure and the expiry of their right to stay in Romania.<sup>336</sup> Asylum seekers have the right to stay in Romania until the expiration of a period of 15 days after the end of the asylum procedure, except when the asylum application was rejected after being examined in the accelerated procedure or in the border procedure, in which case the person is ordered to leave Romania as soon as the asylum procedure has been completed. Accelerated and border procedures are concluded from the date of delivery of the court's decision if an appeal has been lodged, or from the expiration of the deadline for filing the appeal.<sup>337</sup> In the Dublin procedure the right to remain on the territory of Romania ceases on the date of the transfer.<sup>338</sup>

Subsequent applicants do not have the right to material reception conditions.<sup>339</sup>

At the time of submission of an application for material reception conditions and whenever necessary, IGI-DAI shall analyse the provision of material reception conditions on a case-by-case basis, taking into account the material and financial means possessed by the applicant.<sup>340</sup> If IGI-DAI finds that the applicant has the means to ensure an adequate standard of living and can contribute to the costs of material reception conditions and health care, it may suspend the granting of material reception conditions and may require reimbursement and impose future contribution to those costs.<sup>341</sup>

Although according to the law applicants are entitled to reception conditions from the moment they express the intention to seek asylum, in practice they are not accommodated in the reception centres until the asylum claim is registered.

In **Timișoara**, it occurred that asylum seekers were allocated to receive the financial allowance 7 days after their asylum application had been registered. In practical terms this means that IGI-DAI draws up a list of beneficiaries of the financial allowance twice a month; at the beginning of the month and in the middle. When this list is drawn, integration officers inform the asylum seekers accordingly. Within 3 days, eligible asylum seekers may obtain their financial allowance from IGI-DAI. If they have not obtained the allowance within that period, asylum seekers have to make a request duly explaining the

<sup>336</sup> Article 56(6) Asylum Decree.

<sup>337</sup> Article 17(7) Asylum Act.

<sup>338</sup> Article 17(1)(a) Asylum Act.

<sup>339</sup> Article 88<sup>1</sup> Asylum Act.

<sup>340</sup> Article 55(8) Asylum Decree.

<sup>341</sup> *Ibid.*

reasons for their delay. Furthermore, some of the asylum seekers could not obtain their financial allowance due to the fact that they were not issued temporary identity documents (see [Registration](#)), but only a ticket without their photograph which was not deemed sufficient – this occurs when groups of 30 persons arrive in the centre or if they arrive during the weekend – or their visas were expired. The asylum seekers who are transferred to other centres receive the financial allowance one day before they are transferred.

According to the JRS representative, asylum seekers who have money on them are informed in writing, in Romanian, that they will not receive the financial allowance. Due to the fact that they do not understand what is written on the information note, they request the NGO representatives to explain the contents of the document.

## 2. Forms and levels of material reception conditions

### Indicators: Forms and Levels of Material Reception Conditions

1. Amount of the monthly financial allowance/vouchers granted to single adult asylum seekers as of 31 December 2018 (in original currency and in €): 480 RON / 104 €

Reception conditions consist of: accommodation in one of the reception centres; financial allowance for food and clothing; and pocket money.

### 2.1. Allowance for food / clothing and pocket money

Asylum seekers are entitled to receive, upon request, the following allowances:<sup>342</sup>

- Food daily allowance of 10 RON / 2.16 € per person;
- Clothing one-off allowance of 67 RON / 14.48 € per person during summer and 100 RON / 21.60 € per person during winter;
- Pocket money of 6 RON / 1.30 € per day per person for other expenses such as local transport expenses, cultural services, press, repair and maintenance services and personal hygiene products expenses.

Monthly amounts of financial allowances for different categories of applicants are as follows:

Monthly amount of financial allowances for asylum seekers	
Category	Amount of allowances
Single adults	480 RON / 104 €
Pregnant women in months 1-4 Ill persons upon admission to infirmary	570 RON / 123 €
Pregnant women in months 5-9 Women giving birth who do not breastfeed	600 RON / 130 €
Women giving birth who breastfeed Children aged 0-5 months	630 RON / 136 €
Children aged 6-12 months	690 RON / 150 €

Before the 2015 reform, asylum seekers were granted a financial allowance of 3.6 RON per day, amounting to a monthly total of 108 RON / 23 €. In general, the financial allowance is sufficient to ensure a decent living. In cases of families all the members are entitled to receive the financial allowance. The only persons who have complained about the amount of the financial allowance are single men.

In comparison, Romanian nationals with low income benefit from social assistance,<sup>343</sup> heating assistance,<sup>344</sup> and a family allowance.<sup>345</sup> Romanian nationals – families and single persons – are

<sup>342</sup> Article 55(1) Asylum Decree.

entitled to a minimum guaranteed income as a form of social assistance.<sup>346</sup> The monthly minimum guaranteed income is determined based on the social reference indicator (*indicator social de referinta*, ISR) set by law at 500 RON / 108 €. The minimum guaranteed income level is as follows:

Monthly amount of minimum guaranteed income		
Category	Percentage ISR	Amount
Single adults	28.3%	142 RON / 30 €
Family of two	51%	255 RON / 55 €
Family of three	71.4%	357 RON / 77 €
Family of four	88.4%	442 RON/ 96 €
Family of five	105.4%	527 RON / 114 €
Family of six or more, for each family member	7.3%	36.5 RON / 7 €

In addition, the state affords an allowance for all children, including nationals and non-nationals, up to the age of 18.<sup>347</sup> This type of financial allowance is complementary to other forms of material support afforded by the state. The level of the state child allowance is determined by the ISR and amounts to:<sup>348</sup>

- 200 RON / 43 € for children up to the age of 2, or 3 in case of a disabled child;
- 84 RON / 18 € for children between the age 2 and 18;
- 200 RON /43 € for disabled children between the age of 3 and 18.

Even though a comparison between financial assistance granted to nationals and asylum seekers is difficult to make due to the diversity of available allowances and the applicable calculation modes, asylum seekers are not treated less favourably than nationals as far as material support is concerned. They also benefit from other financial allowances than the ones provided by the Asylum Act, such as the allowance for children and they are also entitled to receive social assistance under the conditions provided by Act 292/2011 on Social Assistance, as amended.<sup>349</sup>

## 2.2. Accommodation allowance where reception capacity is exceeded

A new form of reception conditions was included by the 2015 reform. When the capacity in the reception centres for asylum seekers is exceeded, IGI-DAI may grant asylum seekers an accommodation allowance for the purpose of renting a house or contracting specialised services for the reception and accommodation of asylum seekers in individual or collective locations, within the limits of the available funds.<sup>350</sup> This form of reception conditions has never been applied to date.

In these situations, IGI-DAI may provide, upon request, material assistance amounting to the following monthly sums per person: rental assistance of 450 RON; and maintenance assistance of 120 RON during the summer season and 155 RON during the winter season. In the case of a two-member household, the monthly amount paid to a person for rental decreases by 30%. In the case of households consisting of three or more members, the amount granted monthly to a person for rental decreases by 40%.<sup>351</sup>

This material assistance shall be granted in the first month after the filing of the application, without the need for the submission of supporting documents for the rental. However, for the second month the

<sup>343</sup> Act 416/2001 on Minimum Guaranteed Income, available at: <http://bit.ly/2AWyH00>.

<sup>344</sup> Emergency Government Ordinance 70/2011 on social protection measures during the cold season, available at: <http://bit.ly/2mtUk2t>.

<sup>345</sup> Act 277/2010 on Family Allowance, available at: <http://bit.ly/2FvzrN3>.

<sup>346</sup> Article 1(1)-(2) Act 416/2001 on Minimum Guaranteed Income.

<sup>347</sup> Article 1 Act 61/1993 on the State Child Allowance.

<sup>348</sup> Article 3 Act 61/1993 on the State Child Allowance.

<sup>349</sup> Article 17(1)(n<sup>1</sup>) Asylum Act.

<sup>350</sup> Article 17(8) Asylum Act.

<sup>351</sup> Article 55(4) Asylum Decree.

submission of these documents is mandatory. If the requested documents are not submitted in the second month, the grant is suspended.

### 2.3. Reimbursement of expenses related to travel

Asylum seekers also have the right to reimbursement, upon request, of transport costs associated with their court proceedings, if the judicial process takes place in a different area than the one where they are residing, and if transport is carried out by road, rail or ferry.<sup>352</sup>

The reimbursement of transport expenses is made on the basis of a request filed by the asylum seeker, together with travel tickets, filed within 5 working days from the date of the court hearing, at the Regional Centre where the asylum seeker is accommodated. The reimbursement is made after checks have been carried out in order to certify the presence of the asylum seeker in court.<sup>353</sup>

The Asylum Decree refers particularly to asylum seekers accommodated in **Somcuta Mare** and **Rădăuți**, since the competent courts for onward appeals (see [Regular Procedure: Appeal](#)) are located in a different city than the one where the Regional Centres are located; respectively **Baia-Mare** and **Suceava** respectively. The policy of reimbursement is applied in practice. No requests for reimbursement of transport costs were made in Somcuta Mare and Radauti in 2018, however, as there is only one transport operator per day and asylum seekers prefer carpooling.

IGI-DAI may also involve asylum seekers activities related to the maintenance or redevelopment of the interior and exterior spaces of Regional Centres, or support to the centre staff in information and counselling activities.<sup>354</sup> Asylum seekers who perform this kind of activity benefit from an additional allowance for food of 5 RON / 1.08 € per day.<sup>355</sup>

### 2.4. Material and financial assistance from NGOs

In addition to the material reception conditions afforded by IGI-DAI, asylum seekers also benefit from material assistance provided by AIDRom through the project “Assistance and services for asylum seekers in Romania” funded by the AMIF national programme.<sup>356</sup> AIDRom provides material assistance to asylum seekers accommodated in all Regional Centres, in the 2 Accommodation and Counselling Centres run by AIDRom in **Bucharest** and **Timișoara**, and also for asylum seekers detained in public custody.

The number of social vouchers granted by AIDRom to asylum seekers decreased in 2018 compared to 2017. According to the Director of Programmes of AIDRom, the target number was established by IGI-DAI, and in case of higher numbers of asylum seekers arriving in Romania the number may be revised. This did not occur in 2018.

Material assistance offered by AIDRom consists of:

1. Financial assistance for translation of civil status documents and/or diplomas, as well as legalisation / authentication / apostilles of approximately 60 pages of documents;
2. 600 packages of food for asylum seekers transferred between Regional Centres or transferred from the place where the asylum application was made to the Regional Centre;
3. 100 social vouchers for vulnerable asylum seekers;
4. 300 food packages / social vouchers for asylum seekers accommodated in Regional Centres and AIDRom Centres, or detained in specially designed closed spaces or in detention centres;
5. 300 installation packages for persons accommodated in AIDRom Centres and in Regional Centres at the time of filing the asylum application.

<sup>352</sup> Article 17(1)(q) Asylum Act.

<sup>353</sup> Article 56(2<sup>^</sup>1) Asylum Decree.

<sup>354</sup> Article 55(9) Asylum Decree.

<sup>355</sup> Article 55(10) Asylum Decree.

<sup>356</sup> The project, currently in its second phase, is implemented by AIDRom in partnership with CNRR, from 7 July 2017 to 6 July 2018. For more details, see: <http://www.aidrom.ro/proiecte/asistenti-solicitant-de-azil/>.



Under the same project, AIDRom also provides cleaning products and encourages asylum seekers to clean their rooms and common spaces, with different incentives.

### 3. Reduction or withdrawal of reception conditions

#### Indicators: Reduction or Withdrawal of Reception Conditions

1. Does the law provide for the possibility to reduce material reception conditions?  
☒ Yes ☐ No
2. Does the law provide for the possibility to withdraw material reception conditions?  
☒ Yes ☐ No

IGI-DAI may limit or withdraw the material reception conditions granted to asylum seekers by a reasoned decision communicated to the applicant. The Asylum Act provides that the grounds for which material reception conditions may be limited or withdrawn are to be determined by a Government decision.<sup>357</sup> Accordingly, these are laid down in the Asylum Decree.

IGI-DAI may limit or withdraw the material reception conditions where the applicant:<sup>358</sup>

1. Leaves the place of residence established for 72 hours without having previously informed the Regional Centre;
2. Does not comply with the obligation to present him or herself at the request of IGI-DAI in order to provide information or does not attend interviews notified to him or her;
3. Repeatedly violates the house rules of the Regional Centres.

The law does not foresee any limitation on reception conditions due to large numbers of arrival. Where reception capacity is exhausted, IGI-DAI grants a specific allowance to asylum seekers to secure accommodation (see [Forms and Levels of Material Reception Conditions](#)).

More particularly as regards violations of house rules, Article 47 of the Regulation of Internal Order (ROI) prescribes the applicable sanctions in cases of disciplinary deviations, with the exception of applicants held in the specially designed closed spaces. The Director of the centre or his or her legal substitute shall apply individually, gradually and proportionally with the seriousness of the act, one of the following sanctions:

1. Oral warning;
2. Written warning;
3. Suspension of the daily amount of 6 RON for local transport expenses, cultural services, press, repair and maintenance services and expenses for personal hygiene products, for a period of 1-3 months;
4. Temporary suspension from the centre for 24 hours;
5. Temporary suspension from the centre for 7 days;
6. Final eviction from the centre.

Decisions reducing or withdrawing material reception conditions must be reasoned and taken on an individual basis, impartially and objectively.<sup>359</sup> The decision is signed by the Director of the Regional Centre. However, potential risks of destitution following the withdrawal of reception conditions are not assessed.

Practice as regards the reduction or withdrawal of reception conditions in the different Regional Centres is as follows:

Main grounds and forms of withdrawal of reception conditions by Regional Centre: 2018		
Regional	Main applicable grounds	Main sanctions imposed

<sup>357</sup> Article 19^1(1) Asylum Act.

<sup>358</sup> Article 55^1 Asylum Decree.

<sup>359</sup> Article 55^1(3) Asylum Decree.



Centre		
Galați	ROI	Oral and written warning
Rădăuți	ROI	Allowance suspension
Șomcuta Mare	ROI	Oral warning
Timișoara	ROI, departure from the centre	Allowance suspension
Giurgiu	ROI, departure from the centre	24-hour suspension
Bucharest	Departure from the centre	Allowance suspension

According to the director of the Regional Centre **Bucharest**, in case the asylum seeker is re-accommodated in the centre, the daily allowance is suspended for one month.

According to IGI-DAI, 746 withdrawal of reception conditions decisions were taken in 2018.<sup>360</sup>

The decision on reduction or withdrawal of reception conditions may be challenged, subject to the rules applicable in the [Accelerated Procedure: Appeal](#).<sup>361</sup> In practice, however, there were no cases where an appeal was formulated against decisions on reduction or withdrawal of reception conditions in 2017.

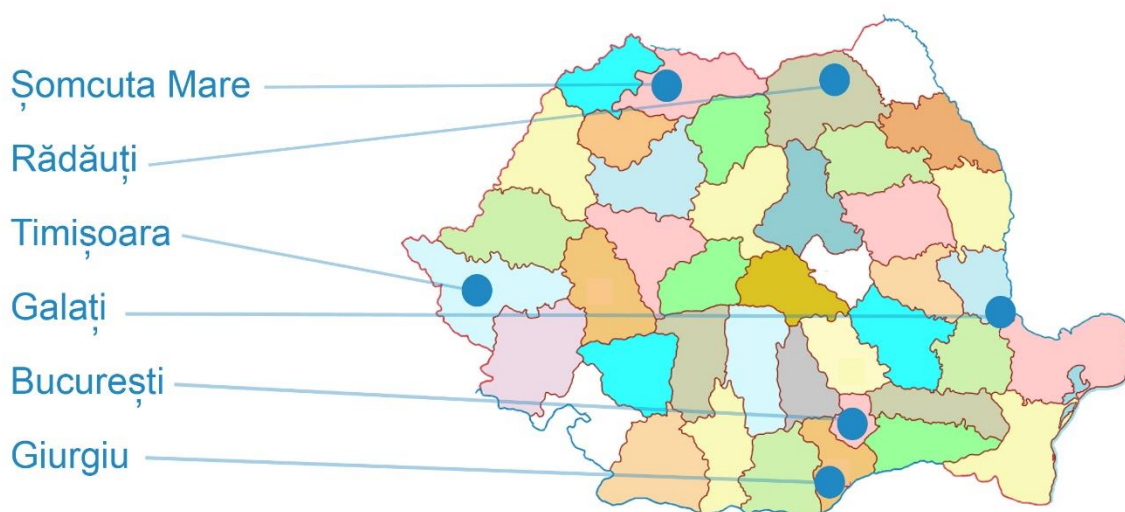
In practice, reception conditions may be reinstated after having been withdrawn or reduced, upon a request which in most of the cases is drafted by NGO representatives.

#### 4. Freedom of movement

##### Indicators: Freedom of Movement

1. Is there a mechanism for the dispersal of applicants across the territory of the country?  
☒ Yes ☐ No
2. Does the law provide for restrictions on freedom of movement? ☒ Yes ☐ No

Asylum seekers are allocated to a specific reception facility through a dispersal scheme operated by IGI-DAI. The Regional Centres for Accommodation and Procedures for Asylum Seekers are located in the following areas:



Source: AIDRom, Sprijin pentru Solicitanții de Azil din România: <http://bit.ly/2mAeokN>.

According to the Asylum Act, asylum seekers are not allowed to leave their place of residence without authorisation from IGI-DAI.<sup>362</sup> The request to leave the residence has to include the address, full name

<sup>360</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>361</sup> Article 19<sup>1</sup>(1) Asylum Act.

of the person with whom the applicant be staying and the period of time and reasons for his or her request to leave.<sup>363</sup> Authorisation issued following an individual, objective and impartial assessment. In case IGI-DAI refuses to grant authorisation, its decision shall be motivated.<sup>364</sup>

The provision of material conditions is subject to the applicant's actual residence in the assigned centre. This is monitored by IGI-DAI through its database. If an applicant leaves the Regional Centre without permission and does not return in 72 hours, IGI-DAI may apply [Reduction or Withdrawal of Reception Conditions](#).

Applicants may also be transferred to different reception facilities for reasons of capacity. In practice, asylum seekers are transferred most often from **Timișoara** to other Regional Centres. This occurs due to the fact that most of the asylum seekers arrive from Serbia, even though the number of arrivals in 2018 decreased in comparison with 2017, and the limited capacity of the Regional Centre of Timișoara. Asylum seekers cannot appeal against the transfer decision. According to the Director of the Regional Centre of Timișoara, asylum seekers are transferred within 5-10 working days from their arrival. They are orally informed by the integration officer about this, in addition to written communication in Arabic or Kurdish. When the number of asylum seekers accommodated in the centre in Timișoara reaches 30-40 people, transfers are organised.

There have been no cases of applicants assigned to a specific residence for reasons of public interest or public order or for the effective assessment of the asylum application.

## B. Housing

### 1. Types of accommodation

#### Indicators: Types of Accommodation

1. Number of reception centres: 6
2. Total number of places in the reception system: 900
3. Total number of places in private accommodation: Not available
4. Type of accommodation most frequently used in a regular procedure:  
☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☐ Other
5. Type of accommodation most frequently used in an accelerated procedure:  
☒ Reception centre ☐ Hotel or hostel ☐ Emergency shelter ☐ Private housing ☐ Other

Most asylum seekers are accommodated in Regional Centres for Accommodation and Procedures for Asylum Seekers, managed by IGI-DAI. The management of reception is decentralised to the level of counties.

The capacity of the different Regional Centres operating across the country (see [Freedom of Movement](#)) are as follows:

Capacity and occupancy of the reception system: 2018		
Centre	Capacity	Occupancy at 31 Dec 2018
Timișoara	50	56
Șomcuta Mare	100	33
Rădăuți	130	38
Galați	200	29

<sup>362</sup> Article 19(g) Asylum Act.

<sup>363</sup> Article 7 Asylum Decree.

<sup>364</sup> Article 19(g) Asylum Act.

Bucharest	320	144
Giurgiu	100	50
<b>Total</b>	<b>900</b>	<b>350</b>

Source: IGI-DAI, 5 March 2019.

The total capacity of the Regional Centres is 900 places, with the possibility of extension to a total of 1,090 places. At the end of 2018, the number of persons staying in the centres was 350, of which 229 were asylum seekers and the rest were beneficiaries of international protection.<sup>365</sup> Until now it has not happened that asylum seekers were left without accommodation due to a shortage of places in the reception centres.

In addition to the Regional Centres, AIDRom, one of the NGOs implementing the AMIF national programme, runs two Accommodation Centres for vulnerable groups (see [Special Reception Needs](#)).

Asylum seekers may also request to stay in private accommodation at their own cost. In this case, they have to present to IGI-DAI a lease agreement registered with the tax authorities or a commodity contract concluded in authentic form.

## 2. Conditions in reception facilities

### Indicators: Conditions in Reception Facilities

1. Are there instances of asylum seekers not having access to reception accommodation because of a shortage of places? ☐ Yes ☒ No
2. What is the average length of stay of asylum seekers in the reception centres? Not available
3. Are unaccompanied children ever accommodated with adults in practice? ☒ Yes ☐ No

Conditions in Regional Centres are monitored *inter alia* by the Ombudsman, who visits the centres on a regular basis.

### 2.1. State of the facilities

**Timișoara:** The Regional Centre is located in the same premises as the Emergency Transit Centre (ETC) operated by UNHCR, where refugees evacuated from other countries stay before they are resettled to another country.<sup>366</sup> The facility is located 20 minutes by bus from the city centre. The facility was repainted and the doors and windows were repaired in December 2017.

The entire facility is split into four buildings, of which two are designed for accommodation. Each of these two buildings contains 12 rooms with 12 beds per room. One building ("Building B") is separated into two parts through a built-in wall: six rooms are dedicated to asylum seekers and another six to ETC refugees. The second building ("Building C") only accommodates families. Therefore, while the ETC has a total capacity of 200 places, the Regional Centre has a capacity of 50 places. Since May 2018, the available places for asylum seekers have been reduced to the initial capacity of 50 places, down from 150 places available in 2017. At the time of the author's visit on 26-29 November 2018, there were 10 asylum seekers and 8 refugees under the ETC programme accommodated in the centre.

Each building where persons are accommodated has a kitchen. However, "Building C" dedicated to families only has one refrigerator. Despite repeated requests from NGOs, IGI-DAI has invoked bureaucracy-related reasons for its delay in installing more refrigerators.

<sup>365</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>366</sup> UNHCR, *ETC Timisoara*, 14 December 2016, available at: <http://bit.ly/2DuZqDN>; *Operations in Romania*, 16 December 2016, available at: <http://bit.ly/2D0OjKO>.

“Building B” has two bathrooms, each equipped with two squat toilets, two urinals, three sinks and three showers.

**Șomcuta Mare:** The Regional Centre is located not far from the city centre and 25km away from Baia Mare. The centre consists of a three-storey building. Rooms are located on the second and third floor, each floor containing 22 rooms with two, four or six beds. There are two bathrooms on each floor, separated by gender. On the hallway of the first floor, there are 6 refrigerators, while the ground floor has two isolation rooms for medical purposes, and the basement has a kitchen with ten stoves, a dining room, and a laundry room with four washing machines, only two of which are functional. The basement also contains a specially designed closed space (see [Place of Detention](#)).<sup>367</sup>

In 2018 the bathrooms were renovated; tiles and doors were changed. Save the Children Romania has set up a playground and a room dedicated to mothers and children.

**Rădăuți:** The Regional Centre is located at the entrance in the city, not far from the city centre. There are rooms with eight and ten beds. There are two bathrooms, one for women and one for men, each with three toilets and showers. There is a common kitchen, which lacked refrigerators and dishes at the time of the Ombudsman's visit.<sup>368</sup> The gym room has been converted into an accommodation facility in order to increase reception capacity.<sup>369</sup>

**Galați:** The Regional Centre is located in the city, with easy access to public transport. The centre has three buildings: two for administrative purposes and one two-storey building for accommodation. On each floor of the accommodation building, there is one bathroom for men and one for women: each comprising of three showers and seven sinks. There is only one normal toilet for women a per floor; the rest are 'squat toilets'.

