

# DUBLIN II Regulation National Report

European network for technical  
cooperation on the application  
of the Dublin II Regulation