The rooms have a maximum capacity of 12 beds. Generally, asylum seekers are accommodated depending on nationality. Families are accommodated in the same room, separately from single men. There are two kitchens on each floor with three stoves and three sinks each, as well as one refrigerator for 12 people.

**Bucharest:** The Regional Centre is located 20 minutes by bus from the city centre. The building accommodating asylum seekers has four floors. It contains a total of 80 rooms, each with four beds, a toilet and a shower. On each floor there are two kitchen, each with two refrigerators, two stoves and two sinks. When assigning asylum seekers to different rooms, IGI-DAI takes into consideration their religion, nationality and gender. Families are accommodated together. At the time of the author's visit on 18-19 June 2018, it was noted that toys were thrown all over the playground in the courtyard. Old bed frames made of steel were deposited near the playground, representing a risk for the children. It seemed that the bed frames had been left there for a long time as grass had grown on them.

**Giurgiu:** The Regional Centre is a former barracks located in the outskirts of the city and re-purposed in 2011, without any refurbishment beyond repaint. As a result, technical problems occur often. The capacity of the centre is 100 places arranged in seven rooms. At the time of the Ombudsman's visit in June 2017, the capacity of the centre had been increased by 70 places, as the gym and prayer room had been converted into bedrooms.<sup>370</sup> Each room has 20 beds equipped with one refrigerator each, and there are two kitchens with stoves and sinks. There are two bathrooms, one for men and one for women, with five 'squat toilets' and five showers. The centre has a small courtyard but is not accessible as it is surrounded by a fence.

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<sup>367</sup> Ombudsman, *Report of the visit to the Regional Centre for Procedures and Reception for Asylum Seekers Șomcuta Mare*, 36/2017, available in Romanian at: <http://bit.ly/2E7EANw>, 4-5.

<sup>368</sup> Ombudsman, *Report of the visit to the Regional Centre for Procedures and Reception for Asylum Seekers Rădăuți*, 34/2017, available in Romanian at: <http://bit.ly/2nEuqcO>, 5.

<sup>369</sup> *Ibid*, 3-4.

<sup>370</sup> Ombudsman, *Report of the visit to the Regional Centre for Procedures and Reception for Asylum Seekers Giurgiu*, 29/2017, available in Romanian at: <http://bit.ly/2EvCLrn>, 2.

## 2.2. Food and hygiene

The Asylum Decree prescribes the necessary daily amount of nutritional value based on which the daily allowance for food is calculated in the Regional Centres.<sup>371</sup> Asylum seekers may cook for themselves, using the kitchens available in every centre.

In all regional centres asylum seekers are obliged to clean their rooms, kitchen and bathrooms on a rotation basis. The number of toilets and showers are sufficient in all facilities during regular occupancy.

In 2018, AIDRom implemented a project providing asylum seekers with cleaning products and they were also encouraged to clean their rooms and common spaces every week. All the interviewed stakeholders observed an improvement of in hygienic conditions in the centres throughout 2018.

Hygienic conditions are satisfactory in **Galați** and **Șomcuta Mare**, although for the former the Ombudsman has expressed concerns about the state of some mattresses, being worn-out and inadequate hygienic conditions in some rooms and bathrooms.<sup>372</sup>

In **Bucharest**, residents complain about the cleanliness and state of mattresses and bedsheets, as well as the lack of beds for children and the shortage of refrigerators. During the author's visit to the centre, a female Iraqi beneficiary of international protection, who was accommodated together with her husband and three children in two rooms of the centre, shared some of their experiences. The family had to buy a crib for their baby born in Romania, as there was none in the centre. They also bought in a fan in order to help her husband, who has a health condition, during the hot summer days. She also complained about the bed bugs.

In **Giurgiu**, during the author's visit on 21 of June 2018, poor conditions were noted in the showers, even though the integration officer mentioned that the centre had been sanitised two weeks prior to the visit. In the men's showers, the wall between the sinks and showers had a big hole, the curtains were black from mould or dirt or both, and it was noticed from the hall that the men's toilets were not clean. According to the legal counsellor in Giurgiu, after the author's visit the conditions of the centre improved. It was sanitised again and the toilets have also been sanitised as far it was possible. There is also a plan to renovate the centre entirely.

In **Rădăuți**, the hygienic conditions improved in 2018 as a consequence of the project implemented by AIDRom. Asylum seekers clean every Monday. The improvements were also a result of a lower number of asylum seekers accommodated in the centre compared to 2017.

In **Timișoara**, residents complain about bed bugs, fleas, the poor condition of mattresses and plumbing in the showers and toilets. The JRS representative reported that in one case asylum seekers who were re-accommodated in the centre did not receive bed linen, while new arrivals did. The Ombudsman found that some of the beds and wardrobes were in precarious condition due to prolonged use. The report refers to poor sanitation in two bathrooms in the "Building B", dirty walls and floors, and broken tiles in the bathroom and kitchen.<sup>373</sup>

Even though IGI-DAI carried out 3 disinfection operations during 2018, asylum seekers still complained about insects. The issue of bugs and insects is a major problem in the Regional Centre of Timișoara. This problem was also noticed by the Ombudsman who reported the existence of cockroaches in the kitchen.<sup>374</sup>

There have not been protests related to the conditions in the centres.

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<sup>371</sup> Article 55(1) Asylum Decree.

<sup>372</sup> Ombudsman, *Report of the visit to the Regional Centre for Procedures and Reception for Asylum Seekers Galați*, 33/2018, available in Romanian at: <https://bit.ly/2RWsTAc>, 7.

<sup>373</sup> Ombudsman, *Report of the visit to the Regional Centre for Procedures and Reception for Asylum Seekers Timișoara*, 35/2018, available in Romanian at: <https://bit.ly/2ACS0hv>, 8.

<sup>374</sup> *Ibid.*

### 2.3. Activities in the centres

Asylum seekers are allowed to go outside whenever they want, until 22:00. All Regional Centres except **Timișoara** have a prayer room where residents can practice their religion.<sup>375</sup>

Social and community workers in the centres organise different activities for both adults and children:

Save the Children Romania is running a project entitled “Integrated services for asylum seeking and refugee children”, funded by Save the Children UK, in all Regional Centres except **Giurgiu**, where the number of children is low. However, Save the Children renovated and furnished a room for children in Giurgiu accordingly, where Romanian classes are held. The project foresees the following activities:

- Social services, counselling, support for having access to different social services and social benefits e.g. state child allowance;
- Financial assistance for children and vulnerable adults, which is meant to cover food, hygiene products, medicine, medical services, school supplies for children, instalment packages, kindergarten and afterschool fees if where. For each of these categories the allowances are as follows:
  - o 250 RON / 54 € for food and clothes; Save the Children uses donations to top up the needs for clothes;
  - o 100 RON / 21 € for medical assistance;
  - o 200 RON / 43 € for school supplies for children;
- Recreational and educational activities in the children's room and outside the centres;
- Psychological assistance in the Regional Centre of **Bucharest**.

The financial allowances may be supplemented where necessary.

In **Timișoara**, **Galați**, **Rădăuți** and **Șomcuta Mare**, AIDRom organises cultural educational and sports activities for adults and children such as football and table tennis games, visits to the museum, zoo, city walks. They also organise Romanian language courses for children, but adults also attend them.

In **Giurgiu**, AIDRom and ICAR Foundation provide activities for adults and children, even though the centre has no interior or exterior recreational spaces where such activities may be organised. However, the lack of playgrounds for children and places for sports activities has been highlighted by JRS and by the Ombudsman.<sup>376</sup>

According to the stakeholders interviewed by the author in **Șomcuta Mare**, **Timișoara**, **Rădăuți** the staff shortage was no longer such an issue in 2018 as the number of the asylum seekers accommodated in the centres decreased considerably from last year. Recruitments also took place in Șomcuta Mare, Timișoara and Rădăuți. An increase in officers was notably witnessed at the access control point. In Timișoara, a nurse and a logistics officer were also hired. In **Galați**, no shortage of staff was reported.

However, the director of the Regional Centre of **Bucharest** (Stolnicu) stated that they would need more management staff and integration officers, as there are 400 beneficiaries of international protection registered in the integration programme (see [Content of Protection: Social Welfare](#)).

According to JRS, IGI-DAI staff is trained internally and also externally by NGOs and UNHCR Romania on different topics.

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<sup>375</sup> Although the Ombudsman states that there is a confession room in Timișoara where Romanian classes are held, this is a hallway leading to the NGO offices rather than an actual room.

<sup>376</sup> Ombudsman, *Report of the visit to the Regional Centre Giurgiu*, 29/2017, 6.



## C. Employment and education

### 1. Access to the labour market

#### Indicators: Access to the Labour Market

- |  |   |
|--|---|
| 1. Does the law allow for access to the labour market for asylum seekers?<br>❖ If yes, when do asylum seekers have access the labour market? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No<br>3 months |
| 2. Does the law allow access to employment only following a labour market test?  | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No             |
| 3. Does the law only allow asylum seekers to work in specific sectors?<br>❖ If yes, specify which sectors:                                   | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No             |
| 4. Does the law limit asylum seekers' employment to a maximum working time?<br>❖ If yes, specify the number of days per year                 | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No             |
| 5. Are there restrictions to accessing employment in practice?   | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No             |

Asylum seekers have access to the labour market following 3 months from the lodging of the application, if no decision has been taken by IGI-DAI due to no fault imputable to the applicant, or during the appeal stage.<sup>377</sup> This means that if a decision was made in the administrative phase of the procedure, the asylum seeker is allowed access to labour market even sooner than 3 months. Persons who, at the time of filing an application for asylum, have a right of residence on the territory of Romania and are legally working, they may continue to work.<sup>378</sup>

Access to the labour market is granted under the same conditions set out by law for Romanian citizens.<sup>379</sup> Accordingly, there is no labour market test, sectoral limitation or other restriction laid down in the law.

The Asylum Decree prescribes that asylum seekers may benefit, upon request, from mediation services, professional information and counselling services provided to persons seeking employment by the County Employment Agencies (AJOFM).<sup>380</sup>

In order to be registered as a job seeker by the AJOFM and to benefit from the aforementioned services, asylum seekers must present the documents requested by law, except for the civil status documents issued by the country of origin, together with their temporary identity document issued by IGI-DAI and a certificate which confirms their right to work. The same conditions apply for asylum seekers' participation in a vocational training programme or the evaluation of professional competences acquired through non-formal means.

Diplomas or certificates of education or graduation, as well as certificates of professional competence, qualification or other relevant documents, are accepted only if they are recognised on the territory of Romania according to the applicable legal provisions.

According to the law, asylum seekers who have access to the labour market have the right to benefit from measures promoting employment, as well as protection within the unemployment insurance system, under the conditions provided by the law for the Romanian citizens.<sup>381</sup> Moreover, the provisions of the Asylum Decree on access to employment for asylum seekers also refer to the possibility to participate in vocational training programmes.<sup>382</sup>

<sup>377</sup> Article 17(1)(o) Asylum Act.

<sup>378</sup> *Ibid.*

<sup>379</sup> *Ibid.*

<sup>380</sup> Article 6<sup>^</sup>1(1)-(5) Asylum Decree.

<sup>381</sup> Article 17(1)(o<sup>^</sup>1) Asylum Act.

<sup>382</sup> Article 6<sup>^</sup>1(4) Asylum Decree.



From the discussions held with the stakeholders, it appears that in 2018 asylum seekers have not faced obstacles to finding a job, as information about available jobs were provided to them. The jobs advertised by stakeholders were in the unskilled labour sector. As a result, asylum seekers did not encounter problems related to the lack of Romanian language knowledge, diplomas or other documents which would prove their qualifications. The majority of asylum seekers were reportedly unskilled workers in their country of origin.

**Bucharest:** According to the Director of the Regional Centre, asylum seekers are not interested in accessing employment, which offers a pay of 1200 RON / 260 €.

**Rădăuți:** It was also reported that asylum seekers prefer to leave than to obtain employment.

**Șomcuta Mare:** Asylum seekers have not faced obstacles in finding a job as they are informed by IGI-DAI and NGOs about the available jobs in the area. The persons accommodated in the Regional Centre are also periodically informed of available jobs by AIDRom. They usually work in the unskilled sector.

**Galați:** It was reported that IGI-DAI received several job offers for asylum seekers in the unskilled labour sector and that information thereon was disseminated to the asylum seekers together with the NGOs. Since most of the asylum seekers in 2018 were unskilled workers, they did not face obstacles in the labour market.

**Timișoara:** Around 15 asylum seekers were in employment in 2018. IGI-DAI and NGOs played an important role in finding them jobs. One of the obstacles faced by asylum seekers in finding a job is the reluctance of employers to hire asylum seekers due to their precarious legal status; they prefer to hire beneficiaries of international protection in order to have legal certainty for a longer period. Most of the employment opportunities offered to asylum seekers came from the community of foreigners or refugees from Timișoara.

Information sessions related to employment were held in different Regional Centres in 2018. In **Rădăuți**, an information session was held on the right to work, illegal employment by an employee from the Territorial Inspectorate of Labour (*Inspectoratul Teritorial de Munca*, ITM). The same information session was held in **Galați** by ITM and the IGI Migration Directorate for asylum seekers and beneficiaries of international protection. NGO representatives were also present. In **Șomcuta Mare**, two information sessions were held by labour authorities with the persons accommodated in the Regional Centre on the rights and obligations of the employer and employee.

The number of applicants who were in employment as of the end of 2018 was 37.<sup>383</sup>

## 2. Access to education

### Indicators: Access to Education

- |  |   |
|--|---|
| 1. Does the law provide for access to education for asylum-seeking children? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. Are children able to access education in practice?                        | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |

The Asylum Act prescribes for the right of minor asylum seekers to have access to before pre-school (0-3 years), pre-school (3-6 years) and compulsory education (6-18 years) under the same conditions as minors Romanian citizens, as long as no measure is taken to remove them or their parents from Romania.<sup>384</sup> Access to education is therefore free and unconditional.<sup>385</sup>

Compulsory general education consists of 10 grades and includes primary and lower secondary education. Compulsory education ends at the age of 18.<sup>386</sup>

<sup>383</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>384</sup> Article 17(1)(p) Asylum Act.

<sup>385</sup> Article 6(1) Asylum Decree.

<sup>386</sup> Article 16(1) and (2) Public Education Act.

Education is provided in regular schools. In general, children are enrolled at local schools whose territorial jurisdiction covers the respective Regional Centres. Asylum-seeking children are enrolled in normal classes together with Romanian children as observers for the first year. Being an observer means that the child is not listed in the class book and he or she does not receive grades.

In **Bucharest, Giurgiu** and **Șomcuta Mare**, the enrolment request is drafted by the NGO representatives together with IGI-DAI.

According to Save the Children, the representatives of NGOs provide support for the enrolment of children at schools and kindergartens. However, some delays may occur as the legal representatives of unaccompanied children have to sign the application for enrolment. The main obstacles faced by children in practice to access education include shortage of places rendering enrolment at the beginning of the school year difficult, direct or indirect refusal by many schools to enrol asylum-seeking children, as well as several registered cases of discrimination by teachers or peers.

In **Galați**, where the enrolment procedure may take up to one month, parents or the legal representative have to lodge a request to IGI-DAI in this regard, in order for IGI-DAI to notify the County School Inspectorate (*Inspectoratul Școlar Județean*, ISJ). Until the inspectorate sends its answer, the asylum procedure is usually completed and the persons have left the country.

In **Rădăuți**, the enrolment procedure takes 2-3 months. Delays in 2018 occurred due to the fact the ISJ did not assign a school. Children were enrolled at school but, similar to **Galați**, children are not attending classes. The same was reported for **Șomcuta Mare**, where children are enrolled at school but do not attend the classes; one of the main reasons for this is that they leave the centre.

In **Giurgiu** all the children were enrolled at school by JRS jointly with IGI-DAI. The enrolment procedure took a long time, in some cases 5 months, as the ISJ was not knowledgeable in asylum law, especially the right of asylum-seeking children to attend school. After several discussions with the NGO and integration officer of IGI-DAI the ISJ understood its obligations and role in the process. Nevertheless, many of the children enrolled at school did not attend classes at all and some attended only for a week. According to the legal counsellor, the reason for this is that they do not adjust and do not understand what is taught in class.

In **Galați**, on the other hand, according to JRS, children above the age of 16 attend courses of the “**Second Chance**” programme,<sup>387</sup> as they feel uncomfortable at high school due to their lower level of Romanian and other subjects compared to Romanian pupils. They can continue their studies under the “**Second Chance**” programme after reaching the age of 18. However, there were no children above the age of 16 in the centre in 2018.

Children accommodated at the DGASPC centre of **Timișoara** are enrolled at school. At the time of the author visit on 26-29 November 2018, there were 3 unaccompanied children accommodated in this centre.

AIDRom is the only entity which provides Romanian language classes to asylum-seeking children inside the different Regional Centres.

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<sup>387</sup> The “**Second Chance**” programme is aimed at adolescents, young people and adults from different social backgrounds and ages, who have not attended or have not completed primary and secondary education. The programme offers these categories of people the opportunity to continue and complete compulsory education without having to interrupt any professional or family activities they are engaged in.

## Preparatory classes

Following the 2015 reform, the Asylum Act foresees a free intensive preparatory course for asylum-seeking children with a view to easing their access to education prior to enrolment at the national education system.<sup>388</sup> The training course is organised by the Ministry of National Education and Scientific Research, in collaboration with IGI-DAI. Children should be enrolled at the preparatory course within 3 months from the date their asylum application was made. At the same time, the child may be enrolled as an observer in the relevant year of study.

At the end of the preparatory course, an Evaluation Commission, whose composition and functioning are established by order of the Minister of National Education and Scientific Research, assesses the level of knowledge of the Romanian language and establishes the registration of asylum seekers in the corresponding year of study.

In practice, however, such preparatory courses are not provided in **Bucharest, Giurgiu, Timișoara, Șomcuta Mare and Rădăuți**. In **Galați**, according to JRS, an ISJ professor offers courses for child asylum seekers and beneficiaries of international protection. The course for asylum-seeking children takes place twice a week and lasts 2 hours, although a stakeholder interviewed by the author was unaware of its specific content.

Asylum-seeking children with special needs enjoy the same alternative arrangements as those provided for Romanian children. Throughout 2018, there were no children with special needs in the Regional Centres of **Timișoara, Galați, Rădăuți, Giurgiu and Șomcuta Mare**.

## D. Health care

### Indicators: Health Care

- |   |   |                                  |                             |
|---|---|----------------------------------|-----------------------------|
| 1. Is access to emergency healthcare for asylum seekers guaranteed in national legislation?               | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No      |                             |
| 2. Do asylum seekers have adequate access to health care in practice?                                     | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| 3. Is specialised treatment for victims of torture or traumatised asylum seekers available in practice?   | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |
| 4. If material conditions are reduced or withdrawn, are asylum seekers still given access to health care? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> Limited | <input type="checkbox"/> No |

Access to health care for asylum seekers covers the right to receive free primary care and appropriate treatment, emergency hospital care and free health care and treatment in cases of acute or chronic illnesses which are imminently life-threatening, through the national emergency health care system and qualified first aid. These services shall be provided, as the case may be, through the medical service of the Regional Centres and/or other health care facilities accredited and authorised by law.<sup>389</sup>

In addition, asylum seekers have the right to be included in national public health programmes aimed at preventing, monitoring and controlling contagious diseases in epidemiological risk situations.<sup>390</sup>

Asylum seekers are assigned a personal identification number which figures on their temporary identity documents in order for them to enjoy all the rights provided by the law.<sup>391</sup> After receiving the personal identification number, asylum seekers may register in the public health insurance system and, if they pay health care contributions and register at a general practitioner's office, have the status of an insured person, with the same rights and benefits as nationals.

<sup>388</sup> Article 18(1)-(4) Asylum Act.

<sup>389</sup> Article 17(1)(m) Asylum Act.

<sup>390</sup> Article 17(1)(m<sup>1</sup>) Asylum Act.

<sup>391</sup> Article 17(1<sup>1</sup>) Asylum Act.

As of 2018, asylum seekers have access to a general practitioner within all Regional Centres. However, In **Giurgiu**, the medical doctor has been in sick leave from November 2018. According to the legal counsellor in Giurgiu, the ICAR Foundation doctor covered for the IGI-DAI medical personnel, as there was no nurse either. Nonetheless, Giurgiu is the only centre which has a psychologist contracted by IGI-DAI, since August 2018, according to the director of the centre. In **Rădăuți** a medical doctor was hired in the summer of 2018. In **Timișoara**, a medical doctor and two nurses are provided by IGI-DAI as of spring of 2018. According to JRS, the medical screening conducted by the medical doctor in Timișoara was done without an interpreter. **Bucharest** had a psychologist contracted by IGI-DAI until September 2017. The Ombudsman has stressed that the provision of a psychologist by IGI-DAI is “imperiously needed” and that psychological assistance and services provided by NGOs should be complementary thereto.<sup>392</sup>

In **Bucharest**, according to the medical doctor, the medical screening is conducted by her and the nurse when the asylum seekers are accommodated in the centre. They are visible checked if they present any signs of eczema, rabies, lice and a medical record is drawn up. In case of medical issues the asylum seekers are referred to the Ministry of Internal Affairs hospitals. Most of the time the screening is conducted with the assistance of an interpreter, but applicants do not have access to an interpreter all the time; they often require the services of the IOM Arabic interpreter.

ICAR Foundation, in partnership with AIDRom, also provides medical services to asylum seekers under the project “Health Protection Services for Asylum Seekers S.O.S. SA”, funded through the AMIF national programme. They provide psycho-social specialists and collaborate with general practitioners in all the Regional Centres.<sup>393</sup> Under this project, “at least 600 asylum seekers will benefit from medical consultations, investigations, analyses and treatments and will participate in information and counselling sessions on the healthcare system in Romania, the rights and obligations on this area, the hygiene and public health rules. At the same time, at least 200 asylum seekers will receive specialist psychological assistance and counselling in the accommodation centres.”<sup>394</sup>

“The psychosocial specialists who will carry out activities in the centres will firstly identify the asylum seekers, especially those belonging to vulnerable groups (families in difficulty, elderly people, people with chronic diseases, unaccompanied minors, and victims of physical and mental violence) as well as their needs. Subsequent tests will be conducted to assess the general health status of newly arrived asylum seekers, and general practitioners will provide weekly medical consultations.”<sup>395</sup>

According to the AIDRom programme coordinator, the tests are basic blood tests and not epidemiology tests. However, if there are signs or indications such tests are needed, they will be conducted.

Through the project, other medical tests and investigations recommended by collaborating general practitioners, as well as medical and non-medical treatments prescribed by them, are provided in order to respond as closely as possible to the medical needs of asylum seekers.<sup>396</sup>

### Specialised treatment

The Asylum Act provides for the right of asylum seekers with special needs to receive adequate health care.<sup>397</sup> In practice, ICAR Foundation is the only organisation with the necessary experience in providing psychological assistance to torture survivors and traumatised asylum seekers in all the reception centres.

<sup>392</sup> Ombudsman, *2017 Reports*, available in Romanian at: <http://bit.ly/2Expec>.

<sup>393</sup> AIDRom, *Health Protection Services for Asylum Seekers S.O.S. SA*, available at: <https://bit.ly/2Dz3v9U>. The project started on 24 July 2018 and is implemented for two years.

<sup>394</sup> *Ibid.*

<sup>395</sup> *Ibid.*

<sup>396</sup> *Ibid.*

<sup>397</sup> Article 17(1)(n) Asylum Act.

In **Timișoara**, the medical screening is conducted by ICAR personnel. IGI-DAI is notified if there are asylum seekers suffering from mental health issues and they are referred to specialised hospitals, where necessary.

## E. Special reception needs of vulnerable groups

### Indicators: Special Reception Needs

1. Is there an assessment of special reception needs of vulnerable persons in practice?  
☒ Yes ☐ No

An applicant with special reception needs is a vulnerable person according to Article 5<sup>41</sup> of the Asylum Act, who needs special guarantees to enjoy his or her rights and fulfil his or her obligations under the law.<sup>398</sup> Article 5<sup>41</sup>(2) lists the following categories of vulnerable persons: minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons suffering from serious illnesses, people with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, or persons in other special circumstances.

The law does not prescribe actual mechanisms or methods for the identification of vulnerable persons. The Asylum Decree only states that specialised personnel of IGI-DAI cooperate with UNHCR and relevant NGOs to identify asylum seekers who may fall within in the category of vulnerable persons referred. In order to assess the vulnerability of asylum seekers, specialists within IGI-DAI, where appropriate together with experts from other institutions and authorities competent in the field, make an assessment of the special needs of foreigners. Depending on the specific need of each asylum seeker identified as vulnerable person, IGI-DAI notifies and cooperates with authorities and specialised agencies in order to provide necessary assistance. IGI-DAI may collaborate with NGOs to assist asylum seekers identified as vulnerable.<sup>399</sup>

Psycho-social specialists of the ICAR Foundation who carry out activities in the Regional Centres first seek to identify asylum seekers, especially those belonging to vulnerable groups (families in difficulty, elderly people, people with chronic illness, unaccompanied children, victims of physical and mental violence) and their needs. Subsequent tests are conducted to assess the general health status of newly arrived asylum seekers, while general practitioners provide weekly medical consultations (see [Health Care](#)).<sup>400</sup>

According to the Asylum Act, asylum seekers with special needs have the right to benefit from adapted accommodation and assistance conditions in the Regional Centres.<sup>401</sup> However, not all centres are adapted to such needs: **Bucharest** and **Timișoara**, for example, are not equipped with ramps for persons with disabilities, even though in Bucharest there is a person who uses a motorised wheelchair.<sup>402</sup>

The house rules of the Regional Centres stipulate that, in order to deal with situations of sexual or gender-based violence, the Director of the Centre shall:<sup>403</sup>

- a. Inform the persons accommodated in the centre about sexual or gender-based violence and the consequences of such acts;

<sup>398</sup> Article 2(1)(b<sup>42</sup>) Asylum Act.

<sup>399</sup> Article 5(1)-(4) Asylum Decree.

<sup>400</sup> AIDRom, *Adapted and accessible health services for asylum seekers in Romania*, available at: <http://bit.ly/2Dz3v9U>.

<sup>401</sup> Article 17(1)(l) Asylum Act.

<sup>402</sup> IGI-DAI takes into consideration any special needs of asylum seekers. Groups such as elderly persons are accommodated on the first floor of the building so as to avoid many flights of stairs. Moreover, in one case, a person suffering from epilepsy was accommodated alone.

<sup>403</sup> Article 60 ROI.

- b. In case of such situations occurring during the period of accommodation in the centre, notify the competent public authorities and institutions and gradually, depending on the seriousness of the deed, apply one of the sanctions provided in Article 47 ROI (see [Reduction or Withdrawal of Reception Conditions](#));
- c. Cooperate with national and international NGOs, as well as with public authorities and institutions in competent in this field, to assist victims while in they are accommodated in the Regional Centre.

In **Timișoara**, in the spring of 2018, a representative of the Crime Prevention Section of the County Police Inspectorate (*Inspectoratul de Politie Judetean*, IPJ) held an information session on domestic violence and criminal law sanctions applicable to such crimes committed in Romania.

In **Galați**, if it is found that a crime of domestic violence has been committed, IGI-DAI applies the sanctions mentioned in the ROI. No cases were reported in 2018.

In **Giurgiu** JRS invited the Directorate for the Investigation of Organised Crime and Terrorism and the National Anti-Drug Agency for an information / counselling and prevention session in 2018.

## 1. Reception of unaccompanied children

### 1.1. Unaccompanied children below the age of 16

Unaccompanied children below the age of 16 are accommodated in a centre managed by DGASPC or an authorised private body.<sup>404</sup> If they have relatives residing in a Regional Centre, DGASPC decides where they will be accommodated, taking into consideration their best interests. In case of unaccompanied children who have siblings under or above the age of 16, when taking a decision regarding their accommodation, IGI-DAI shall consult their legal representative, observe the principle of family unity and take into account the age and maturity of the older sibling.<sup>405</sup> The opinion of the unaccompanied child regarding the place where he or she will be accommodated is considered and given due importance, taking into account his or her the age and degree of maturity.<sup>406</sup>

Based on information provided by Save the Children Romania, there have been cases where unaccompanied children below the age of 16 were left in the Regional Centres for months before being accommodated in a DGASPC centre. One of the reasons for this is likely the fact that DGASPC is facing a shortage of accommodation places. As regards the conditions in DGASPC facilities, Save the Children stated that the facilities are decent but there are no interpreters, so interaction with these children is limited until they learn Romanian. In most cases the staff is not trained to work with foreign children, the services provided are not adapted to their needs.

**Timișoara:** Unaccompanied children are accommodated in the DGASPC Emergency Accommodation Centre and have described living conditions as good. However, the director of the Regional Centre of Timișoara pointed out several issues regarding the centre and the assistance provided by the DGASPC social assistance, such as the lack of interpreters and specialised personnel. It was also mentioned that DGASPC does not assume responsibility for unaccompanied children under the age of 16. The social examination conducted by an employee of DGASPC, with the help of an interpreter made available by IGI-DAI, always concludes that is in the best interests of the child to remain with his or her so called “relatives” in the Regional Centre. The director mentioned an incident which took place in the DGASPC centre involving two unaccompanied children. The children reportedly complained about the food and one of the social workers had aggressive behaviour towards them. IGI-DAI sent a letter to DGASPC reporting the incident and was informed that internal measures had been taken. Other minor incidents were reported later, according to the JRS representative, such as fights between asylum-seeking children and Romanian children accommodated in the same centre. The JRS representative also

<sup>404</sup> Article 58(3) Asylum Decree, in conjunction with Article 78(1) Child Protection Act.

<sup>405</sup> Article 58(3^1) Asylum Decree.

<sup>406</sup> Article 58(4) Asylum Decree.



specified that disagreements between the unaccompanied children and the staff of the centre often started due to the language barrier and the fact that children feel discriminated against by Romanian children.

**Șomcuta Mare:** Unaccompanied children are accommodated in family houses in **Baia Mare**, managed by the NGO **Somaschi Foundation**. JRS has reported that conditions in the facilities are good.

**Galați:** Unaccompanied children are accommodated in the day and night shelter for homeless children, under the authority of DGASPC. They are housed in rooms with other children beneficiaries of international protection. Children have reported that they are generally treated well and have not complained about conditions. They have only stated that they would prefer to stay in the Regional Centre with their peers. There were no children accommodated in this centre in 2018.

**Rădăuți:** Unaccompanied children are accommodated in the **Solca Placement Centre**, located 20km away from Rădăuți. While Romanian children accommodated in separate areas of the centre have access to different cultural and educational programmes, unaccompanied asylum-seeking children have limited access due to the lack of interpreters. The children accommodated here complained that their belongings were stolen from them and that they were not taken to school.

**Bucharest:** Unaccompanied children are accommodated in two centres: **Pinocchio Day Centre** within DGASPC District 1 and **Gavroche Day Centre** within DGASPC District 2. Conditions in the centres good, while children have a legal representative who keeps in touch with the NGOs and attends to their needs. There have been reported situations when children stayed in the Stolnicu reception centre for up to 2-3 months due to lack of available places at the DGASPC centre or delays in the coordination between the authorities.

**Giurgiu:** Unaccompanied children are accommodated in DGASPC family houses, where living conditions are decent. There were no unaccompanied children below the age of 16 in 2018.

IGI-DAI does not have figures on the number of unaccompanied children accommodated in DGASPC centres.<sup>407</sup>

## 1.2. Unaccompanied children aged 16 or more

Unaccompanied children who have reached the age of 16 and who do not have the necessary material resources to ensure their subsistence are accommodated in the Regional Centres. They are accommodated separately from adults in **Bucharest** and **Șomcuta Mare**, although if there is a relative in the centre they will be accommodated with him or her. On the other hand, they are not separated from adults in **Timișoara**, **Rădăuți** and **Giurgiu**. In **Galați** there were a few unaccompanied children but they left soon after their arrival.

During 2018, a total of 159 unaccompanied children were accommodated in Regional Centres.<sup>408</sup>

## 2. Reception of families

Efforts are made to ensure that nuclear families can stay together during the asylum procedure. Families are accommodated in a different building in **Timișoara**, and in separate rooms in **Bucharest**, **Rădăuți**, **Giurgiu**, **Șomcuta Mare** and **Galați**.

Beyond the Regional Centres managed by IGI-DAI, AIDRom runs two Accommodation Centres:

- One Accommodation Centre in **Timișoara**, which operates uninterruptedly since August 2012 with a capacity of 15 places; and
- One Accommodation Centre in **Bucharest**, which operates since 2015 with 18 places.

<sup>407</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>408</sup> Information provided by IGI-DAI, 5 March 2019.



These centres accommodate vulnerable persons, especially single parents with children (mothers with children). The AIDRom centres are located within these cities, funded partially by AMIF and partially by external donors. Asylum seekers housed in these centres have access to social assistance, cultural activities, and cultural orientation.

According to IGI-DAI a total of 81 asylum seekers were accommodated in the two AIDRom centres; 29 in Bucharest and 52 in Timișoara. At the end of December 2018 there were 16 asylum seekers accommodated in these centres.<sup>409</sup>

## F. Information for asylum seekers and access to reception centres

### 1. Provision of information on reception

Asylum seekers are informed of their rights and obligations pursuant to Article 17(1)(f) of the Asylum Act. IGI-DAI shall provide written information to asylum seekers in a language they understand or are reasonably supposed to understand, within a maximum of 15 days from the submission of the asylum application.<sup>410</sup> The information shall be provided by the official responsible for receiving the asylum application, according to a template established by order of the General Director of IGI.<sup>411</sup> Where necessary to ensure an adequate understanding of the information by the applicant, it may also be presented orally during the preliminary interview.<sup>412</sup> Competent officers are also required to inform asylum seekers on how to contact NGOs and UNHCR and how to obtain legal assistance and representation.<sup>413</sup> The General Director of IGI appoints the official responsible for ensuring the conditions for carrying out the above activities.<sup>414</sup>

The house rules of the reception centres prescribe that, when accommodated in reception centres, asylum seekers also receive information on the rights, obligations, prohibitions and disciplinary sanctions applicable during their stay in the centre. In this regard information is handed to asylum seekers in the form of an information sheet in a language which he or she understands or is reasonably supposed to understand and in which he or she can clearly communicate in. Where appropriate, for an adequate understanding of the applicant, information may also be provided orally using the services of an interpreter apt to ensure appropriate communication.<sup>415</sup> The applicant has to sign an acknowledgment of the receipt of the information leaflets.

In practice, asylum seekers are expected to contact the NGOs in the Regional Centres in order to get more detailed information on reception conditions, house rules and their rights and obligations.

**Bucharest:** The Regulation of Internal Order (ROI) is explained by the integration officer when needed or during the interview with each asylum seeker. It has been reported that leaflets regarding the ROI, rights and obligations were distributed in the past but are no longer distributed. The ROI is explained by the NGO representatives and the officer at the gate of the centre each time an event occurs. According to the director of the Regional Centre, the information is provided at the time of accommodation in the centre by the officers at the access control point, with the help of an IOM Arabic interpreter who is present in the centre from 08:00 to 14:00, or by a person from the community. Written information is provided.

**Giurgiu:** The JRS representative is not aware of how information on ROI is provided by IGI-DAI to asylum seekers as she has never been present at such an information session. The NGOs organise

<sup>409</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>410</sup> Article 17(1)(f) Asylum Act; Article 2(1) Asylum Decree.

<sup>411</sup> Article 2(1) Asylum Decree.

<sup>412</sup> Article 2(1<sup>^</sup>1) Asylum Decree.

<sup>413</sup> Article 2(2) Asylum Decree.

<sup>414</sup> Article 2(3) Asylum Decree.

<sup>415</sup> Article 5(1) and (2) ROI.

information sessions with asylum seekers after their arrival in the centre and offer information during individual counselling sessions. According to the legal counsellor, IGI-DAI does not hold collective information sessions for asylum seekers.

**Galați:** The ROI is explained in an easily comprehensible manner at the moment of accommodation in the centre, with the assistance of an interpreter, where possible, or of a person from the community who speaks English. The information is provided every time it is needed. There are also written information in the rooms.

**Șomcuta Mare:** Asylum seekers are provided general information on the ROI and the projects implemented by NGOs in the Regional Centre, upon submission of the asylum application. In general, IGI-DAI provides information to asylum seekers only upon arrival in the centre, while NGO representatives cover the details and additional information on the procedure, rights and obligations.

**Timișoara:** Information on the ROI is explained by the integration officer during the weekly information session organised jointly with NGOs for the asylum seekers. In general, the integration officer focuses on residents' obligations and prohibitions. The NGO representatives explain and detail other elements not mentioned by the integration officers. The JRS representative also offers information during individual counselling sessions.

**Rădăuți:** Asylum seekers receive leaflets when their asylum application is registered. NGO representatives inform them orally during counselling sessions.

Information on the rights, obligations, prohibitions and disciplinary sanctions applicable during the stay in the Regional Centre shall be displayed in each accommodation room in an international language.<sup>416</sup> However, according to the stakeholders interviewed by the author, this is not complied with in practice, although **Șomcuta Mare** the main provisions of the ROI are incorporated in a poster in the form of infographics. In **Timișoara**, posters on the rights and obligations prepared by CNRR and AIDrom, and billboards with excerpts from the ROI and the Asylum Act, are displayed in the building where the asylum seekers are accommodated.

## 2. Access to reception centres by third parties

### Indicators: Access to Reception Centres

1. Do family members, legal advisers, UNHCR and/or NGOs have access to reception centres?  
☒ Yes      ☐ With limitations      ☐ No

Pursuant to Article 17(1)(r) of the Asylum Act, asylum seekers have the right to be visited by family members, representatives of national and international NGOs and bodies with duties in the field of asylum or human rights, authorised and accredited under the law.

The house rules prescribe that visitors shall have access to the centre premises, including closed spaces, only through the access control post, based on identity documents such as identity card, passport, diplomatic identity card or residence permit. Visitors' access to the centre premises, including closed spaces, shall be allowed only after they have been authorised by the service staff at the access control post and after registering the entry in the Visitor Record Register. Authorities are forbidden from retaining the documents at the access control post.

NGOs implementing projects funded by the AMIF national programme have access to reception centres for the duration of their projects, based on protocols with IGI-DAI.

<sup>416</sup> Article 5(3) ROI.

## **G. Differential treatment of specific nationalities in reception**

There is no difference in treatment with respect to reception based on nationality. All Regional Centres accommodate different nationalities.

## Detention of Asylum Seekers

### A. General

#### Indicators: General Information on Detention

1. Total number of persons detained in 2018:	304
2. Number of persons in detention at the end of 2018:	57
3. Number of detention centres:	2
4. Total capacity of detention centres:	274

#### Specially designed closed spaces

Before the recast Reception Conditions Directive, Romania only detained foreigners subject to removal. An asylum detention regime was established following the transposition of the Directive, which took the form of a specially designed closed place i.e. locked rooms in each Regional Centre, except **Giurgiu**.

Detention in a specially designed closed space is ordered in writing, for a period of 30 days, by an ordered motivated in fact and in law by the designated prosecutor within the Prosecutor's Office attached to the Court of Appeal territorially competent for the area where the Regional Centre is located, upon a motivated request by IGI.<sup>417</sup>

Romania does not apply this form of detention in practice. Since the entry into force of the reform on 20 April 2016 and until today, only one applicant in **Bucharest** has been subject to asylum detention as he was considered dangerous for public order. The reasons behind the lack of use of the specially designed closed spaces of the reception centres include lack of staff, as well as unsuitable facilities to meet the standard requirements for detention, especially concerning daily meals.

#### Public custody centres

The 2015 reform also amended the provisions of the Aliens Ordinance regarding the situation of foreigners who lodge an asylum application from detention. Whereas prior to 2015 the Aliens Ordinance required the release of foreigners from detention as soon as a first application for international protection was lodged, the Aliens Ordinance now prescribes that an asylum seeker is only released when he or she is granted access to the regular procedure in Romania.

The law defines the measure of taking a person into "public custody" as a temporary restriction of the freedom of movement on the territory of Romania, ordered against foreigners in order to accomplish all the necessary steps for removal or transfer under the Dublin Regulation under escort.<sup>418</sup> In practice, however, it constitutes a measure of deprivation of liberty.

There are 2 detention centres, known as Centres for Accommodation of Foreigners Taken into Public Custody (*Centrul de Cazare a Străinilor luați în Custodie Publică*), located in **Otopeni**, near Bucharest, and **Arad**, near Timișoara. The centres are managed by IGI and are specially designed for temporary accommodation of foreigners taken into public custody.<sup>419</sup>

Detention ("public custody") is ordered in writing by an order, justified in law and in fact by the designated prosecutor within the Prosecutor's Office attached to the Court of Appeal of Bucharest, upon a motivated request by IGI.<sup>420</sup>

In general asylum seekers are not detained. The main categories of asylum seekers detained are those who applied for asylum from detention and their application was assessed in accelerated procedure.

<sup>417</sup> Article 19^7(1) Asylum Act.

<sup>418</sup> Article 101(1) Aliens Ordinance.

<sup>419</sup> Article 103(3) Aliens Ordinance.

<sup>420</sup> Article 19^14(1) Asylum Act; Article 101(2) Aliens Ordinance.

During 2018, 48 asylum applications were made from public custody centres and 10 from penitentiary facilities.<sup>421</sup> A total of 304 persons were detained in public custody in the course of 2018, while 57 remained in detention at the end of the year.

According to the director of the Public Custody Centre of **Arad**, 192 persons were placed in detention in 2018, of which one was a 10-year-old accompanied child. During the author's visit to Arad on 15 January 2019, there were 26 persons in detention, including one asylum seeker from Tunisia. According to the JRS representative, on 13 November 2018 there were 27 persons in detention, including four asylum seekers. In **Otopeni**, at the time of the author's visit on 22 June 2018, there were 60 persons detained. According to the director of the centre, the majority were first-time asylum seekers or had made a subsequent application.

The law prescribes a deadline of 3 days for IGI-DAI to assess the asylum application of an applicant who is in detention and to issue a motivated decision.<sup>422</sup> Therefore in these cases the procedure is rapidly conducted. Asylum seekers cannot prepare for the personal interview, as they have no time to contact an attorney or a legal counsellor in order to be counselled or assisted at the interview. According to the legal counsellor in **Timișoara**, personal interviews are rudimentary and the procedure is quickly conducted, also given the mental state of detained asylum seekers.

## B. Legal framework of detention

### 1. Grounds for detention

#### Indicators: Grounds for Detention

- |  |  |   |
|--|--|---|
| 1. In practice, are most asylum seekers detained                       |  |   |
| ❖ on the territory:  | <input checked="" type="checkbox"/> Yes  | <input type="checkbox"/> No   |
| ❖ at the border: <sup>423</sup>  | <input type="checkbox"/> Yes   | <input checked="" type="checkbox"/> No                                    |
| 2. Are asylum seekers detained during a regular procedure in practice? | <input type="checkbox"/> Frequently  | <input type="checkbox"/> Rarely <input checked="" type="checkbox"/> Never |
| 3. Are asylum seekers detained during a Dublin procedure in practice?  | <input type="checkbox"/> Frequently <input checked="" type="checkbox"/> Rarely | <input type="checkbox"/> Never  |

#### 1.1. Detention of asylum seekers in specially designed closed spaces

Under Article 19<sup>5</sup>(1) of the Asylum Act, IGI may place asylum seekers in specially designed closed places where [Alternatives to Detention](#) cannot be applied to carry out the necessary procedural steps and to limit abuse to the procedure, for the following reasons:

- To verify the applicant's identity
- To establish the elements on which the application is based, which could not be obtained in the absence of this measure, in particular where there is a risk of absconding by the applicant;
- At the request of one of the institutions with responsibilities in the field of national security, from which it follows that the applicant presents a danger for the national security.

The law provides that the "risk of absconding" within the meaning of Article 19<sup>5</sup>(1)(b) of the Asylum Act is to be understood as the factual situation which justifies the assumption that the applicant absconds from performing the activity of determining the elements of the asylum application made with the

<sup>421</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>422</sup> Article 19<sup>15</sup>(1) Asylum Act.

<sup>423</sup> Accommodation in airport transit zone with very restricted freedom of movement.

occasion of the personal interview.<sup>424</sup> The Asylum Act sets out the criteria for determining the existence of a “risk of absconding”:<sup>425</sup>

- a. The applicant crossed or was caught trying to illegally cross the state border of Romania after filing the asylum application;
- b. The applicant was caught trying to illegally cross the state border of Romania, and the asylum application was filed after the person was apprehended ;
- c. There are reasons to believe that the applicant intends to leave Romania after filing the application.

In relation to asylum seekers subject to the Dublin procedure or to a measure of removal or expulsion from the Romanian territory, the measure of placement in specially designed closed spaces cannot be ordered.<sup>426</sup>

## 1.2. Detention of asylum seekers in public custody centres

Under Article 19<sup>13</sup> of the Asylum Act an asylum seeker may be placed or maintained in detention (“public custody”) in the cases foreseen by the Aliens Ordinance,<sup>427</sup> as well as in the following cases:

- a. In order to carry out the transfer to the responsible Member State under the Dublin Regulation, where there is a significant risk of absconding;<sup>428</sup>
- b. Where the applicant was detained with a view to removal or expulsion from Romania and filed an application in order to delay or prevent enforcement of the removal or expulsion measure, having had the possibility to lodge such an application before.

The Asylum Act sets out a different set of criteria for the determination of a “significant risk of absconding” in a Dublin procedure, referring to cases where the applicant:<sup>429</sup>

1. Has irregularly crossed the border and his or her fingerprints match with a Eurodac ‘hit’;
2. Has irregularly crossed the external border of the EU Member States or Schengen countries, or was caught trying to irregularly cross the Romanian border and applied for asylum after being apprehended;
3. Has irregularly crossed or attempted to cross the Romanian border after applying for asylum in Romania;
4. Has applied for asylum in Romania after having been transferred to the responsible Member State;
5. Has not complied with alternatives to detention;<sup>430</sup>
6. Opposes the transfer to the responsible Member State.

In practice, in most cases asylum seekers are detained on the territory. In relation to applicants subject to the Dublin procedure, who cannot be detained in specially designed closed spaces, most stakeholders reported that detention in public custody is generally not ordered. These asylum seekers are usually detained if they cross or attempt to cross to Hungary.

Whereas prior to 2015 the Aliens Ordinance required the release of foreigners from detention as soon as a first application for international protection was lodged, the law now prescribes that an asylum seeker is only released when he or she is granted access to the regular procedure. Therefore if they are assessed in an **Accelerated Procedure** they will stay in detention until the asylum procedure is

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<sup>424</sup> Article 19<sup>6</sup>(3) and (2) Asylum Act.

<sup>425</sup> Article 19<sup>6</sup>(4) Asylum Act.

<sup>426</sup> Article 19<sup>2</sup>(3) Asylum Act.

<sup>427</sup> Article 101(2) Aliens Ordinance. The measure of public custody is ordered against a foreigner who cannot be removed under escort within 24 hours and who: (a) risks absconding from removal; (b) avoids or hampers the preparation of the return or removal under escort process; or (c) is subject to expulsion.

<sup>428</sup> Article 19<sup>13</sup> Asylum Act, in conjunction with Article 19<sup>14</sup>(1) Asylum Act.

<sup>429</sup> Article 19<sup>14</sup>(2) Asylum Act.

<sup>430</sup> Article 19<sup>14</sup>(2)(e) Asylum Act, citing Article 19<sup>2</sup>(1)(a)-(b).

concluded. If the application is rejected and the asylum seeker lodges an appeal, he or she shall remain in detention under the appeal has been examined. When the applicant makes a subsequent application, detention ceases on the date he or she is granted access to the new procedure.<sup>431</sup> If the application is rejected and the asylum seeker lodges an appeal, he or she shall remain in detention under the appeal has been examined.

## 2. Alternatives to detention

### Indicators: Alternatives to Detention

1. Which alternatives to detention have been laid down in the law?
  - ☒ Reporting duties
  - ☐ Surrendering documents
  - ☐ Financial guarantee
  - ☒ Residence restrictions
  - ☐ Other
2. Are alternatives to detention used in practice?
  - ☐ Yes ☒ No

### Specially designed closed spaces

The Asylum Act provides for the possibility to impose alternatives to asylum detention, defined as “restrictive measures”, in order to fulfil the necessary formalities, to limit abuse of the asylum procedure, and in case the asylum seeker poses a threat to national security, on the basis of an individual assessment.<sup>432</sup> These consist of:<sup>433</sup>

- ❖ Reporting duties;
- ❖ Designated place of stay in one of the Regional Centres.

Detention in specially designed closed spaces may be ordered if reporting duties and designated place of stay measures cannot effectively be applied to carry out the necessary procedural formalities and to limit abuse of the asylum procedure.<sup>434</sup>

No restrictive measures may be imposed against an asylum applicant for the sole reason that he or she has lodged an application for international protection in Romania.<sup>435</sup>

### Detention (“public custody”) centres

The placement of an asylum seeker in detention centres (“public custody”) may be ordered if the outcome of a prior assessment regarding the possibility to impose reporting duties to IGI or to designate their residence demonstrates that these measures are not possible and sufficient to meet the procedure and purpose sought,<sup>436</sup> namely removal from Romania or transfer under the Dublin Regulation.

IGI-DAI reported 42 asylum seekers subject to the alternative to detention of designated place of stay in one of the Regional Centres in 2018.<sup>437</sup>

<sup>431</sup> Article 101(8) Aliens Ordinance.

<sup>432</sup> Article 19^2(1) Asylum Act.

<sup>433</sup> Article 19^2(1) Asylum Act.

<sup>434</sup> Article 19^5(1) Asylum Act.

<sup>435</sup> Article 19^2(2) Asylum Act.

<sup>436</sup> Article 19^13(2) Asylum Act.

<sup>437</sup> Information provided by IGI-DAI, 5 March 2019.



### 3. Detention of vulnerable applicants

#### Indicators: Detention of Vulnerable Applicants

1. Are unaccompanied asylum-seeking children detained in practice?  
☐ Frequently ☒ Rarely ☐ Never  
  
❖ If frequently or rarely, are they only detained in border/transit zones? ☐ Yes ☒ No
2. Are asylum seeking children in families detained in practice?  
☒ Frequently ☐ Rarely ☐ Never

#### Specially designed closed spaces

Asylum detention i.e. placement in specially designed closed spaces cannot be ordered against unaccompanied asylum-seeking children, except for cases where the unaccompanied child cannot prove his or her age and, due to serious doubts thereon, IGI-DAI requests an age assessment.<sup>438</sup>

#### Detention (“public custody”) centres

The Public Custody Centres Regulation explicitly provides that children cannot be detained in these centres, unless they are accompanied by at least one of the parents or their legal representative, who are taken into public custody.<sup>439</sup>

According to the amended Aliens Act, if the foreigner declares that he or she is a minor and cannot prove his or her age, but there are serious doubts about his minority, he or she will be considered an adult.<sup>440</sup> In this situation, IGI requests an age assessment, with his or her prior consent.<sup>441</sup> As a consequence the child will be treated as adult and placed in detention pending the age assessment, until his or her age is confirmed.

While IGI-DAI stated that children are not detained in public custody,<sup>442</sup> according to JRS, 80 children (accompanied and unaccompanied) were detained in public custody centres in 2017. No figures are available for 2018. In one case in 2017, 4 unaccompanied children were placed in the **Otopeni** detention centre, even though they had been registered as such by the Border Police. While in detention they lodged an asylum application and, after the personal interview, IGI-DAI granted them access to regular procedure on account of their minority.

Romanian law does not prohibit detention of other vulnerable asylum seekers. IGI-DAI noted that detention of persons with special needs such as victims of torture or trafficking has not been applied in public custody.<sup>443</sup>

In **Arad**, a single-parent family, a father with a 10-year-old child, was placed in detention in 2018. A family with three children from Iraq, who arrived in Romania by boat in 2017, were also held in Arad until June 2018 when they were granted tolerated status and moved to Bucharest. According to the JRS representative, who provided counselling to them, they made an asylum application but it was rejected. After this they tried to cross the border but they were apprehended and placed in detention again, where they made a subsequent application, which was also rejected.

The number of accompanied children placed in detention in **Arad** in 2017 was 35, according to the director of the centre. During 2018, there were two pregnant women from Vietnam and Kosovo detained in Arad who were later transferred to **Otopeni**. In **Arad** they were accommodated at the infirmary where

<sup>438</sup> Article 19^5 Asylum Act, in conjunction with Article 42(2) Asylum Act.

<sup>439</sup> Article 29 Public Custody Centres Regulation.

<sup>440</sup> Article 131^1(1) Aliens Act, as amended by Act 247/2018 of 6 November 2018.

<sup>441</sup> Article 131^1(2) Aliens Act, as amended by Act 247/2018 of 6 November 2018.

<sup>442</sup> Information provided by IGI-DAI, 14 February 2018.

<sup>443</sup> Information provided by IGI-DAI, 14 February 2018.

they were under 24-hour observation, according to the JRS representative. According to the director of the centre, there was also an elderly person aged 64 and two persons with medical problems; one with affective schizophrenia and drug dependence.

In **Otopeni**, at the time of the author's visit in June 2018, there were no vulnerable persons detained according to the director of the centre. However, in the first half of the year, accompanied minors were detained. This was confirmed by the JRS representative, who stated that one or two families with children placed in detention in 2017 were still in detention at the beginning of 2018.

Save the Children stated that a family from Cuba with a minor child and the child's grandmother was detained in **Otopeni** for a few months in 2018 until they were released and granted tolerated status. This was confirmed by a lawyer, who stated that the child's grandmother was not released.

#### 4. Duration of detention

##### Indicators: Duration of Detention

- |  |               |
|--|---------------|
| 1. What is the maximum detention period set in the law (incl. extensions): |               |
| ❖ Asylum detention   | 2 months      |
| ❖ Pre-removal detention  | 18 months     |
| 2. In practice, how long in average are persons detained?                  | Not available |

#### Specially designed closed spaces

According to Article 19<sup>447</sup>(1) of the Asylum Act, detention in specially designed closed spaces is ordered for a period of 30 days. IGI may request the territorially competent Court of Appeal to prolong detention for an additional 30-day period.<sup>444</sup> Accordingly, the total period of detention in those spaces may never exceed 60 days.<sup>445</sup>

IGI-DAI has to carry out the examination of the applicant's identity and establishment of the elements of the asylum claim expeditiously in order to maintain the measure of detention for as short as possible. Delays due to the administrative procedures that cannot be imputed to the applicant cannot justify a continuation of detention, except for situations where it is necessary to continue to apply the measure for reasons of national security, without exceeding the 60-day limit.<sup>446</sup>

#### Detention ("public custody") centres

Detention in public custody centres is also ordered for an initial period of 30 days,<sup>447</sup> and may not exceed 6 months.<sup>448</sup> However, this period may be extended exceptionally for an additional period not exceeding 12 months, in cases where IGI-DAI is unable to transfer the asylum seeker to the responsible Member State due to delays in obtaining the necessary documentation for the transfer to the respective Member State.<sup>449</sup> Therefore detention in public custody can last up to 18 months.

Specifically as regards detention in the Dublin procedure, the Asylum Act recalls that detention ceases if the time limit of six weeks set out in Article 28(3) of the Dublin Regulation is reached.<sup>450</sup>

Asylum seekers who make an asylum application while in detention centres and are assessed under the accelerated procedure spend the whole asylum procedure in detention.

The duration of detention in **Arad** in 2018 was as follows:

<sup>444</sup> Article 19<sup>447</sup>(3) Asylum Act.  
<sup>445</sup> Article 19<sup>447</sup>(5) Asylum Act.  
<sup>446</sup> Article 19<sup>447</sup>(6) Asylum Act.  
<sup>447</sup> Article 19<sup>447</sup>(1) Asylum Act.  
<sup>448</sup> Article 19<sup>447</sup>(6) Asylum Act.  
<sup>449</sup> Article 19<sup>447</sup>(7) Asylum Act.  
<sup>450</sup> Article 19<sup>447</sup>(10) Asylum Act.

Duration of detention – Public Custody Centre Arad: 2018	
Duration	Number of persons
1-10 days	100
> 10 days	35
> 1 month	75
> 6 months	9
> 1 year	1

Source: IGI, Director of Arad Public Custody Centre, 15 January 2019.

According to the JRS representative there were a number of Pakistani nationals who stayed in detention for 18 months and were subsequently granted tolerated status and released.

According to the director of **Otopeni**, there are no statistics on the average duration of detention in that centre. However, she stated that in the case of Pakistani, Indian and Bangladeshi nationals the average duration exceeds 6 months as their identities were not confirmed. The JRS representative reported that the average duration of detention in **Otopeni** is 4-6 months and in the case of Pakistani nationals it may reach 8-10 months.

### Detention in borders and transit zones

Detention upon apprehension cannot exceed 24 hours under the Romanian Constitution and the Criminal Procedure Code.<sup>451</sup> According to JRS, in 2018 persons apprehended were not held for more than 24 hours in Border Police custody, as there were no cases of large groups of new arrivals. In **Otopeni Airport**, there were cases where persons who did not make an asylum application were detained for 30 days, according to JRS.

## C. Detention conditions

### 1. Place of detention

#### Indicators: Place of Detention

1. Does the law allow for asylum seekers to be detained in prisons for the purpose of the asylum procedure (i.e. not as a result of criminal charges)? ☐ Yes ☒ No
2. If so, are asylum seekers ever detained in practice in prisons for the purpose of the asylum procedure? ☐ Yes ☒ No

According to the law, asylum seekers may be detained in specially designed closed spaces within the Regional Centres, as well as in public custody centres. Asylum seekers are only detained in prisons if they are convicted of a criminal act or if they are sentenced to imprisonment.

#### 1.1. Specially designed closed spaces in Regional Centres

All Regional Centres except **Giurgiu** contain specially designed closed spaces. In **Bucharest**, 96 places are established at the IGI-DAI **Tudor Gociu**. **Rădăuți** has 10 places in closed spaces, **Galati** has 30, **Timișoara** has 15 and **Șomcuta Mare** has 15 places located in a closed space in the basement of the building.

<sup>451</sup> Article 23 Romanian Constitution; Article 209 Criminal Procedure Code.

## 1.2. Detention (“public custody”) centres

There are two Accommodation Centres for Aliens Taken into Public Custody (*Centrul de Cazare a Străinilor luați în Custodie Publică*) in Romania with the following capacity:

Capacity of detention centres: 2018	
Detention centre	Capacity
Otopeni	114
Arad	160
<b>Total</b>	<b>274</b>

Capacity in Arad may be extended to 206 places but only for limited periods.

Asylum seekers placed in public custody centres shall be detained, as far as possible, separately from other categories of foreigners.<sup>452</sup> In practice, this is not the case according to the directors of the **Arad** and **Otopeni** centres.

Persons who are convicted of crimes are also to be accommodated in separate rooms from other categories of foreigners.

## 1.3. Transit zones

Romania has an airport transit zone in **Otopeni Airport** in Bucharest, with a capacity of 22 places. Three people were detained in Otopeni during 2017.<sup>453</sup> According to JRS, 11-12 asylum seekers were detained at **Otopeni Airport** in 2018, but not at the **Moravița** border-crossing point.

## 2. Conditions in detention facilities

### Indicators: Conditions in Detention Facilities

- |   |   |  |
|---|---|--|
| 1. Do detainees have access to health care in practice? | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| ❖ If yes, is it limited to emergency health care?       | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |

Given that detention of asylum seekers in specially designed closed spaces of Regional Centres is not used in practice, the following section focuses on conditions in detention (“public custody”) centres.

Public custody centres are managed by the IGI Migration Directorate. According to the Aliens Ordinance, the centres are established, organised, sanitary authorised and equipped to provide adequate accommodation, food, medical care and personal hygiene.<sup>454</sup>

The director of **Arad** emphasised the lack of interpreters and lack of staff as an issue. The lack of personnel was also reported by the Ombudsman.<sup>455</sup>

According to the director of **Arad**, NGOs and UNHCR do not hold trainings for staff working in detention centres. They only have monthly internal trainings in the centre on subjects recommended by the IGI Migration Directorate, held by the coordinator on duty. The director stressed that there is a need for staff trainings on practical aspects of their day-to-day activities which could be held by trainers or practitioners from abroad, to share their knowledge. The director of **Otopeni** declared that IGI has organised trainings throughout time.

<sup>452</sup> Article 19^16(1) Asylum Act.

<sup>453</sup> Information provided by IGI-DAI, 14 February 2018.

<sup>454</sup> Article 103(3) Aliens Ordinance.

<sup>455</sup> Ombudsman, *Report of the visit to the Accommodation Centre for Aliens Taken in Public Custody Arad*, 40/2018, available in Romanian at: <https://bit.ly/2GkcXCq>.

According to the JRS representative, only one person in Arad declared that he had been physically assaulted by the police. The case was reported to UNHCR and he was transferred to **Otopeni**. One of the foreigners detained in Arad, interviewed by the author, stated that the police is beating and verbally abusing detainees. However, two of the foreigners interviewed by the author said that they are respected by the staff and have no problems with them, that staff are kind and the director is very nice and well-intentioned. Another individual only mentioned that the police entered his room to inform him that it was lunch time while he was showering and that one of the police officers pulled the shower curtain.

When transferred from the facility to court for hearings, detained foreigners are handcuffed and escorted.

Regarding detainees' right to information on their rights and obligations in detention in **Arad**, the author noticed leaflets on rights and obligations drafted by CNRR and the daily schedule and prohibitions in the centre, in one of the rooms where foreigners are taken upon arrival in the centre. The director of the centre mentioned that every person placed in detention receives leaflets from IGI upon arrival. Posters in different languages were also displayed on the dormitory doors.

## 2.1. Overall conditions

**Otopeni** operates in Otopeni, Ilfov County, near the largest airport in Romania, Henri Coanda Airport, which facilitates the operative return of foreigners to their countries of origin. The centre was established in 1999 and renovated in 2004-2005 with PHARE funds of 1,500,000 €, including Romania's own contribution.<sup>456</sup> At the time of the Ombudsman's visit in 2016, Otopeni had two buildings, distributed in 25 accommodation rooms with a maximum of 12 beds each. The centre had a capacity of 114 places, with the possibility of extension in times of crisis up to 140 places.<sup>457</sup>

**Arad** is located in Horia, a village in Arad County. It has a capacity of 160 places. There are two buildings: one hosting the administrative offices and 52 places of accommodation, and another building designated for accommodation with 108 places, administration purposes and other activities, inaugurated in 2015.<sup>458</sup> Each room is designed to accommodate 4 people and has 4.5 to 6m<sup>2</sup> per person.<sup>459</sup>

According to the directors of the two centres, both Otopeni and Arad have reached maximum capacity in the past. Arad had an occupancy rate of 108.5% in September/October 2017, with 174 persons detained. During that period, staff members were transferred from other authorities of the Ministry of Internal Affairs to Arad due to staff shortages.

During the visits carried out to Otopeni in June 2018 and Arad in January 2019, the detention conditions in the two public custody centres were satisfactory. In **Arad** the entire facility was visited, except the rooms where people sleep. Hygienic conditions and overall cleanliness of the centre were very good. The empty rooms which were visited had four beds, a shower separated by a wall and with a curtain and a toilet near the shower, which is not separated from the rest of the room. Next to the medical offices there is a room for mother and children, which includes a baby crib and a colourful carpet. The windows of the building where people were accommodated during the visit were opaque, so there was no possibility to look outside. The persons interviewed by the author also mentioned this issue. A person interviewed by the author during the visit in Arad mentioned that Arad is cleaner than Otopeni.

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<sup>456</sup> Ombudsman, *Report of the visit to the Accommodation Centre for Aliens Taken in Public Custody Otopeni*, 70/2016, available in Romanian at: <http://bit.ly/2BPRsK>, 2.

<sup>457</sup> *Ibid*, 4.

<sup>458</sup> Ombudsman, *Report of the visit to the Accommodation Centre for Aliens Taken in Public Custody Arad*, 30/2016, available in Romanian at: <http://bit.ly/2EbfM7g>, 3-4.

<sup>459</sup> *Ibid*, 10.

In **Otopeni** the rooms are equipped with their own bathroom, individual bed, table, chairs, closet, television, electric sockets and lighting. The bathrooms are equipped with a toilet, sink, shower, ensuring the privacy of detainees while using the bathroom.<sup>460</sup>

During the short visit to the premises in Otopeni in June 2018, the author noticed that it was clean and people detained had clean clothes. In **Arad** one of the foreigners interviewed by the author stated that he had just received from CNRR a pair of trousers, a shirt and toothpaste after five months spent in the centre. Another person who was detained for 6 months in Arad at the time of the visit declared that during his first month he received a hygienic packet (toothpaste, shampoo, one soap, one toilet paper roll), last week he received the same package and the day before the visit he received a hat, trousers, a blouse and playing cards from CNRR.

According to the people interviewed by the author in **Arad**, who were also previously detained in **Otopeni**, the rooms in Otopeni were closed every day at 18:00 until 13:00 the next day. The windows are not opaque and people can see outside, and the food was described as better in Otopeni. Each asylum seeker has his or her own bed and there is sufficient space. Detainees are required to clean their own rooms and the common spaces in both centres.

Detainees are accommodated in separate rooms on the basis of gender. Family members are accommodated in the same room separately from other people, ensuring an appropriate level of privacy. According to the director of **Otopeni** there is a room for children with toys. In **Arad**, authorities are planning to build a facility for families with children.

CNRR provides material assistance through the project "Counselling and Material Assistance in Public Custody Centres", funded by the AMIF national programme. In **Otopeni**, this includes hygienic and sanitary items supplementing those provided by the centre, as well as clothes, materials for educational and recreational activities, certain foods such as sweets, fruit, juices and tea, medical materials, and items for children where needed.<sup>461</sup>

The Public Custody Centres Regulation prescribes that food is provided three times a day, in the form of hot or cold food, depending on the situation of the detainees during accommodation or transport. For sick people, pregnant women and other categories of persons, food provision follows the number of meals and the diet prescribed by the doctor of the centre. At the request of detainees, religious diet is respected.<sup>462</sup>

In **Arad** the food is provided by the Arad penitentiary facility. Three foreigners interviewed by the author in Arad complained about the food quality. One of them mentioned that every day for lunch they have chicken thighs, with only side dishes differing. The nutritional value of food provided to persons suffering from medical conditions and requiring specific diets is ensured, as reported by the two centres' directors. The JRS representative who visits Arad confirmed that special diets were provided to pregnant women and to a person suffering from diabetes. Nevertheless, it was reported by the director of Arad that they have no special menus for children as meals are provided by the Arad penitentiary.

## 2.2. Activities

The Public Custody Centres Regulation provides that every foreigner is entitled to an hour of recreational outdoor activities per day, depending on the weather conditions and the possibilities of surveillance. Recreational outdoor activities usually take place between 13:30 and 17:00. The director of the centre or his or her legal substitute may increase in the duration of outdoor recreational activities.<sup>463</sup> **Arad** has two courtyards of 120m<sup>2</sup> each for walking, with lawns and concrete surfaces, each equipped with a goalpost and basketball hoop with backboard and tables with benches. According to the director

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<sup>460</sup> Ombudsman, *Report of the visit to Otopeni*, 70/2016, 4-5.

<sup>461</sup> Ombudsman, *Report of the visit to Otopeni*, 70/2016, 5.

<sup>462</sup> Article 30(1)-(4) Public Custody Centres Regulation.

<sup>463</sup> Article 26(1)-(2) Public Custody Centres Regulation.

of Arad, between meals, people are let outside in the courtyard for an hour, under the police officers' supervision. In **Otopeni** people are also allowed outside under supervision after meals or depending on IGI missions.

There is a workout room with a few fitness machines in **Arad** but it cannot be used yet as the project is still being finalised as of January 2019. **Otopeni** has a functioning gym room.

Televisions in **Otopeni** are functional and available in every room, while in **Arad**, during the author's visit to Arad in January 2019, there were only two televisions, one in each common room, with channels provided by the Romanian cable company. The interviewed foreigners complained about the fact that they do not have a television in their rooms. Although every room can support a television and televisions were bought, they cannot install them as they cannot connect them to a cable television network.

According to JRS and the directors of the two centres, detainees have no internet access in detention.

According to the Ombudsman report on **Otopeni**, "migrants have access to common spaces which are designated for cultural, recreational activities, and a prayer room with a library including books and dictionaries in foreign languages (French, English, German, Arabic), a gym with equipment, a club, a guest room, a playroom for minors accompanying migrants in public custody."<sup>464</sup>

The directors of both **Arad** and **Otopeni** stated that there are no social, cultural or education activities organised in the centre, neither for adults nor for children. A person interviewed by the author in Arad confirmed that there are no activities organised for them in Arad, whereas in Otopeni the CNRR representative used to organise different social activities and games.

The Ombudsman had also observed in 2016 that there was no social worker in Otopeni, as the management of the centre stated that there was no need for such a position. The report details that:

"Despite the language difficulties and the short period of detention in the centre, there were no socio-cultural-educational activities, Romanian language courses or other types of information-education sessions for the beneficiaries. There is no hired person to provide social counselling to residents or to provide other information of interest responding to the needs of cultural adaptation or other needs of detainees".<sup>465</sup>

The report also mentions that CNRR often provides support and legal advice, including social assistance and information regarding rights and obligations in the centre, material aid, goods and products, as well as providing access to the interpreter for custody.<sup>466</sup>

**Otopeni** has a small playground. According to the director, there is also a children's room with toys.

The Aliens Ordinance provides for the right to access to education for children detained in public custody centres accompanied by at least one parent or by their legal representative; children have free access to the compulsory education system.<sup>467</sup> Nevertheless, according to the directors of both **Arad** and **Otopeni**, none of the children detained in public custody centres was enrolled or attended school. The director of Otopeni referred to a case from 2017 where foreigners detained requested the enrolment of their child at school and they were later released after receiving tolerated status. She also mentioned that there is a lack of staff to transport the children to school.

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<sup>464</sup> Ombudsman, *Report of the visit to Arad*, 30/2016, 8.

<sup>465</sup> *Ibid*, 11.

<sup>466</sup> *Ibid*, 12.

<sup>467</sup> Article 104(6) Aliens Ordinance.



### 2.3. Health care and special needs in detention

Foreigners detained in public custody centres have the right to legal, medical and social assistance and the right to have their own opinion, religious, philosophical and cultural matters respected.<sup>468</sup>

**Otopeni** has a general practitioner and a full-time psychologist since April 2018. From September 2017 to April 2018 there was a psychologist visiting twice a week, for 8 hours a day. The doctor's schedule is 8 hours per day on weekdays, while the medical staff work in shifts.

**Arad** has a general practitioner and a psychologist. During the author's visit on 15 January 2019, there was a doctor and three nurses, one nurse position being vacant at the time. The medical doctor stated that they had signed a contract for the first time with a pharmacy two years ago and that they have to renew the contract at the moment.

When new persons arrive in the centre, a visual medical screening is conducted by the medical staff who also take their pulse, temperature and blood pressure. The screening is conducted without an interpreter and the medical doctor specified that difficulties may arise due to this. On the next day, if the doctor was not present when the person arrived, the doctor examines the person for other medical conditions. The medical office in **Arad** did not perform medical tests for the diagnosis of infectious / contagious diseases such as HIV or hepatitis, however. They used to have HIV and drug tests in 2016-2017. At present they only have some tests they cannot use because they require a plasma separator and such equipment is not available. The medical office provides oral treatment and injections in the centre. If there is a need for specialist consultations and medical prescriptions from specialist doctors, foreigners are taken to public health care institutions in Arad county. The medical doctor noted the necessity to sign a contract with a clinic in order to facilitate the provision of medical services outside the centre. This was also noted in the Ombudsman's report.<sup>469</sup>

In 2018 there were two individuals released from **Arad** due to their medical conditions. One of them was suffering from a severe pulmonology disease, and as a result the medical doctor made a proposal for the termination of detention addressed to the director of the IGI Migration Directorate. The other case involved a child of a family of five, who among other conditions had severe viral conjunctivitis; the entire family was released. The director of Arad also mentioned the case of a person suffering from drug addiction, withdrawal symptoms and self-harming, who was taken to the psychiatric hospital. He was not hospitalised; instead the doctors prescribed medication and advised the staff from Arad to tie him to his bed. After a few days his situation improved and he was transferred to Otopeni.

Persons suffering from medical conditions such as diabetes and tuberculosis were detained in **Otopeni** in 2018. However, they were released, as reported by the JRS representative. The director of Otopeni mentioned a case from 2017 concerning a woman with cancer and hip prosthesis who was accompanied by her son and his family and her sister, and they were all released.

According to the law, the psychologist of the centre makes the psychological evaluation of persons detained in the centre, drafts psychological observation sheets and provides specialist assistance throughout their stay. For foreigners with psychological or psychiatric problems, the psychologist of the centre informs immediately the Director of the centre or his or her legal substitute and, where appropriate, makes proposals for specialist consultations to hospital departments.<sup>470</sup>

The Asylum Act provides that vulnerable asylum seekers detained in specially designed closed spaces within the Regional Centres are regularly monitored and benefit from adequate support, according to

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<sup>468</sup> Article 104(2) Aliens Ordinance.

<sup>469</sup> Ombudsman, *Report of the visit to Arad*, 40/2018, 8-9.

<sup>470</sup> Article 38 Public Custody Centres Regulation.

their individual situation, including their health situation.<sup>471</sup> The Aliens Ordinance also provides for appropriate medical care and treatment for vulnerable persons in detention centres.<sup>472</sup>

According to UNHCR Romania there is a lack of an established identification mechanism of vulnerable persons in public custody centres unlike the mechanisms used for reception centres, including specially arranged closed areas.

According to the director of **Otopeni** the identification of vulnerable persons is sought. The director of **Arad** mentioned an interview guide which is filled in by the officer on duty when the foreigner is placed in the public custody centre. The guide also includes questions related to vulnerability. This guide is filled in without an interpreter. On the other hand, the psychologist of Arad stated that there is no identification mechanism for vulnerable persons but that they are all identified, even though there are no interpreters available for psychological counselling sessions. The psychologist indicated that in case the foreigners do not speak Romanian or English, she uses Google translate, and where difficulties may arise for illiterate persons then she uses sign language. The psychologist emphasised that for over ten years of working in detention she has managed to communicate with the migrants.

The authorities try to ensure assistance for this category of persons, but if the needs in question cannot be catered for, the person is released. In rare cases groups such as families with children have been released from detention.

### 3. Access to detention facilities

#### Indicators: Access to Detention Facilities

1. Is access to detention centres allowed to

❖ Lawyers:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No
❖ NGOs:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No
❖ UNHCR:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No
❖ Family members:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Limited	<input type="checkbox"/> No

The Aliens Ordinance provides that national, international and non-governmental organisations and other bodies competent in the area of migration, authorised and accredited under the law, shall be provided with the possibility to visit detention centres on the basis of the Protocols concluded with IGI or prior authorisation. In exceptional and duly motivated situations, it is possible to visit the centres within 48 hours.<sup>473</sup>

Article 13 of the Public Custody Centres Regulation details visiting hours in detention centres for the following groups:<sup>474</sup>

- a. Representatives of diplomatic missions or foreign consular offices representing the detainees' interests: 09:00 – 20:00 every day;
- b. Representatives of national, international or non-governmental organisations competent in the area of migration, authorised and accredited under the law: 09:00 – 20:00 every day;
- c. Family members or other persons who need to state the reasons for visiting: 10:00 – 12:00 and 14:00 – 17:00 for a maximum of 30 minutes, three times a week, usually on Tuesday, Friday and Sunday;
- d. Legal representatives: 09:00 – 20:00 every day.

Lawyers have to hold a power of attorney from the foreigner held in detention. In some cases lawyers have not been allowed access to detention centre on the ground that they had not had their lawyer's card validated by the Bar Association.

<sup>471</sup> Article 19^11(3) Asylum Act.

<sup>472</sup> Article 104(7) Aliens Ordinance.

<sup>473</sup> Article 103(4) Aliens Ordinance.

<sup>474</sup> Article 13(1)-(3) Public Custody Centres Regulation.

Visits are authorised by the Head of the Centre or his or her legal representative. In the absence of cooperation Protocols, visits by NGO representatives are authorised by the Director of the IGI Migration Directorate. There have been exceptional situations whereby NGOs were not allowed to enter the public custody centre as the authorities declared that they were holding interviews during that day.

Media and politicians have access to detention centres if their request is approved. As far as JRS is aware, neither media nor politicians have visited the detention centres.

JRS is present once a week in the public custody centre of **Otopeni** and twice a month in **Arad**. JRS provides assistance in cases which are not covered by projects funded by the AMIF national programme such as assistance for subsequent applications, voluntary repatriation and Dublin returnees. Two foreigners interviewed by the author in Arad in January 2019 stated that they had not seen the JRS representative for two months.

CNRR implements two projects funded by the AMIF national programme in public custody centres. According to CNRR “the project ‘Counselling and Material Assistance in Public Custody Centres’ has the general objective of advising and informing migrants about rights, obligations and rules of conduct in the public custody centres and providing them with services and assistance which is complementary to what Romania grants, both during their stay in the accommodation centres and for their return under escort to the country of origin or country of destination under conditions of dignity.”<sup>475</sup>

Regarding the second project implemented under AMIF, CNRR stated that “the overall objective of the project ‘Counselling and Legal Assistance, Interpretation and Legal Representation in Court for Aliens Subject to a Return Decision on the Territory of Romania’ is to ensure the minimum guarantees regarding the possibility of using the remedies provided by the current legislation concerning third country nationals who are subject of a return decision, through the provision of legal counselling, legal assistance, interpretation and legal representation in court.”<sup>476</sup>

The Public Custody Centres Regulation prescribes the conditions under which detainees may use the phone in order to contact people outside the centre.<sup>477</sup> Foreigners may use the public telephone at their own expense from 09:00 to 22:00 every day. Every person is entitled to no more than 20 minutes free of charge phone per month.

In **Arad** there are only two public phones and according to the persons interviewed by the author during the visit, one of the phones was not working. The phones are not in the same building as living units so people have to be escorted by the police to use them. The Ombudsman also recommended the installation of at least two phones.<sup>478</sup> The director of Arad mentioned that they received a wireless phone but is not in use yet. In **Otopeni**, according to the people interviewed, there are 3 wireless phones in the hallway next to their rooms and they can use them at any time with permission.

Detainees may use their personal mobile phone upon request, provided that it is not equipped with a camera. They are forbidden from using their personal mobile phone as long as they are under escort.

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<sup>475</sup> Information provided by CNRR, 9 January 2018. See CNRR, *Material assistance for foreigners who are subject of a return decision and are taken in public custody*, available at: <http://bit.ly/2F2c8JY>.

<sup>476</sup> Information provided by CNRR, 9 January 2018. See CNRR, *Counseling and legal assistance, interpretation and legal representation in court for migrants who are subject of a removal decision from Romania's territory*, available at: <http://bit.ly/2DvFqV3>.

<sup>477</sup> Article 12(1)-(4) Public Custody Centres Regulation.

<sup>478</sup> Ombudsman, *Report of the visit to Arad*, 40/2018, 17.

## D. Procedural safeguards

### 1. Judicial review of the detention order

#### Indicators: Judicial Review of Detention

1. Is there an automatic judicial review of the lawfulness of detention? ☐ Yes ☒ No
2. If yes, at what interval is the detention order reviewed?

The Aliens Ordinance provides that foreigners detained in public custody centres have the right to be informed immediately after their arrival in these places, in their language or in a language they understand, of the main reasons for their detention and of the rights and obligations they have during their stay in these centres. These are communicated in writing by the persons designated to manage these centres.<sup>479</sup>

According to CNRR, there is an obligation to provide information in writing in a language that the person can reasonably be supposed to understand. The documents are received upon individuals' arrival in the public custody centre. CNRR provides them counselling and, if they so wish, supports them to challenge the detention order.<sup>480</sup>

In practice, however, foreigners receive a document, in most cases written in Romanian and English, which cites the legal provision on which detention is based and the reasons for detention, according to the director of **Arad**. Communication is done only in writing when they arrive in detention and there is no interpreter provided at this stage. No further oral explanation is given to the person, according to JRS.

Under Romanian law, only a Prosecutor is competent to order detention. The maximum duration of the initial detention order is 30 days both for public custody and for specially designed closed spaces in Regional Centres.

Foreigners subject to detention can appeal before the territorially competent Court of Appeal within 5 days.<sup>481</sup> The appeal formulated against detention is subject to lighter formalities, as it is exempt from the judicial stamp duty.<sup>482</sup> It does not have suspensive effect on the detention order or on the determination of the responsible Member State, if the applicant is detained in the Dublin procedure.<sup>483</sup> The Court of Appeal has to examine the appeal within 3 days from the date of receipt, and its decision is final.

Few appeals were lodged against detention orders in 2018. In 2018, the Court of Appeal of Timișoara had registered only two appeals<sup>484</sup> against detention orders of the Prosecutor's Office attached to the Court of Appeal of Bucharest.<sup>485</sup> However, according to the director of **Arad** there were five appeals against the detention orders, of which two lodged in February and three in November. The Ombudsman reported that as of its team's visit on 25 September 2018 there were no appeals lodged against detention orders,<sup>486</sup> although the foreigners interviewed by the Ombudsman's team stated they were informed about the possibility to appeal.<sup>487</sup> The Court of Appeal of Bucharest had registered 17 appeals against detention as of 31 December 2018.<sup>488</sup>

<sup>479</sup> Article 104(3) Aliens Ordinance.

<sup>480</sup> Information provided by CNRR, 3 December 2018.

<sup>481</sup> Articles 19^7(7) and 19^14(8) Asylum Act.

<sup>482</sup> Article 19^16(3) Asylum Act.

<sup>483</sup> Article 19^14(8) Asylum Act.

<sup>484</sup> Case file no. 1133/59/2018 and 1134/59/2018 lodged in November-December 2018.

<sup>485</sup> Information provided by the Court of Appeal Timișoara, 8 November 2018 and 23 January 2019.

<sup>486</sup> Ombudsman, *Report of the visit to Arad*, 40/2018, 16.

<sup>487</sup> *Ibid*, 4.

<sup>488</sup> Information provided by the Court of Appeal Bucharest, 7 November 2018 and 23 January 2019.

The prolongation of detention is ordered by the territorially competent Court of Appeal, upon a motivated request by IGI, filed at least 5 days before the expiry of the time limit of initial detention. The court must rule before the expiry of the period of prior detention, and its decision is final.<sup>489</sup>

In general, the IGI Migration Directorate requests the extension of detention for an additional period of 5 months to enforce return decisions under escort and the court may grant an extension of detention for this period.

Questions are raised with regard to the effectiveness of judicial review against detention measures, particularly in light of recent case law from the Court of Appeal of Bucharest. In a case concerning a family from Cuba including a child enrolled at kindergarten and a grandmother suffering from thalassaemia and hypertension, whose asylum application had been rejected, detained on the basis of a risk of absconding from the voluntary return procedure, the Court briefly concluded on the legality of detention. It dismissed the appellants' argument on alternatives to detention, stating that these only apply to asylum seekers. the Court also failed to consider the best interests of the child.<sup>490</sup>

In the assessment of the IGI Migration Directorate's request for a two-month extension of detention, however, the Court of Appeal noted that even though detention was not ordered against the minor child, since the centre could not provide adequate conditions for raising and educating a child, it would be contrary to the best interests of the child to maintain the family in detention.<sup>491</sup>

In addition to judicial review upon request and judicial review in case of an extension of the duration of detention, the Aliens Ordinance requires IGI to examine the opportunity to maintain the measure of public custody at intervals of up to 3 months. In the case of families with children, the analysis must be carried out at intervals of up to one month.<sup>492</sup>

## 2. Legal assistance for review of detention

### Indicators: Legal Assistance for Review of Detention

1. Does the law provide for access to free legal assistance for the review of detention?  
☒ Yes ☐ No
2. Do asylum seekers have effective access to free legal assistance in practice?  
☐ Yes ☐ No

During detention in public custody centres, asylum seekers have all the rights set out in the Asylum Act, except for those concerning the right to access employment, right to accommodation in the Regional Centres and reimbursement for travel costs.<sup>493</sup> As a consequence, detained asylum seekers have the same rights to legal assistance as those at liberty.

Legal assistance for asylum seekers in detention is provided by CNRR through the project "Specialized legal assistance for asylum seekers in Romania", funded by the AMIF national programme. In **Arad**, legal counselling is ensured by the legal counsellor of **Timișoara**.

JRS stated that asylum seekers face obstacles in accessing legal assistance in detention. In most cases NGO representatives are aware of the asylum claims made in public custody after a decision has been delivered by IGI-DAI in their cases. This was echoed by the JRS representative visiting the Arad centre and the CNRR legal counsellor in Timișoara.

It is more difficult or even impossible for asylum seekers to contact the legal counsellors or attorneys in due time in order to prepare and/or assist them for the personal interview. They are made aware of their rights and obligation as asylum seekers only at the interview conducted by the IGI-DAI case officer.

<sup>489</sup> Article 19^14(4) Asylum Act.

<sup>490</sup> Court of Appeal of Bucharest, Decision 2472/2018, 29 May 2018.

<sup>491</sup> Court of Appeal of Bucharest, Decision 2767/2018, 13 June 2018.

<sup>492</sup> Article 101(13) Aliens Ordinance.

<sup>493</sup> Article 19^16(2) Asylum Act.

There is no legal counsellor providing legal counselling to asylum seekers in detention who works in the centre on a daily basis. Lawyers cannot contact their clients by phone, as detainees are not allowed to have personal phones in detention and may only use their phone upon request if it has no camera. Lawyers may only access them if they visit them or if the clients have free minutes left to talk on the phone. Meetings are held in private rooms.

#### **E. Differential treatment of specific nationalities in detention**

According to JRS, nationalities most susceptible to detention are **Pakistan, India** and **Russia**. There are cases when **Pakistani** and **Bangladeshi** nationals stay longer in detention due to the fact that the respective embassies do not reply to the requests submitted by IGI.

## Content of International Protection

Under Government Ordinance No. 44/2004 (“Integration Ordinance”), beneficiaries of international protection are included in an integration programme upon request and according to a protocol concluded individually IGI-DAI.<sup>494</sup> The application for participation in the integration programme has to be submitted to IGI-DAI within 30 days of the grant of protection.<sup>495</sup>

After the registration of the application, the beneficiary is interviewed by the integration officer of IGI-DAI. An evaluation form of the person’s needs is drafted in order to determine the necessary assistance or activities for his or her social integration.<sup>496</sup> Based on this evaluation form, an individual plan is established, which includes deadlines, necessary activities to achieve the objectives, responsible persons, institutions and/or organisations are communicated to the beneficiary. The implementation of this plan is monitored by IGI-DAI.<sup>497</sup>

Participation in the integration programme is relevant to the enjoyment of certain rights such as [Housing](#) and [Social Welfare](#).

Activities which may be included in the plan mainly include, separately or cumulatively, the following:<sup>498</sup>

- Counselling and support activities to ensure access to the rights listed in the Integration Ordinance;
- Cultural orientation sessions;
- Romanian language courses (see [Access to Education](#)).

In addition to the integration programme offered by the state authorities, there are several projects concerning the integration of beneficiaries of international protection and third-country nationals funded through the national AMIF scheme. Since 2016 the implementation of these projects covers 5 regions throughout the country.<sup>499</sup> Each region has at least one Regional Centre for asylum seekers.

1. IOM Romania implements the project “INTERACT PLUS - Integrated services for migrants, social and intercultural dialogue” in Region 1 which includes **Bucharest** and the following counties: Ilfov, Arges, Brasov, Buzau, Calarasi, Covasna, Dambovită, Dolj, Ialomița, Gorj, Giurgiu, Olt, Prahova, Teleorman, Valcea.<sup>500</sup>
2. JRS implements the project “My place – A bridge for the integration of beneficiaries of international protection and third country nationals in Romania” in Region 2 in partnership with Children’s heart Foundation (Fundatia Inima de copil). The objective of the project is to sustain an effective integration of the beneficiaries of international protection and third country nationals at the level of **Galați**, Constanța, Vrancea, Bacău, Vaslui, Braila, Tulcea counties, with special attention afforded to vulnerable persons and persons with special needs, by providing services complementary to those provided by state. These include activities such as information, counselling, material assistance, legal assistance, medical, psychological as well as social, cultural, recreational, educational, training courses Romanian language and cultural orientation, at the level of the two regional integration centres in Galați and Constanța.<sup>501</sup>

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<sup>494</sup> Article 15 Integration Ordinance.

<sup>495</sup> Article 16 Integration Ordinance.

<sup>496</sup> Article 17 Integration Ordinance.

<sup>497</sup> Article 18(1) Integration Ordinance.

<sup>498</sup> Article 18(2) Integration Ordinance.

<sup>499</sup> Romania is Home, *Integration programs*, available in Romanian at: <https://bit.ly/2RXBfZk>.

<sup>500</sup> IGI-DAI, *AMIF projects*, available in Romanian at: <http://bit.ly/2HVtES4>. According to IOM, 2,100 persons benefitted from its services in 2018, 47% of whom were beneficiaries of international protection

<sup>501</sup> JRS, ‘My Place – o punte pentru integrarea BPI si RTT in Romania’, available in Romanian at: <http://bit.ly/2t45amz>.



3. ICAR Foundation implements the project "Integration of foreigners with legal residence in Romanian society - a common challenge" in the Region 3 which includes **Suceava**, Botoşani, Iaşi and Piatra Neamţ counties.<sup>502</sup>
4. In Region 4 LADO Cluj in partnership with Asociația Profesională Neguvernamentală de Asistență Socială Baia Mare (ASSOC) is implementing the project "SIM - CIS 4 - Integrated services for migrants - intercultural and solidarity communities. The project covers **Maramureș**, Satu Mare, Sălaj, Cluj, Bistrița Năsăud, Mureș, Harghita, Sibiu și Alba counties. The project aims to offer educational social, cultural and recreational activities, Romanian language and cultural orientation courses to beneficiaries of international protection and third country nationals. The project also foresees financial incentives for completing some social integration activities; a number of health insurances are covered and the costs of meals of children from kindergarten, pre-school or school are reimbursed.<sup>503</sup>
5. In Region 5, the Western part of Romania, AIDRom in partnership with Filantropia Oradea implements the project "Integration NOW - Complex and Uniform Approaches for Migrants". "The project aims to support the socio-economic and cultural integration of beneficiaries of international protection and third-country nationals in the Romanian society through an integrated approach, in providing the information and services they need, and by enhancing active collaboration and involvement the authorities / institutions, the private sector and other entities with attributions in the field of migrant integration". The project is implemented for a period of 2 years since June 2017.<sup>504</sup> Region 5 includes **Timișoara**, and Arad, Bihor, Hunedoara, Mehedinți și Caraș Severin counties.

The integration prospects for beneficiaries of international protection in Romania are assessed in the context of appeals against returns of beneficiaries from other European countries. Different courts in Germany and the Netherlands have dismissed such appeals on the ground that conditions for international protection holders in Romania do not present deficiencies triggering Article 3 ECHR,<sup>505</sup> including the case of a person with PTSD.<sup>506</sup> In one case in the Netherlands, the court opposed the return of a family on the basis that beneficiaries of protection have no effective assistance after the expiry of their integration programme in Romania.<sup>507</sup>

## A. Status and residence

### 1. Residence permit

#### Indicators: Residence Permit

1. What is the duration of residence permits granted to beneficiaries of protection?

❖ Refugee status	3 years
❖ Subsidiary protection	2 years

The duration of residence permits granted for **refugee status** is 3 years and for **subsidiary protection** 2 years.<sup>508</sup>

<sup>502</sup> IGI-DAI, *AMIF projects*, available in Romanian at: <http://bit.ly/2F2ysaC>.

<sup>503</sup> Liga Apărării Drepturilor Omului (LADO) Cluj, 'SIM\_CIS4 – Servicii integrate pentru migranți – comunități interculturale și solidare', available in Romanian at: <http://bit.ly/2F963Pv>.

<sup>504</sup> AIDRom, 'Integrare ACUM – Abordări complexe și unitare pentru migranți', available in Romanian at: <http://bit.ly/2owtzw3>. According to AIDRom, 28 beneficiaries of international protection were assisted by the organisation in 2018. Some of them finalised the integration programme and 80% of persons left Romania before the end of the programme.

<sup>505</sup> (Germany) Administrative Court of Aachen, 6 L 202/18.A, 7 May 2018; Administrative Court of Düsseldorf, Decision 22 L 5230/17.A, 5 June 2018; Administrative Court of Hannover, Decision 12 B 3173/18, 3 July 2018; (Netherlands) Regional Court of The Hague, Decision NL.18.7700, 17 May 2018; Regional Court of Gravenhage, Decision NL18.21071, 5 December 2018.

<sup>506</sup> (Germany) Administrative Court of Aachen, Decision 6 L 606/18.A, 6 July 2018.

<sup>507</sup> (Netherlands) Administrative Court of Roermond, Decision NL18.5246, 3 May 2018.

<sup>508</sup> Article 20(6) Asylum Act.

The conditions for issuing a residence permit – in the form of a **card** – are prescribed by the Asylum Decree.<sup>509</sup> In order to obtain a residence permit, issued free of charge, the beneficiary of international protection has the obligation to submit to IGI-DAI a document which proves his or her legal residence. This can be a: title of ownership; lease agreement registered with the fiscal administration; commodity contract concluded in authentic form; or any other documents concluded under the conditions of validity provided by Romanian legislation in force regarding the housing title, which prove the acquisition of some housing rights.<sup>510</sup>

Responsibility for issuing the residence permits lies with IGI-DAI. In practice there are no difficulties in the issuance of the residence permit. However, the AIDRom representative in **Timișoara** stated that beneficiaries encounter difficulties in obtaining a rental contract which fulfils the conditions required by the authorities. Currently, the landlords do not want to declare to the authorities that they rented out their apartments.

The beneficiary of international protection has to fill in a standard form,<sup>511</sup> which is usually filled in together with the officer in charge. The time of issuance of the residence permit card is issued differs from one Regional Centre to another: 4 weeks in **Bucharest**, 3-4 weeks in **Timișoara**, 3 weeks **Rădăuți**, 2-4 weeks in **Galați**, 4 weeks in **Șomcuta Mare**, to 1 month in **Giurgiu**.

According to IOM Romania, a difficulty reported by several beneficiaries of international protection is the fact that their names are transcribed differently from their identification documents or there are different versions of names within the same family.<sup>512</sup>

As regards the renewal of residence permit, beneficiaries of international protection do not encounter any problems. Before the expiry of the residence permit, they fill in a request of renewal and a new card is issued in the same time frame as mentioned above.

IGI-DAI delivered 342 residence permits to refugees and 403 to subsidiary protection beneficiaries in 2018.<sup>513</sup>

## 2. Civil registration

The procedure of civil registration is set out in Act 119/1996.<sup>514</sup>

### 2.1. Marriage and child birth registration

With regard to marriage registration, the law provides the obligation for the future spouses to present identity documents, birth certificates, and medical certificates.<sup>515</sup> Beneficiaries of international protection have to present several documents, such as:

- Identity document, which in their case may be the travel document issued after granting a form of protection;<sup>516</sup>
- Birth certificate;
- Certificate / evidence issued by diplomatic missions or consular offices;
- Declaration, authenticated by the notary, which proves that they fulfil the necessary conditions for getting married;
- Proof of divorce / death certificate of the spouse as the case may be;
- Prenuptial medical certificate;

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<sup>509</sup> Article 51 Asylum Decree.

<sup>510</sup> Article 50(3) Asylum Decree.

<sup>511</sup> The form is available at: <http://bit.ly/2xaDCgJ>.

<sup>512</sup> Information provided by IOM Romania, 21 January 2019.

<sup>513</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>514</sup> Act 119/1996 on civil registration acts, available in Romanian at: <http://bit.ly/2nFDcYr>.

<sup>515</sup> Article 25(3) Act 119/1996.

<sup>516</sup> Local Council of Timișoara, *Marriage Registration*, available in Romanian at: <https://bit.ly/2CSb8si>.

- Marriage convention.

In addition, foreign citizens who do not speak Romanian have to submit the marriage declaration in the presence of and through an authorised translator, which they have to pay for.

According to IOM Romania, no obstacles were reported as regards marriage registration, where the only step that may take longer is obtaining the celibacy certificate from the country of origin's embassy / consulate in Romania.<sup>517</sup>

As regards birth registration, IOM Romania mentioned that there were cases where families could not afford to pay the notaries fees for a declaration requested by the authorities in charge of birth registrations. This declaration must be made by the parents even though they have their marriage certificate translated and registered in Romania, and which already contains their names, place and date of marriage. All this information has to be repeated in the declaration given at the notary, as well as the fact that the father recognises the child in order to obtain the birth certificate.<sup>518</sup>

According to the AIDRom representative in Timișoara difficulties were only encountered in other localities in the south-western region of Romania. Cases from **Arad** and **Caras-Severin** County were reported.<sup>519</sup>

ASSOC mentioned that in the past beneficiaries faced some difficulties in getting the celibacy certificate, as their countries of origin do not have embassies in Romania; it is impossible to obtain them through another family member who still lives in the country of origin, as they cannot apply for the certificate. In case of birth registration it was reported that some difficulties may arise if the mother does not have the same surname with the father and they cannot prove they are married.<sup>520</sup>

## 2.2. Bank accounts

According to the legal counsellor in **Galați**, beneficiaries are unable to open bank accounts at some banks (large banks), as it appears there are certain third countries whose nationals are not offered services for security reasons. Only one small bank agrees to open bank accounts for beneficiaries of international protection. The same situation was reported in **Rădăuți**.

In **Șomcuta Mare** some of the banks are also reluctant to open bank accounts, according to JRS representative. According to ASSOC representative beneficiaries of international protection may open a bank account more easily than asylum seekers because their residence permit is valid for longer periods than temporary identity documents issued for asylum seekers. Usually beneficiaries deal with this on their own or are accompanied by fellow nationals; ASSOC has not received many requests of this kind.<sup>521</sup>

In **Timișoara**, in most cases beneficiaries were not able open bank accounts in 2018. The banks required not only the residence permit, but also the beneficiaries' passport or travel document issued by IGI-DAI. At the end of 2018, accounts could not be opened even with these documents. The AIDRom representative together with their legal counsel tried to find out why this issue occurred and it seems that there was a decision of the Romanian National Bank regarding the opening of bank accounts for Syrian, Afghan and Sudanese nationals.<sup>522</sup>

In **Giurgiu**, according to the legal counsellor, banks open bank accounts for beneficiaries of international protection only for salary transfers and do not issue debit cards for them. People therefore have to withdraw their salaries from the bank.

<sup>517</sup> Information provided by IOM Romania, 21 January 2019.

<sup>518</sup> Information provided by IOM Romania, 21 January 2019.

<sup>519</sup> Information provided by AIDRom, 16 January 2019.

<sup>520</sup> Information provided by ASSOC, 30 January 2019.

<sup>521</sup> Information provided by ASSOC, 30 January 2019.

<sup>522</sup> Information provided by AIDRom, 16 January 2019.

IOM Romania reported that while this is not a general issue, several problems were brought to their attention as regards the bank accounts, such as: inclusion of the country of origin on the list of risk countries (terrorist financing, etc.); social condition of the family; proof of the need for an account; validity of the residence permit.<sup>523</sup>

### 3. Long-term residence

#### Indicators: Long-Term Residence

1. Number of long-term residence permits issued to beneficiaries in 2018: Not available

Long-term residence or permanent residence status is regulated by Government Emergency Ordinance No. 194/2002 ("Aliens Ordinance"). The conditions for obtaining long-term or permanent residence status are prescribed by Article 71 of the Aliens Ordinance and do not differ for refugees and people granted subsidiary protection.

- a. **Lawful residence:** Permanent residence status may be granted to refugees or beneficiaries of subsidiary protection who have lawfully resided on the territory of Romania continuously during the last 5 years preceding the filing of the application.<sup>524</sup> Continuity implies that a person have not been absent from Romania for more than 6 consecutive months and shall not exceed 10 months of absence in total.<sup>525</sup>

The 5 years residence term may be reduced to 4 years for beneficiaries of international protection in Romania who actively participate in the economic, social and cultural life of the Romanian society, including following the integration programmes provided by the Integration Ordinance,<sup>526</sup> or are married to a person holding Romanian citizenship for at least 5 years.<sup>527</sup>

According to the law, this period of residence starts from the moment when the asylum application was lodged.<sup>528</sup>

- b. **Knowledge of Romanian language:** In addition, the applicant has to know Romanian language at least at a satisfactory level. Usually this requirement is verified by the officer examining the request for a long-term residence card, by having a discussion in Romanian with the applicant.<sup>529</sup>
- c. **Public order / national security:** The applicant must not pose a threat to public order or national security.<sup>530</sup>
- d. Health insurance.<sup>531</sup>
- e. Accommodation: The applicant has to prove the legal possession of a living space.<sup>532</sup>
- f. Means of subsistence: The applicant has to prove he or she has at least the level of the gross average income in Romania.<sup>533</sup>

<sup>523</sup> Information provided by IOM Romania, 21 January 2019.

<sup>524</sup> Article 71(1)(a) Aliens Ordinance.

<sup>525</sup> Article 71(1)(a)(i) Aliens Ordinance.

<sup>526</sup> Article 71(1)(a)(v) Aliens Ordinance.

<sup>527</sup> Article 71(1)(a)(vi) Aliens Ordinance.

<sup>528</sup> Article 71(1)(a)(vii) Aliens Ordinance.

<sup>529</sup> *Ibid.*

<sup>530</sup> Article 71(1)(f) Aliens Ordinance.

<sup>531</sup> Article 71(1)(c) Aliens Ordinance.

<sup>532</sup> Article 71(1)(d) Aliens Ordinance.

<sup>533</sup> Article 71(1)(b) Aliens Ordinance.

Article 72 of the Aliens Ordinance sets out the documents that the applicant has to submit personally, when requesting the permanent residence status:

- ❖ Travel document;<sup>534</sup> for which there is an exemption for beneficiaries of international protection;<sup>535</sup>
- ❖ Proof of the legal possession of the living space, in accordance with the law;<sup>536</sup>
- ❖ Proof of the means of subsistence at the gross average earning in Romania;<sup>537</sup>
- ❖ Proof of health insurance;<sup>538</sup>
- ❖ Criminal record, issued by the Romanian authorities.<sup>539</sup>

According to AIDRom, documents have to be valid for at least 6 months when lodging the request for permanent residence status. As regards the interpretation of conditions in practice the only issue reported was the health insurance. IGI requires as proof of the person's contribution to the state health insurance a certificate issued by the County Health Insurance House (CJAS), even though he or she has a work contract.<sup>540</sup>

In relation to the proof of health insurance, beneficiaries have to present a certificate confirming that they are paying health insurance. Employees and their co-ensured persons prove their quality of insured with the certificate issued by the employer.<sup>541</sup> In some cases, obtaining this certificate takes a lot of time as it has to be submitted by the employer.

Applications for permanent residence status are examined by a special committee of IGI.<sup>542</sup> The decision has to be taken no later than 6 months from the day the application was registered. For objective reasons, the Head of IGI may extend this deadline by another 3 months, duly notifying the applicant.<sup>543</sup>

The applicant is notified within 15 days of the request being granted. Within 30 days from the receipt of the communication, the person who has been granted the right of permanent residence in Romania has to present him or herself to the regional office of the IGI, where the application was registered, for the issuance of the permanent residence permit.<sup>544</sup>

In practice, the decision is given in most of the cases in 6 months, in some centres even in 3-4 months. The permit is issued within 3-4 weeks in **Timișoara**, 4 weeks in **Bucharest**. In **Rădăuți** there were no applications for long-term residence permits. It was reported by the JRS representative in Rădăuți that the reason behind this is that beneficiaries are leaving the country. In **Șomcuta Mare** the decision is taken in 4-6 months. In **Giurgiu** no problems were reported regarding the issuance of the permit, but there have been cases where the issuance of such permits has been hampered by the existence of a commodity or rental contract attesting the residence of the beneficiary.

In 2017, 890 long-term residence permits were issued to refugees and 467 to beneficiaries of subsidiary protection.<sup>545</sup> Statistics for 2018 were not made available.

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<sup>534</sup> Article 72(1)(a) Aliens Ordinance.

<sup>535</sup> Article 146 Asylum Act.

<sup>536</sup> Article 72(1)(b) Aliens Ordinance.

<sup>537</sup> Article 72(1)(c) Aliens Ordinance.

<sup>538</sup> Article 72(1)(d) Aliens Ordinance.

<sup>539</sup> Article 72(1)(e) Aliens Ordinance.

<sup>540</sup> Information provided by AIDRom, 16 January 2019.

<sup>541</sup> Health Insurance House (*Casa de Asigurări de Sănătate*), *Clarifications regarding validation of the quality of an insured person for employees*, available in Romanian at: <http://bit.ly/2Gb71YZ>.

<sup>542</sup> Article 73(1)-(2) Aliens Ordinance.

<sup>543</sup> Article 73(3) Aliens Ordinance.

<sup>544</sup> Article 73(4)-(5) Aliens Ordinance.

<sup>545</sup> Information provided by IGI-DAI, 14 February 2018.

## 4. Naturalisation

### Indicators: Naturalisation

- |  |               |
|--|---------------|
| 1. What is the minimum residence period for obtaining citizenship? |               |
| ❖ Refugee status   | 4 years       |
| ❖ Subsidiary protection  | 8 years       |
| 2. Number of citizenship grants to beneficiaries in 2018:          | Not available |

The main criteria for naturalisation are laid down in Article 8(1) of the Act on Romanian Citizenship.<sup>546</sup>

The applicant must:

- a. Have legally resided in Romania continuously for at least 8 years, or at least 5 years since the day of marriage to a Romanian national;
- b. Prove, through behaviour, actions and attitude, loyalty to the Romanian State, and not undertake or support actions against the rule of law or national security and declare that he or she has not taken such actions in the past;
- c. Have reached the age of 18;
- d. Have legal means for a decent existence in Romania, under the conditions established by the legislation on the regime of foreigners;
- e. Be known for good behaviour and have not been convicted in the country or abroad for an offense that makes him or her unworthy of being a Romanian citizen;
- f. Know Romanian language and possess basic notions of Romanian culture and civilisation, sufficient to integrate into the social life.

The minimum period of residence prior to the naturalisation application is shorter for a number of categories of applicants treated preferentially.<sup>547</sup> Recognised **refugees** are one of the categories required to have resided in Romania continuously for a period of at least 4 years prior to the submission of the application. Therefore, the aforementioned provision clarifies the distinction between refugee status and subsidiary protection, which means that preferential treatment is afforded only to those bearing refugee status, while persons with **subsidiary protection** need to fulfil the condition of living 8 years prior to submitting the application.

However, the Act on Romanian Citizenship has introduced two additional articles which extend the right to apply for nationality to stateless persons or foreigners who have “particularly contributed to the protection and promotion of Romanian culture, civilization and spirituality”<sup>548</sup> or “who can significantly promote the image of Romania through outstanding performance in sports”.<sup>549</sup> The Romanian Government considered these amendments “necessary” and found that “not adopting them urgently will significantly affect the nationality acquisition and reacquisition process”.<sup>550</sup>

The competent authority is the National Authority for Citizenship (NAC).<sup>551</sup>

According to the AIDRom representative in **Timișoara**, in 2018 4 beneficiaries applied for Romanian citizenship, even though AIDRom provided counselling in this regard to more persons. It was also pointed out that there is no common practice on citizenship grants. Beneficiaries who cannot prove their income for the past 3 years have problems understanding what other documents are required in order to apply. Counselling is provided to them by AIDRom jointly with CNRR in this respect.<sup>552</sup>

<sup>546</sup> Act 21/1991 of 1 March 1991, available in Romanian at: <http://bit.ly/2xafo6v>.

<sup>547</sup> Article 8(2) Act on Romanian Citizenship.

<sup>548</sup> Article 8^1 Act on Romanian Citizenship, as amended by Government Emergency Ordinance No. 37/2015 of 15 September 2015.

<sup>549</sup> Article 8^2 Act on Romanian Citizenship, as amended by Government Emergency Ordinance No. 37/2015 of 15 September 2015.

<sup>550</sup> Government Emergency Ordinance No. 37/2015 of 15 September 2015.

<sup>551</sup> For further details, see European Statelessness Network, *Ending Childhood Statelessness: A case study on Romania*, 2015, available at: <http://bit.ly/2DxDsiz>.

<sup>552</sup> Information provided by AIDRom, 16 January 2019.



IOM Romania reported 2 beneficiaries of international protection who had applied for citizenship in 2018. The decisions are pending.<sup>553</sup>

IGI-DAI does not keep statistics on citizenship granted to beneficiaries of international protection.<sup>554</sup>

## 5. Cessation and review of protection status

### Indicators: Cessation

1. Is a personal interview of the beneficiary in most cases conducted in practice in the cessation procedure? ☒ Yes ☐ No
2. Does the law provide for an appeal against the first instance decision in the cessation procedure? ☒ Yes ☐ No
3. Do beneficiaries have access to free legal assistance at first instance in practice? ☐ Yes ☐ With difficulty ☐ No

Article 98(1) of the Asylum Act prescribes the grounds for cessation of **refugee status** as cases where the beneficiary:

- a. Has voluntarily re-availed him or herself of the protection of the country of nationality;
- b. Having lost his or her nationality, has voluntarily re-acquired it;
- c. Has acquired a new nationality and enjoys the protection of the country of his or her new nationality;
- d. Has voluntarily re-established him or herself in the country which he or she left or outside which he or she remained owing for the reasons on the basis of which he or she was granted refugee status;
- e. Can no longer, because the circumstances in connection with which he or she has been recognised as a refugee have ceased to exist, continue to refuse to avail him or herself of the protection of the country of nationality or habitual residence and cannot invoke, in order to justify such refusal, imperious reasons of concern to previous persecutions; or
- f. Expressly renounces refugee status granted by Romania in writing.

Article 99(1) of the Asylum Act provides the following grounds for cessation of **subsidiary protection**:

- a. When the circumstances which led to its grant have ceased to exist or have changed to such an extent that this form of protection is no longer necessary; or
- b. When the beneficiary expressly renounces in writing, to the subsidiary protection granted by the Romanian State.

These provisions on changed circumstances do not apply to a persons who has been granted refugee status or subsidiary protection and who can rely on compelling reasons resulting from previous persecution, in order to refuse the protection of the country of origin or habitual residence.<sup>555</sup>

Article 102 of the Asylum Act describes the cessation and withdrawal procedure. It shall be triggered *ex officio* by IGI-DAI or at the proposal of one of the institutions responsible national security or public order, when new elements or data indicate the existence of reasons to reconsider the situation of the persons enjoying international protection within the meaning of the Asylum Act. Where the procedure for the cessation or cancellation of international protection is initiated at the proposal of one of the institutions responsible national security or public order, IGI-DAI shall inform the respective institution of the decision of the procedure.

Article 103 of the Asylum Act requires the case officer in charge to inform the beneficiary of international protection in writing of: (a) the initiation of the cessation or, as the case may be, withdrawal of the international protection granted by the Romanian state, as well as the reasons for initiating the

<sup>553</sup> Information provided by IOM Romania, 21 January 2019.

<sup>554</sup> Information provided by IGI-Dai, 14 February 2018.

<sup>555</sup> Articles 98(2)-(3) and 99(2) Asylum Act.



procedure; (b) rights and obligations during this procedure; (c) the possibility to present, in a personal interview or written statement, the reasons why international protection should be maintained.

In addition, the same article sets down the rights and obligations of the person subject to cessation or withdrawal procedure. During the cessation or withdrawal of the international protection granted by the Romanian state, the beneficiary has the right to: (a) be assisted by a lawyer; (b) have an interpreter free of charge; (c) contact and receive assistance by a UNHCR official; (d) receive counselling and assistance by an NGO representative; (e) receive, upon request, legal and procedural information, including information on the procedure in the administrative phase, under the legislation on legal aid in civil matters, taking into account his or her personal situation; (f) be provided, on request, with information to clarify the reasons for a cessation or withdrawal of international protection decision, at the administrative phase and to explain how such a decision may be challenged, under the legal provision on legal aid in civil matters. The beneficiary has the obligation to: (g) provide the competent authorities with full and complete information about their personal situation; submit all the documents at his or her disposal and relevant to his or her personal situation; (h) follow the stage of the procedure and inform IGI-DAI within 5 days regarding any change of residence; (i) respond to the requests of IGI-DAI.

The beneficiary of international protection has the possibility to present, in a personal interview or written statement, the reasons why his or her international protection should be maintained.<sup>556</sup> The interview is not conducted in case the beneficiary of international protection has acquired Romanian citizenship.<sup>557</sup> If the beneficiary is not present at the interview, the case officer will assess the case on the basis of the documents in the personal file.<sup>558</sup>

The re-evaluation of the case may be carried out in the [Regular Procedure](#) or [Accelerated Procedure](#). The case officer decides on the re-examination of the case in the accelerated procedure, pursuant to the conditions set out in Article 75 for applying it.<sup>559</sup>

Upon request, IGI-DAI grants UNHCR access to information on the procedure for reconsideration of the situation of beneficiaries of international protection and on the decisions issued, if the beneficiary has consented to this. In fulfilling its supervisory role under Article 35 of the Refugee Convention, UNHCR has the right to present its views to IGI-DAI on the procedure for reconsidering the situation of beneficiaries of international protection at any stage of this procedure.<sup>560</sup>

After analysing the existing elements from the case file and, as the case may be, the reasons invoked during the interview, the case officer issues a reasoned decision which maintains, ceases or withdraws international protection.<sup>561</sup> The cessation or withdrawal of the form of protection shall not have effect on the person's family members.<sup>562</sup>

Depending on the reasons which gave rise to the decision to cease or withdraw the form of protection, the case officer may mention, as the case may be, the obligation to leave the Romanian territory.<sup>563</sup> If the decision states also the obligation to leave the Romanian territory, IGI shall issue and enforce the return decision.<sup>564</sup>

If the case officer decides to cease or to withdraw international protection, the beneficiary may appeal the decision, following the rules of the [Regular Procedure](#) or [Accelerated Procedure](#).

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<sup>556</sup> Article 103(1)(c) Asylum Act.

<sup>557</sup> Article 103(3) Asylum Act, citing Article 98(1)(c).

<sup>558</sup> Article 103(4) Asylum Act.

<sup>559</sup> Article 103(5) Asylum Act.

<sup>560</sup> Article 103(6) Asylum Act.

<sup>561</sup> Article 104(1) Asylum Act.

<sup>562</sup> Article 104(2) Asylum Act.

<sup>563</sup> Article 104(3) Asylum Act.

<sup>564</sup> Article 104(4) Asylum Act.

The law does not prescribe a systematic review of the protection status and cessation has not occurred systematically in 2018. IGI-DAI issues 3 cessation decisions in 2018, all concerning Iraqi nationals.<sup>565</sup>

According to IOM Romania there were no cases of cessation or withdrawal of international protection in 2018. Nevertheless, there have been cases of beneficiaries who have voluntarily renounced international protection and then requested support for repatriation to their country of origin, this activity being carried out under the Humanitarian Voluntary Assisted Repatriation Support Program and Reintegration, an AMIF-funded project.<sup>566</sup>

## 6. Withdrawal of protection status

### Indicators: Withdrawal

1. Is a personal interview of the beneficiary in most cases conducted in practice in the withdrawal procedure? ☒ Yes ☐ No
2. Does the law provide for an appeal against the withdrawal decision? ☒ Yes ☐ No
3. Do beneficiaries have access to free legal assistance at first instance in practice? ☐ Yes ☐ With difficulty ☐ No

**Refugee status** is revoked where: (a) the person who has been granted refugee status has made false statements, failed to provide certain data or used false documents that were decisive for granting refugee status, and there are no other grounds for maintaining the status of refugee; or (b) after granting the refugee status it was discovered that the person should have been excluded from being a refugee.<sup>567</sup> **Subsidiary protection** is revoked under the same grounds as the refugee status,<sup>568</sup> the only difference being the grounds of exclusion.

The withdrawal procedure is the same as the [Cessation](#) procedure. There were no revocation cases in 2018.<sup>569</sup>

It was brought to the AIDRom representative's knowledge that in **Timișoara** there were 2 cases of withdrawal of protection status. One of the cases concerned a person who declared that he was a Syrian national and turned out to be from North Africa, while the other case concerned false declarations regarding religious beliefs.<sup>570</sup>

<sup>565</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>566</sup> Information provided by IOM Romania, 21 January 2019.

<sup>567</sup> Article 100 Asylum Act.

<sup>568</sup> Article 101 Asylum Act.

<sup>569</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>570</sup> Information provided by AIDRom, 16 January 2019.

## B. Family reunification

### 1. Criteria and conditions

#### Indicators: Family Reunification

1. Is there a waiting period before a beneficiary can apply for family reunification?  
☐ Yes ☒ No  
❖ If yes, what is the waiting period?
2. Does the law set a maximum time limit for submitting a family reunification application?  
☐ Yes ☒ No  
❖ If yes, what is the time limit?
3. Does the law set a minimum income requirement?  
☐ Yes ☒ No

There is no difference between refugees and subsidiary protection beneficiaries in relation to the criteria and conditions for family reunification.

#### 1.1. Eligible family members

Article 2(j) of the Asylum Act defines family members of the beneficiary of refugee status or subsidiary protection, to the extent that the family is in the country of origin at the date of the asylum application made by the sponsor, as:

- Spouse;
- Minor unmarried children of the beneficiary or the spouse, with the condition that they are unmarried, regardless of whether they are born in the marriage or out of wedlock or adopted in accordance with the national law of the country of origin.

The law does not set out any waiting period before a beneficiary of international protection may apply for family reunification. The law does not prescribe any deadline for applying for family reunification. The beneficiary of international protection in Romania may apply for asylum for his or her family members as long as they are not on the territory of Romania.<sup>571</sup> Beneficiaries of international protection are also not required to prove the existence of income, accommodation or health insurance for family reunification.

They only need to prove the family relationship with the family member or the fact that the marriage was concluded before entering the territory of Romania.<sup>572</sup> In practice, if the beneficiary of international protection does not have the financial means to pay for the translation of necessary documents to prove family ties, NGOs might help him or her in covering the costs of translation. In this case, the beneficiary has to wait until he or she receives the [Residence Permit](#), as the terms the project funded by the national AMIF programme clearly state that costs of such translations may be covered only based on residence permit.

According to the AIDRom representative in **Timișoara** IGI-DAI required original documents and in some cases beneficiaries were unable to provide them as they were at the family members. All family reunification applications from 2017 and 2018 were not completed because beneficiaries did not have patience and communication between family members in Romania and those in the country of origin was not productive. The AIDRom representative also noted that she has not had the opportunity to see family members arriving in Romania through this procedure until now.<sup>573</sup>

In **Giurgiu**, original documents are preferred, according to the JRS representative. The application for family reunification of an Eritrean refugee was rejected by IGI-DAI and subsequently by the Regional Court of Giurgiu in 2018. The reason for the dismissal of the application and appeal was that the marriage and birth certificate of his son were forged. The original writing from the documents was

<sup>571</sup> Article 71(1) Asylum Act.

<sup>572</sup> Article 71(3) Asylum Act.

<sup>573</sup> Information provided by AIDRom, 16 January 2019.

erased and replaced with writing on another pen. The applicant was heard in court and could not provide the court with concrete data on the birth date of his son and his wife.<sup>574</sup>

## 1.2. Family reunification procedure

Prior to 2017, the applications for family reunification were assessed by IGI-DAI **Bucharest**. Currently, family reunification applications are to be processed by every Regional Centre.

According to the law, once the application has been submitted, the beneficiary shall also present original documents (birth certificate, marriage certificate, identity card) to prove family ties with the family members or, in the absence of these documents, any other documents proving the status of family member.<sup>575</sup>

In order to obtain additional data and information on family ties and to clarify other relevant aspects of the asylum application lodged for family members, IGI-DAI must conduct an interview with the beneficiary of international protection.<sup>576</sup>

If the beneficiary of international protection does not present to IGI-DAI sufficient documents showing his or her family relationship with the family member in whose name the application is made, where originals are in the possession of the family member who is in a third country, IGI-DAI must communicate to the Directorate-General for Consular Affairs of the Ministry of Foreign Affairs the list of the necessary documents.<sup>577</sup>

The General Directorate for Consular Affairs requests the diplomatic mission or the consular office of Romania from the country where the family member of the beneficiary of international protection is, to establish the existence of the documents requested by IGI-DAI. The family member must present these documents, in original, to the diplomatic mission or consular office of Romania.<sup>578</sup> The documents shall be sent in copy, with the mention "according to the original", through the General Directorate for Consular Affairs, to IGI-DAI by the diplomatic mission or consular office of Romania from the country where the family member is present.<sup>579</sup>

## 1.3. Specific procedure for unaccompanied children

The Asylum Act provides also for a family reunification procedure for unaccompanied children, with specific requirements. The family reunification for unaccompanied minors, beneficiaries of international protection, shall be done with respect to his or her best interests.<sup>580</sup> The procedure may be triggered *ex officio* by IGI-DAI. In this case the consent of the legal representative and/or the unaccompanied child is also required.<sup>581</sup> In all cases, the unaccompanied child's views will be taken into account and given due weight.<sup>582</sup>

If the unaccompanied child's family has been traced, the case officer analyses the possibility and the conditions for carrying out family reunification and issues a reasoned decision in this respect.<sup>583</sup> The decision provided may be challenged under the same conditions as a decision delivered by IGI-DAI in the [Regular Procedure](#).<sup>584</sup>

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<sup>574</sup> Regional Court Giurgiu, Decision 5379/2018, 5 November 2018.

<sup>575</sup> Article 30(1) Asylum Decree.

<sup>576</sup> Article 30(2) Asylum Decree.

<sup>577</sup> Article 30(3) Asylum Decree.

<sup>578</sup> Article 30(4) Asylum Decree.

<sup>579</sup> Article 30(5) Asylum Decree.

<sup>580</sup> Article 72(1) Asylum Act.

<sup>581</sup> Article 72(2) Asylum Act.

<sup>582</sup> Article 72(2) Asylum Act.

<sup>583</sup> Article 72(3) Asylum Act.

<sup>584</sup> Article 72(4) Asylum Act.

IGI-DAI shall take, as soon as possible, the necessary measures to trace the unaccompanied child's family, while protecting his or her best interests.<sup>585</sup> The unaccompanied child's opinion on the tracing of his or her family is taken into account and given the due importance, in relation to his or her age and maturity.<sup>586</sup>

The data and information collected for the purpose of family tracing are processed in accordance with the principle of confidentiality, especially when the life or physical integrity of a child or his or her close family who have remained in the country of origin is endangered.<sup>587</sup>

According to Save the Children, it is rather NGOs than IGI-DAI that assist unaccompanied children to initiate the family reunification procedure. Nevertheless, there were not many cases of family reunification for unaccompanied children in 2018.

According to IOM Romania, based on the cases they handled so far, IGI-DAI representatives do not trigger a reunification procedure without a prior request. This is done at the request of the child through the legal representative. This was confirmed by ASSOC, while the AIDrom representative stated that according to her knowledge the NGOs triggered the family reunification procedure for unaccompanied children.

In **Galați** there were many applications for family reunification and they were all admitted or still pending a decision. The procedure takes around 6-9 months, as the application is assessed by the case officer, according to article 31(2) of the Asylum Decree. When the application was assessed by IGI-DAI Bucharest the average duration of the procedure was 2-3 months. Thus, the procedure for family reunification takes a lot more time since the assessment of the application is done at the regional level.

#### 1.4. Time limits and duration

The law prescribes that the family reunification procedure must be completed as soon as possible, not exceeding 9 months from the date the application was made. If further checks are required, the 9-month period may be extended by up to 6 months.<sup>588</sup>

**Timișoara:** The family reunification procedure takes around 6 months. In comparison with 2017, in 2018 the procedure at the level of the National Centre for Visas for foreigners who want to travel to Romania did not delay the process.

**Șomcuta Mare:** There was an Afghan national beneficiary of subsidiary protection who made a successful family reunification application. The procedure lasted around 3 months.

**Rădăuți:** There were 5-6 applications for family reunification and are still pending. In one case in 2017 the procedure lasted one year.

**Bucharest:** The procedure takes 6-9 months.

**Giurgiu:** The procedure takes 8-12 months.

A total of 71 applications for family reunification were submitted in 2017, of which 33 from Syrian, 11 from Iraqi, 8 from Eritrean, 5 from Sudanese and 4 from Somali nationals. IGI-DAI took 32 decisions, 28 of which approved the application and 4 rejected it. 39 applications are still pending.<sup>589</sup>

A total of 60 applications for family reunification were submitted in 2018, of which 46 from nationals of Syria, 5 from Iraq, 3 from Pakistan, 3 from Afghanistan, 1 from Cameroon, 1 from Turkey and 1 from

<sup>585</sup> Article 73(1) Asylum Act.

<sup>586</sup> Article 73(2) Asylum Act.

<sup>587</sup> Article 73(3) Asylum Act.

<sup>588</sup> Article 31(4) Asylum Decree.

<sup>589</sup> Information provided by IGI-DAI, 14 February 2018.

Somalia. IGI-DAI took 60 decisions on family reunification applications during that year. 55 decisions approved the application and 5 rejected it.<sup>590</sup>

## 2. Status and rights of family members

If the case officer considers that the family relationship or, as the case may be, the conclusion of the marriage before entering Romania, has been proved by the beneficiary international protection, he or she will request the diplomatic missions or consular offices of Romania to grant the short stay visa for the family members holding valid travel documents.<sup>591</sup>

For the family members who do not hold valid travel documents or are unable to obtain them and they are outside the country of origin, at the request of the case officer, the diplomatic missions or consular offices of Romania shall issue *laissez passer* and shall grant a short stay visa in order to enter the country. The validity of the travel document shall be no more than 30 days and ceases on the date of entry of the holder into the territory of Romania.<sup>592</sup>

After their entry into Romania, if they consent to the asylum application, family members will have their application assessed according to the provisions of the Asylum Act.<sup>593</sup> In practice, the family members are registered as asylum seekers, they are fingerprinted and photographed, granted temporary identity documents and follow the steps of the asylum procedure. They are scheduled for an interview and receive a decision. In all reported cases, family members were granted the same form of protection as the sponsor.

According to a legal counsellor in **Bucharest**, who assisted a family member during the personal interview in 2017, the interview was shorter than the interview of the main beneficiary. The IGI-DAI case officer did not explore all the details of the case and basically confirmed the facts already existing in the file; the case officer even told the family member (wife of the beneficiary) “not to worry as you will receive a positive decision.”

If it is determined conditions for family reunification set out in Article 30 of the Asylum Decree are not fulfilled, the case officer shall issue a decision to reject the asylum application of the family members. The rejection of the application cannot be solely based on the lack of documentation certifying family ties or marriage.<sup>594</sup> The decision shall be communicated to the sponsor beneficiary of protection who submitted the asylum application for the family members.<sup>595</sup>

## C. Movement and mobility

### 1. Freedom of movement

Beneficiaries of international protection enjoy freedom of movement within Romania, in the sense that they may choose their place of residence freely and move freely, under the same conditions as other legally residing foreigners.<sup>596</sup> Beneficiaries are not allocated to specific geographic regions or facilities.

### 2. Travel documents

The travel document is issued, upon request, to the beneficiaries of international protection (both persons with refugee status and subsidiary protection) in Romania for a period of 2 years, without the possibility of prolonging its validity. Upon expiry, a new travel document with the same validity period is

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<sup>590</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>591</sup> Article 71(3) Asylum Act.

<sup>592</sup> Article 71(3<sup>^</sup>1) Asylum Act.

<sup>593</sup> Article 71(4) Asylum Act.

<sup>594</sup> Article 31(2) Asylum Decree.

<sup>595</sup> Article 31(3) Asylum Decree.

<sup>596</sup> Article 20(1)(b) Asylum Act.

issued.<sup>597</sup> **Refugees** receive a dark blue trilingual travel document (Romanian, English, French) as specified in the 1951 Refugee Convention, while beneficiaries of **subsidiary protection** receive a different travel document, also trilingual but of grey colour, which mentions “subsidiary protection”.<sup>598</sup>

For beneficiaries of international protection who are abroad and do not possess valid travel documents, the diplomatic missions or consular offices of Romania, with the approval of IGI, will provide them with travel documents valid only for the return to Romania. The validity of the travel title is at most 30 days and ceases upon the holder’s entry on Romanian territory.<sup>599</sup>

The travel document is valid for travel to all countries, except the country of origin of the beneficiary.

**Refugees** may travel freely in the EU, without a visa, while beneficiaries of **subsidiary protection** must apply for a visa. At the base of this trend lies the European Agreement on the Abolition of Visas for Refugees signed at Strasbourg on 20 April 1959,<sup>600</sup> and the Council Regulation (EC) No 539/2001. Before 2014, beneficiaries with subsidiary protection were assimilated to refugees and they were also exempt from the visa requirement.

In order to apply for a travel document, beneficiaries of international protection are obliged to certify their residence by submitting one of the following documents: lease agreement registered with the fiscal authority; commodity contract concluded in authentic form; or any other documents concluded under the conditions of validity provided by Romanian legislation in force regarding the housing title, which prove the acquisition of some housing rights. In addition, beneficiaries should also submit an ID photo when applying for a travel document. The travel document is issued for a fee of 258 RON / 60 €, which represents a tax imposed by the National Printing House.

The application (standard form) for the travel document is made at IGI-DAI, after the temporary residence permit is issued. The authority issues the travel document within 30 days.

IGI-DAI issued 1,534 travel documents to beneficiaries of international protection in 2018.<sup>601</sup>

## D. Housing

### Indicators: Housing

- |  |           |
|--|-----------|
| 1. For how long are beneficiaries entitled to stay in reception centres?       | 12 months |
| 2. Number of beneficiaries staying in reception centres as of 31 December 2018 | 121       |

### 1. Stay in reception centres

Beneficiaries of international protection who participate in integration programmes and have no financial means are allowed to stay in the Regional Centres, subject to availability of places.<sup>602</sup> They may stay in the centres for 6 months with the possibility of extension for another 6 months in case of well-founded reasons, with the approval of IGI-DAI, without exceeding the implementation period of the integration programme.<sup>603</sup>

A total of 121 beneficiaries of international protection were residing in the Regional Centres at the end of 2018:

<sup>597</sup> Article 20(8) Asylum Act.

<sup>598</sup> Annexes 5 and 6 Government Decision 557/2006.

<sup>599</sup> Article 20(9) Asylum Act.

<sup>600</sup> European Agreement on the Abolition of Visas for Refugees signed at Strasbourg on 20 April 1959, signed by Romania on 5 November 1999 and ratified through Act 75/2001.

<sup>601</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>602</sup> Article 21(1) Integration Ordinance.

<sup>603</sup> Article 21(2) Integration Ordinance.



Beneficiaries of international protection in Regional Centres: 31 December 2018			
Centre	Refugee status	Subsidiary protection	Total
Timișoara	0	1	1
Șomcuta Mare	8	0	8
Rădăuți	9	15	24
Galați	8	3	11
Bucharest	26	40	66
Giurgiu	10	1	11
<b>Total</b>	<b>61</b>	<b>60</b>	<b>121</b>

Source: IGI-DAI, 5 March 2019.

Beneficiaries accommodated in Regional Centres have to pay rent and maintenance costs.<sup>604</sup> The daily rental fee is 6.6 RON / 1.4 € during winter and 5.67 RON / 1.2 € during summer. Vulnerable beneficiaries may be accommodated free of charge in the Regional Centres.<sup>605</sup>

According to IGI-DAI, beneficiaries of international protection may benefit from free accommodation in the Regional Centres for a maximum of one year, and if there are vulnerable cases, they can be accommodated for an unlimited period, as long as the reasons for their vulnerability exist.<sup>606</sup>

In practice, beneficiaries of international protection in **Timișoara**, **Șomcuta Mare**, **Rădăuți**, **Galați** and **Giurgiu** are allowed to stay for free for up to 2 months, and have to pay the rental fee after that period. According to IOM Romania, beneficiaries in **Bucharest** are not allowed to stay in the centre for free during the first 2 months. According to the AIDRom representative in **Timișoara**, there were 4 beneficiaries of international protection accommodated in the centre in 2018, a single parent family (mother and child) and 2 men. The family stayed for 3 months in the centre and the men for 6 months.

In **Rădăuți**, ICAR Foundation pays the rental fee for another two months. As a result the beneficiary has to pay for rent only after four months after obtaining international protection.

In addition to this, JRS implemented the project “A New House” in all the Regional Centres, funded through the AMIF national programme, which covered partially or entirely the rental fees and/or the utility costs for beneficiaries of international protection until June 2018. These services are available to: (a) relocated or resettled beneficiaries; (b) beneficiaries enrolled in the integration programme; and (c) beneficiaries in a vulnerable situation. For each case, a request is made to IGI-DAI in order to receive their approval for assisting the case.

## 2. Social housing

According to the law, beneficiaries of international protection have the right to access the social housing scheme under the same conditions as Romanian citizens.<sup>607</sup>

After the integration programme is completed or when a job opportunity has been identified, IGI-DAI guides the assisted person to the community where there are vacancies and informs him or her on how to get a social home under the conditions set in the law.<sup>608</sup>

<sup>604</sup> Article 21(4) Integration Ordinance. The rental fee is established at local level for the living facilities which are in the state's or territorial / administrative unit's property.

<sup>605</sup> Article 34(2) and (3) Integration Ordinance. IGI-DAI may provide accommodation in its centers to vulnerable persons that do not require specialised assistance and who cannot benefit from a home from the institutions ability within the space and funds available. For well-founded reasons, the IGI-DAI may extend the integration program for these persons.

<sup>606</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>607</sup> Article 20(1)(q) Asylum Act.

<sup>608</sup> Article 28 Integration Ordinance.

The local public administration authorities have the obligation to ensure, within the limits of available resources, social housing for persons who have acquired a form of protection in Romania and who are to move to the respective community under the same conditions as the Romanian citizens, even if they have not established their domicile or residence in that area.<sup>609</sup>

If the local public administration authorities cannot provide a social home, the beneficiary may rent housing within the respective local community.<sup>610</sup> IGI-DAI subsidises up to 50% of the rent, subject to availability of funding, for a maximum period of one year.<sup>611</sup> According to IGI-DAI, 11 persons benefitted from this subsidy in 2018.<sup>612</sup>

**Timișoara:** Requests for social housing have been submitted, but until now no one has benefited from this. The local public administration authority has no social houses available; the list of requests for social housing is endless. In order to benefit from financial aid from IGI-DAI for the rent, beneficiaries have to prove that they have requested social housing and they have to have a rental contract registered at the tax authorities. According to the AIDRom representative, IGI-DAI granted subsidies (50% of the rent) to a family of four from and a man in 2018.

**Bucharest:** Requests for social housing have also been filled, but none has been accepted according to IOM. IOM was not aware of rent subsidies being provided.<sup>613</sup>

**Rădăuți, Giurgiu and Șomcuta Mare:** This provision has never been applied in practice. In Rădăuți beneficiaries never stayed until the end of their 12-month integration programme, while in Șomcuta Mare they request assistance under the aforementioned project “A New House” run by JRS.

**Galați:** As far as JRS is aware no beneficiary was granted this subsidy by IGI-DAI.

ASSOC is aware of a single beneficiary of international protection who lives in **Baia Mare** in a social housing. The request was made 3 years ago and the beneficiary was granted social housing in 2018.<sup>614</sup>

Other issues reported by AIDRom are the high rental fees in **Timișoara** (around 250 € for a studio) and landlords’ reluctance to accept foreigners as they do not speak Romanian and they need a rental contract registered at the tax authority in order to receive the residence permit and all the other documents; many landlords do not declare their contracts because they do not want to pay taxes.

## E. Employment and education

### 1. Access to the labour market

Beneficiaries of international protection have the right to be employed by natural or legal persons, to carry out voluntary activities, to exercise free professions and to carry out legal acts, to carry out acts and deeds of commerce, including independent economic activities, under the same conditions as Romanian citizens.<sup>615</sup> There are no differences between refugees and subsidiary protection beneficiaries in relation to access to employment.

#### 1.1. Obstacles to access in practice

In practice, access to labour market also depends on the economic power of the city or region.

<sup>609</sup> Article 29(1) Integration Ordinance.

<sup>610</sup> Article 29(2) Integration Ordinance.

<sup>611</sup> Article 29(3) Integration Ordinance.

<sup>612</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>613</sup> Information provided by IOM Romania, 21 January 2019.

<sup>614</sup> Information provided by ASSOC, 30 January 2019.

<sup>615</sup> Article 20(1)(c) Asylum Act.

**Timișoara:** There are jobs available and beneficiaries may easily find a job even if they do not speak Romanian, in fast-food shops owned by people from the foreign community. As a consequence they may work and face no language barrier.<sup>616</sup>

**Bucharest:** According to IOM, there are difficulties in accessing the labour market, mainly in the case of beneficiaries who do not have diplomas / certificates of studies / qualifications. Some of the employers are not aware of the conditions under which foreigners can be employed in Romania and of the status of beneficiaries of international protection. Another difficulty encountered is the level of knowledge of Romanian language, which usually is required at an advanced level.<sup>617</sup>

**Șomcuta Mare:** According to the JRS representative, persons accommodated in the centre are periodically informed about available jobs in the area by AIDRom. There are a couple of companies which constantly recruit people in the unskilled labour sector. Even though there are jobs available, beneficiaries have not expressed interest in seeking employment. Beneficiaries do not intend to remain in Șomcuta Mare because it is a small city and there is no community of foreigners; they prefer to go to **Cluj**, which is one of the most developed cities in Romania. According to ASSOC one of the obstacles faced by beneficiaries is the Romanian language. However, many of the beneficiaries do not make efforts to learn it. Even though employers are flexible and understanding, people often leave without any notice but because they are unsatisfied with the salary received.<sup>618</sup>

**Galați:** There are jobs available and employment offers are received from different companies. There were beneficiaries who accepted to work for 1,200 RON / 255 € and others who refused such jobs.

**Rădăuți:** Even though it is a small city there are some jobs. Beneficiaries refuse to work for the minimum wage of around 300 €, they are not interested in learning the language, even though there are jobs available. There are also difficulties in recognition of qualifications.

**Giurgiu:** According to the JRS representative, the main obstacles in find a job are the language barrier, the lack of diplomas and the lack of qualifications. Beneficiaries also have higher salary expectations than what can be offered. According to IOM, there is a coordination office within the centre of Giurgiu. There are 2 counsellors who provide support to beneficiaries of international protection e.g. Romanian language courses, socio-cultural activities, employment support.<sup>619</sup>

Although beneficiaries of international protection have the same rights as Romanian citizens when it comes to access to labour market, there are some fields where there is limited or no access. For example, doctors with refugee status or subsidiary protection do not have the right to practice medicine in Romania,<sup>620</sup> unless they are married to a Romanian citizen, they are family members of an EU citizen, or they have a [Long-Term Residence](#) permit granted by Romania or an EU Member State.<sup>621</sup>

Legally there are no limitations imposed on beneficiaries of international protection regarding access to labour market. In practice, knowledge of Romanian language (and in some cases English) may hinder beneficiaries' access to labour market. In addition, many of the beneficiaries do not have diplomas which certify their studies, which makes it impossible for them to apply for certain positions.

One of the limitations which was mentioned by all stakeholders interviewed is the language barrier.

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<sup>616</sup> Information provided by AIDrom, 16 January 2019.

<sup>617</sup> Information provided by IOM Romania, 21 January 2019.

<sup>618</sup> Information provided by ASSOC, 30 January 2019.

<sup>619</sup> Information provided by IOM Romania, 21 January 2019.

<sup>620</sup> The issue was debated during a meeting on 26 October 2017 with representatives of the Romanian Government, the College of Doctors, IGI, NGOs, UNHCR and the International Organisation for Migration (IOM). The conclusions of the meeting were that the Government will analyse the proposals and will try to find solutions. See EMINET, 'Obținerea dreptului de practică de către medicii străini, în contextul deficitului de personal din sistemul de sănătate românesc', 26 October 2017, available in Romanian at: <http://bit.ly/2hK7IUb>.

<sup>621</sup> Article 376(1) Act 95/2006 on Health Reform.

## 1.2. Recognition / equivalence of professional qualifications

According to the Asylum Act, beneficiaries of international protection have the right to equal treatment to Romanian citizens regarding the equivalence of studies or periods of study, the recognition of diplomas, attestations and certificates of competency, as well as of professional qualifications which give access to regulated professions in Romania, in accordance with the regulations in force.<sup>622</sup>

If the beneficiary would like to be employed in a position according to his or her qualifications, he or she has to obtain the recognition and validation of his or her diplomas. The request for recognition and validation of diplomas is assessed by the National Centre for Recognition and Validation of Diplomas (CNRED), within the Ministry of Education.

The request should include the following documents:<sup>623</sup>

1. Standardised application;
2. Act of study for equivalence or recognition:
  - Copy if studies are in Romanian, English, French, Spanish or Italian;
  - Copy and legalised translation into Romanian for other languages;
3. Transcript or any other document from the education institution certifying the courses taken. If the recognition of the specialisation, or where the field of study is not mentioned in the diploma,
  - Copy if studies are in Romanian, English, French, Spanish or Italian;
  - Copy and legalised translation into Romanian for other languages;
4. Other relevant documents e.g. full programme of course for the pursuit of a regulated profession in case of study documents obtained in third countries:
  - Copy if studies are in Romanian, English, French, Spanish or Italian;
  - Copy and legalised translation into Romanian for other languages;
5. Copies of personal identification documents i.e. passport, identity card, proof of name change if applicable;
6. Processing fee of 50 RON / 11 €.

The CNRED website also mentions that Apostille or over-legalisation is required for the authentication of the diplomas subject to recognition. For states parties to the Hague Apostille Convention, diplomas subject to recognition must be addressed to the Hague Apostille by the competent authorities of the issuing countries. Education titles in Italy, Greece, Spain, Portugal and Cyprus are covered by the Hague Convention Apostille, whereas other EU Member States are exempted.

For States who are not party to the Hague Apostille Convention, education titles shall be legalised or accompanied by the Certificate of Authenticity issued by the competent authorities of the country of origin. The legalisation is applied by the Ministry of Foreign Affairs of the issuing country and the Embassy / Consular Office of Romania in that country or by the Ministry of Foreign Affairs of the issuing country and its Embassy / Consular Office in Romania and the Ministry of Foreign Affairs of Romania. For countries where there are no diplomatic missions of Romania or who do not have diplomatic missions in Romania, titles are endorsed by the Ministry of Education and the Ministry of Foreign Affairs of the issuing country.

When requested, CNRED did not clarify whether this procedure also applies to beneficiaries of international protection. However, in case Apostille is required for beneficiaries, this would be contrary to the essence of international protection, as the person would be required to request the over-legalisation or Apostille from the Ministry of Foreign Affairs of the issuing country and its Embassy. According to AIDRom representative in **Timișoara** and Save the Children, if the beneficiary of international protection has studied in the country of origin, CNRED does not require Apostille or over-

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<sup>622</sup> Article 20(1)(r) Asylum Act.

<sup>623</sup> CNRED, *Recunoașterea studiilor superioare ale cetățenilor din state membre UE, SEE și din Confederația Elvețiană, membrii de familie ai acestora, posesorii unui permis de ședere pe termen lung CE și refugiați, în vederea accesului pe piața forței de muncă*, available in Romanian at: <http://bit.ly/2ySVHRc>.

legalisation. CNRED only requires Apostille if the studies are completed in another country. However, according to IOM, depending on the country of origin, CNRED may require Apostille or over-legalisation of beneficiaries' diplomas.<sup>624</sup>

The AIDRom representative from **Timișoara** reported that there is always a need to follow-up on the cases submitted at CNRED, as it often happens that the person handling the file does not answer. As a consequence, the legal counsellor of AIDRom sends requests to CNRED management in order to receive a reply.<sup>625</sup>

The recognition procedure lasts 2-6 months according to the AIDRom representative from Timișoara. According to IOM the procedure lasts 2 months and beneficiaries receive support from the NGOs implementing integration projects. In Timișoara beneficiaries receive assistance from NGOs and also from the Department of International Relations of universities where they would like to apply.<sup>626</sup>

IGI-DAI does not keep statistics on the number of beneficiaries of international protection in employment.

## 2. Access to education

Beneficiaries of international protection have the right to have access to all forms of education, under the same conditions as Romanian citizens.<sup>627</sup> In order to have access to education, children beneficiaries of international protection have to have the minimum age provided by law for all children: 3 to 6 for pre-school education-age and 6 for primary education.

### 2.1. Enrolment at schools

During the first year, children are enrolled at schools as viewers and listeners; they do not receive grades and are not registered in the class book. This way they can learn the Romanian language.

**Bucharest (Region 1):** the counsellors supported the enrolment at school / kindergarten of approximately 30 children. They all attend classes according to IOM. IOM also reported that families feel safer if the child attends Arabic schools; some of the Arabic schools require a fee but there were cases where children were not asked to pay fees. In this way, beneficiaries consider that there is no danger of children being removed from their tradition and culture. Another difficulty is the lack of diplomas from the country of origin, but also the fact that in some cases children have not attended school for long periods of time. Lastly, the enrolment forms are all in Romanian.<sup>628</sup>

**Giurgiu:** JRS enrolled 5 children at school in 2018. Children attended school for 7 days, after which they refused to go to class for different reasons. For example, one of the families with children was compelled to leave the centre, as after 2 months they had to pay rent per capita and the costs – around 2,000 RON / 425 € – were too high.

**Galați:** Children are enrolled at school from the moment they become asylum seekers. It was reported that the School Inspectorate does not designate a school which is in the territorial range of the Regional Centre. As a consequence, beneficiaries preferred not to go to school anymore, as they had to travel long distances, i.e. 40 minutes by tram.

**Timișoara:** The only difficulties reported by the AIDRom representative are the language barrier and stress of the child in adapting to the new environment, as they do not receive necessary attention. The AIDRom representative reported that the School Inspectorate does not take the necessary diligence to

<sup>624</sup> Information provided by IOM Romania, 21 January 2019.

<sup>625</sup> Information provided by AIDRom, 16 January 2019.

<sup>626</sup> Information provided by IOM Romania, 21 January 2019.

<sup>627</sup> Article 20(1)(h) Asylum Act.

<sup>628</sup> Information provided by IOM Romania, 21 January 2019.

designate a school for the beneficiaries and the integration officer has too many duties to perform to deal with all the issues. Younger children are enrolled by their parents, even when they are still in the asylum procedure, at the Arab School in Timișoara. The Arab School is a private school which has functioned for over 7 years. Teaching takes place in Arabic, Romanian and English. If they have the financial means to afford the fee of around 100 € per month, prefer to enrol their children in this school as the cultural impact is not so high and it is considered a more appropriate way of cultural integration for their children. Only after one year are children enrolled at the state school. Children aged 15-16 are enrolled at the state school.

**Rădăuți:** Children are enrolled at school but they do not attend the classes constantly, as the parents are not taking them to school, even though NGO representatives are advising them to do so.

**Galați:** According to the legal counsellor, it is easier for younger children to adapt as they learn easily the language in comparison with older children who cannot learn the language as fast. In their case, they cannot adapt to the class and teachers cannot provide all pupils with the necessary support, and they are often bullied by older children, therefore they often abandon school. The most common reason why children do not go to school is that the family leaves the country; parents do not pay proper attention to their children's education.

**Șomcuta Mare:** According to ASSOC, where the asylum seekers have not left the centre within 20-30 days, all children were enrolled at the school while they were in the asylum procedure. However, if they made an asylum application during school holidays, they were enrolled at the beginning of the school year or semester, as the case may be, if they were still in the centre at that date. Three children beneficiaries of international protection attended school classes during their stay in the centre. However, they are no longer in the country.<sup>629</sup>

As regards children with special needs, the conditions for accessing education are the same as for Romanian children. The child should first be issued a degree of disability by the Complex Assessment Service of the Child with Disabilities within the Directorate-General for Social Assistance and Child Protection (DGASPC). This is a particularly complicated and bureaucratic process which has to be repeated every year.<sup>630</sup>

Based on the evaluation, the Complex Assessment Service of the Child with Disabilities also decides if the child should be enrolled in a school for children with special needs or in a state school, and at what grade.

In **Timișoara** the same rules apply for beneficiaries of international protection as for Romanian citizens. In the case of a girl with disabilities, the case was referred to other NGOs and public authorities dealing with disabled minors. There were no problems regarding their integration, as the mother of the girl is employed as a personal assistant of the girl, and she is paid according to the law applicable to Romanian citizens. The only difficulties faced by the family are the language barrier and bureaucracy which the mother's employment and the issue of the disability certificate. Without proper support and assistance in this process, the family of the girl would not have managed.

In **Region 1** there was only one case which was enrolled at the public school.

As regards the difficulties encountered by beneficiaries of international protection once they have become 18 in accessing vocational training or education, the AIDRom representative mentioned that even if they are 18 or not, they face the same impediments. The language is an impediment, since if they do not have diplomas, they have to be examined for all subjects from the first to twelfth grade, or if they cannot certify the years of study, they have to repeat those school years in Romania following the

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<sup>629</sup> Information provided by ASSOC, 30 January 2019.

<sup>630</sup> For the highly onerous administrative requirements to be met for this process according to Common Order No 1985/1305/5805/2016, see DGASPC, *Necessary documents for the complex assessment of the child's disability*, available in Romanian at: <http://bit.ly/2hK8T0r>.



Romanian curricula. There are very few cases that have chosen this path, even though professors were understanding and helpful. Another situation reported is of those who go to Arabic school and after they finish one year they are transferred to the public school. IOM also pointed out as difficulties for those who reach 18 the lack of diplomas and language barrier. ASSOC, on the other hand, specified that along with the language barrier, in some cases there is also a lack of determination.

## 2.2. Integration courses

According to the Integration Ordinance, foreigners who have acquired the right to stay in Romania and citizens of the Member States of the EU and of the European Economic Area benefit, upon request and free of charge, from courses of Romanian language, cultural orientation and counselling sessions.<sup>631</sup>

The cultural orientation sessions are organised in order to familiarise the persons with the traditions, customs and values of the Romanian culture and for providing practical information on Romanian society.<sup>632</sup> Romanian language courses are organised by the Ministry of Education in collaboration with IGI-DAI and aim to familiarise the participants with the Romanian language.<sup>633</sup>

In practice, some deficiencies in Romanian courses are reported in **Timișoara** and **Rădăuți**. Participants are not grouped based on their age – children and adults are in the same class – or on their level of education, meaning that illiterate persons and persons with higher education are grouped together. In Timișoara they are grouped in advanced and beginner groups. The classes are held only twice a week, from 5-6pm for advanced learners and from 3-5pm for beginners in Timișoara. In Rădăuți the classes are held from 1-3pm. There is only one teacher in Timișoara for all beneficiaries.

In **Timișoara** it was reported that there is goodwill on the part of teacher, but there seems to be a lack of support at the national level. The lack of efficiency was emphasised by the AIDRom representative who stated that in case a new beneficiary starts participating in Romanian language classes the whole group of beginners will have to repeat all the introductory courses. There were 10 beneficiaries of international protection registered in the integration programme and also third-country nationals participating in the Romanian language classes.

The AIDRom representative in Timișoara deems that beneficiaries should benefit from proper measures which will give them the opportunity to learn Romanian extensively in the first 3 months. Language courses should be daily and intensive. In reality, beneficiaries are concerned about sustaining their families or themselves and pay for rent. As a result, they focus on employment and they have less or no time at all to attend Romanian classes.

In **Bucharest**, the courses take place at School no. 145 three times a week. Courses are held by a teacher designated by the School Inspectorate. Beneficiaries are not divided based on their age or levels of language knowledge. One of the problems identified is that the structure of the course is strictly related to the school year calendar; so if a beneficiary starts the course in January, he or she will go to the lesson at which the group is at that time, even if he or she does not have any knowledge of Romanian language. In addition, these classes do not provide support materials for the beneficiaries.<sup>634</sup>

According to the director and the integration officer of Bucharest Centre Stolnicu, there is only one teacher of Romanian language in Bucharest; the courses are held twice a week for 2 hours and the beneficiaries are divided based on their age. In 2018 they were no longer divided based on their knowledge. Children beneficiaries of international protection have separated classes.

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<sup>631</sup> Article 35^1(1) Integration Ordinance.

<sup>632</sup> Article 35^1(2) Integration Ordinance.

<sup>633</sup> Article 35^2(1) Integration Ordinance.

<sup>634</sup> Information provided by IOM Romania, 21 January 2019.



In **Galați**, beneficiaries were grouped based on their age, but when the number of beneficiaries attending the class is low they are not grouped. There are 2 teachers, 1 for the children and the other for the adults. The classes are held twice a week for 2 hours.

Romanian language courses were organised based on demand in 2017. Therefore isolated cases remained uncovered. For example, a beneficiary of international protection from **Oradea** has not benefitted from the integration programme because no Romanian language courses were organised in the county.

In **Giurgiu**, the legal counsellor was unable to provide information on the Romanian classes organised by the Ministry of Education, because the only Romanian classes organised in the centre are the ones held by the NGOs. She also mentioned that the last time ISJ organised Romanian classes in the centre was three years ago.

IOM Romania, in partnership with the Intercultural Institute in Timișoara and the Schottener Social Services Foundation, is implementing between July 2017 and January 2019 the project “REACT\_RO: educational resources for learning Romanian language and cultural accommodation of beneficiaries of International Protection (BPI) and Third-Country Nationals (RTT) in Romania”. The project aims to contribute to the development of a coherent package of educational resources for learning Romanian as a foreign language and orientation in society that takes into account the needs of beneficiaries of international protection and third-country nationals in Romania.<sup>635</sup>

## F. Social welfare

Beneficiaries of international protection who for objective reasons lack the necessary means of subsistence have the right to receive, upon request and within the limits of the state's financial resources, a monthly non-reimbursable aid (“aid”) for a maximum period of 12 months.<sup>636</sup> The amount of aid is related to the reference social indicator under the terms and conditions established by Government Decision.<sup>637</sup>

### 1. Conditions for aid

The non-refundable financial aid is granted for an initial period of 6 months, with the possibility of extending it to 12 months. In order to receive non-refundable aid, beneficiaries of international protection must be enrolled in the integration programme.<sup>638</sup> However, some groups, referred to as “special cases”, are exempt from the obligation to be enrolled in the integration programme. The special cases are:<sup>639</sup>

- a. Unaccompanied children;
- b. Persons with disabilities;
- c. Persons who have reached retirement age and do not benefit from retirement;
- d. Pregnant women;
- e. Single-parent families with juvenile children;
- f. Victims of human trafficking;
- g. Victims of torture, rape or other serious forms of psychological or sexual violence.

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<sup>635</sup> IOM Romania, ‘*REACT\_RO: resurse educaționale pentru învățarea limbii române și acomodarea culturală a Beneficiarilor de Protecție Internațională (BPI) și Resortisanților Țărilor Terțe (RTT) în România*’, available in Romanian at: <http://bit.ly/2F9Wlw5>.

<sup>636</sup> Article 20(1)(m) Asylum Act.

<sup>637</sup> *Ibid.*

<sup>638</sup> Article 60(1) Asylum Decree.

<sup>639</sup> Article 33(2) Integration Ordinance.

In 2018, 1,146 beneficiaries of international protection were enrolled in the integration programme, of whom 608 continued a programme started in 2017. 10 unaccompanied children beneficiaries of international protection were enrolled in the integration programme in 2018.<sup>640</sup>

The provision of aid is subject to actual residence of the beneficiary, which is mentioned on the [Residence Permit](#). The beneficiary of international protection is included in the integration programme coordinated by the IGI-DAI office territorially competent for the area where he or she resides.<sup>641</sup>

In case a beneficiary would like to change his or her place of residence, he or she has to communicate this intention to IGI-DAI where he or she started the integration programme and has the obligation, within 15 days from the date of moving to the new address, to present him or herself to the IGI-DAI office territorially competent for the area in which he or she now resides or, as the case may be, to the relevant territorial entity of the Aliens Authority to register him or herself and to make the necessary changes to the identity document.<sup>642</sup>

IGI-DAI reported that 567 beneficiaries of international protection received the non-refundable financial aid in 2018.<sup>643</sup>

## 2. Application procedure for aid

The authority responsible for granting the non-refundable aid is the County Agency for Payments and Social Inspection (*Agenția Județeană pentru Plăți și Inspecție Socială*, AJPIS). The funds necessary for granting aid are provided from the budget of the Ministry of Labour and Social Protection through the Agency for Payments and Social Inspection of the County.<sup>644</sup>

The application for non-refundable aid is drafted individually by each beneficiary of international protection who fulfils the conditions set out in the law or by his or her legal representative or guardian, according to a template established by IGI.<sup>645</sup> This requirement raises issues in practice for unaccompanied children, as confirmed by Save the Children, JRS and AIDRom representatives in Timișoara. An unaccompanied child beneficiary of international protection may not access non-refundable financial aid due to the fact that he was not appointed a legal representative by DGASPC, since the legal representative only assists unaccompanied asylum-seeking children during the asylum procedure and not after they are granted a form of protection.

Save the Children reported that some of the unaccompanied children beneficiaries of international protection did not access the non-refundable financial aid due to the fact that they were not appointed a legal representative within three months of the day of receiving international protection.

According to IOM for all the children registered in **Region 1** the application for financial aid was made within the time limit prescribed by law. Children have access to the financial aid only when they are 18. Until then, the money is collected in an account on behalf of the beneficiary. Upon leaving the centre, the child will live in a DGASPC centre, and the director of the centre becomes the legal representative of the child.<sup>646</sup>

According to the AIDRom representative in **Timișoara**, unaccompanied children benefit from the state child allowance and non-refundable financial aid only if they are accommodated in an emergency residential centre of DGASPC or if they are appointed a legal representative. Due to the fact that unaccompanied children are not appointed a legal representative, who would have to sign the processing of personal data agreement for them according to the General Data Protection Regulation,

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<sup>640</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>641</sup> Article 60(1) Asylum Decree.

<sup>642</sup> Article 52(2) Asylum Decree.

<sup>643</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>644</sup> Article 20(5) Asylum Act.

<sup>645</sup> Article 60(2) Asylum Decree.

<sup>646</sup> Information provided by IOM Romania, 21 January 2019.

NGOs can no longer assist them. Between 2017 and 2019, AIDRom had 3 cases of unaccompanied minors who did not benefit from the abovementioned financial aid and other benefits due to the fact that they had not had a legal representative appointed. IGI-DAI does not keep statistics on the number of unaccompanied children beneficiaries of international protection who received the non-refundable financial aid.<sup>647</sup>

In practice, the application is made within 3 months of the date of granting international protection, with an NGO's assistance. IGI-DAI forwards the file of the beneficiary to the AJPIS for review. The application must be accompanied by the decision granting international protection, the temporary residence permit, as well as a certificate attesting the registration in the integration programme issued by the territorially competent IGI-DAI office.<sup>648</sup>

In order to establish the right to aid, the AJPIS makes a social investigation within 10 days from the receipt of the application to confirm that the applicant lacks the necessary means of subsistence.<sup>649</sup> The Executive Director of the AJPIS approves granting the financial aid, starting with the following month in which the application was registered with the territorial agency, on the basis of the documents submitted by IGI-DAI.<sup>650</sup> Until the first month of payment of the aid, beneficiaries who have no means of subsistence shall receive from IGI-DAI material aid equal to the amount granted to asylum seekers, within the limits of available funds, but no more than two months.<sup>651</sup> In 2018, this type of assistance was granted to 508 beneficiaries of international protection.<sup>652</sup>

IGI-DAI reviews the situation of each beneficiary of aid twice a year, depending on the active participation of the person in the activities stipulated in the individual integration plan and submit to the competent AJPIS proposals for extending the period of granting, suspending or terminating the payment of aid.<sup>653</sup>

It was reported that in **Șomcuta Mare**, while there are no obstacles in obtaining financial aid, many people do not stay in Romania to benefit from this. According to ASSOC, 28 beneficiaries of international protection were registered in the integration programme from 1 June 2018 to 21 January 2019. Most left in the first 3 months; only one unaccompanied child beneficiary of international protection stayed, as he applied for family reunification.<sup>654</sup>

Beneficiaries of international protection who participate in the integration programme, who do not meet the conditions for receiving non-refundable financial aid and who have no means of subsistence, are supported in order to fulfil the legal conditions for obtaining the minimum guaranteed income.<sup>655</sup>

In **Giurgiu** in 2018 no problems were reported regarding the non-refundable financial aid for unaccompanied children.

Beneficiaries of international protection also have the right to benefit from social insurance, social assistance measures and social health insurance, under the conditions provided by the law for Romanian citizens.<sup>656</sup>

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<sup>647</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>648</sup> Article 60(2)-(3) Asylum Decree.

<sup>649</sup> Article 60(5) Asylum Decree.

<sup>650</sup> Article 60(4) Asylum Decree.

<sup>651</sup> Article 22(3) Integration Ordinance.

<sup>652</sup> Information provided by IGI-DAI, 5 March 2019.

<sup>653</sup> Article 60(6) Asylum Decree.

<sup>654</sup> Information provided by ASSOC, 30 January 2019.

<sup>655</sup> Article 22(1) Integration Ordinance.

<sup>656</sup> Article 20(1)(g) Asylum Act.

## G. Health care

Beneficiaries of international protection have the right to benefit from health insurance under the conditions provided by the law for the Romanian citizens.<sup>657</sup> Persons suffering from mental health problems, including torture survivors and traumatised persons also have access to treatment in the same conditions as Romanian nationals.

Challenges in practice include lack of awareness of how the Health Insurance House (*Casa de Asigurări de Sănătate*, CAS) works and what it entails. Therefore NGOs play a key role in assisting beneficiaries of international protection to overcome all the practical obstacles which would be insurmountable without this type of support.

The JRS representative in **Rădăuți** reported difficulties regarding the identification of family doctors. Family doctors refuse to register beneficiaries of international protection, including children, because they have to register patients for at least six months and are afraid that beneficiaries will leave Romania.

Another reported issue is related to health insurance. Persons who do not earn an income are obliged to pay state health insurance for 12 months, which equals 6 gross national salaries, irrespective of the date of filing the declaration.<sup>658</sup> In practice the amount which has to be paid monthly by the beneficiaries is 190RON / 40 €.

NGOs may reimburse the cost of this but they cannot pay directly. The payment of one month of health insurance triggers an obligation to pay for the entire year in order to access health services. If beneficiaries stop paying health insurance they enter into debt. If they commit to stay for six months, ICAR Foundation may pay for their health insurance, but there were no cases of this occurring.

In **Galați**, beneficiaries do not pay health insurance, even though within the project implemented by JRS on integration it is possible to reimburse a maximum of 500 RON / 106 € for medical services.

According to IOM not all the beneficiaries of the project implemented by them have health insurance. In emergency situations, they have free access to medical services. Children, pregnant women and other vulnerable categories do not pay health insurance,<sup>659</sup> all these categories are medically insured and can have a family doctor.<sup>660</sup>

The ASSOC representative stated that the monthly cost of health insurance represents a burden for the beneficiaries. They are informed about the health system in Romania and if they opt for it they have to pay the contribution, while the NGO identifies a family doctor for them. The AMIF project may cover a minimum two-month contribution for health insurance, but the beneficiary of international protection has to assume responsibility to pay the contribution for the entire year.<sup>661</sup>

According to the AIDRom representative in **Timișoara**, beneficiaries of international protection who pay for their health insurance are not issued a health insurance card.

Stakeholders have also mentioned difficulties related the generally poor condition of the state health care system which also affects Romanian nationals. As a consequence, beneficiaries prefer to access private medical clinics instead of state hospitals.

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<sup>657</sup> Article 20(1)(g) Asylum Act.

<sup>658</sup> Article 180(3) Fiscal Code.

<sup>659</sup> For more details about the Categories of individuals exempted from the social health insurance contribution please see Article 154 Fiscal Code.

<sup>660</sup> Information provided by IOM Romania, 21 January 2019.

<sup>661</sup> Information provided by ASSOC, 30 January 2019.

## ANNEX I – Transposition of the CEAS in national legislation

### Directives and other CEAS measures transposed into national legislation

Directive / Regulation	Deadline for transposition	Date of transposition	Official title of corresponding act	Web Link
<b>Directive 2011/95/EU</b> Recast Qualification Directive	21 December 2013	27 January 2014	Ordonanța nr. 1/2014 pentru modificarea și completarea Legii nr. 122/2006 privind azilul în România și a Ordonanței Guvernului nr. 44/2004 privind integrarea socială a străinilor care au dobândit o formă de protecție sau un drept de ședere în România, precum și a cetățenilor statelor membre ale Uniunii Europene și Spațiului Economic European	<a href="http://bit.ly/2C7UWoI">http://bit.ly/2C7UWoI</a> (RO)
<b>Directive 2013/32/EU</b> Recast Asylum Procedures Directive	20 July 2015 Article 31(3)-(5) to be transposed by 20 July 2018	24 December 2015	Legea nr. 331/2015 pentru modificarea și completarea unor acte normative în domeniul străinilor	<a href="http://bit.ly/2Hy9NIG">http://bit.ly/2Hy9NIG</a> (RO)
<b>Directive 2013/33/EU</b> Recast Reception Conditions Directive	20 July 2015	24 December 2015	Legea nr. 331/2015 pentru modificarea și completarea unor acte normative în domeniul străinilor	<a href="http://bit.ly/2Hy9NIG">http://bit.ly/2Hy9NIG</a> (RO)
<b>Regulation (EU) No 604/2013</b> Dublin III Regulation	Directly applicable 20 July 2013	24 December 2015	Legea nr. 331/2015 pentru modificarea și completarea unor acte normative în domeniul străinilor	<a href="http://bit.ly/2Hy9NIG">http://bit.ly/2Hy9NIG</a> (RO)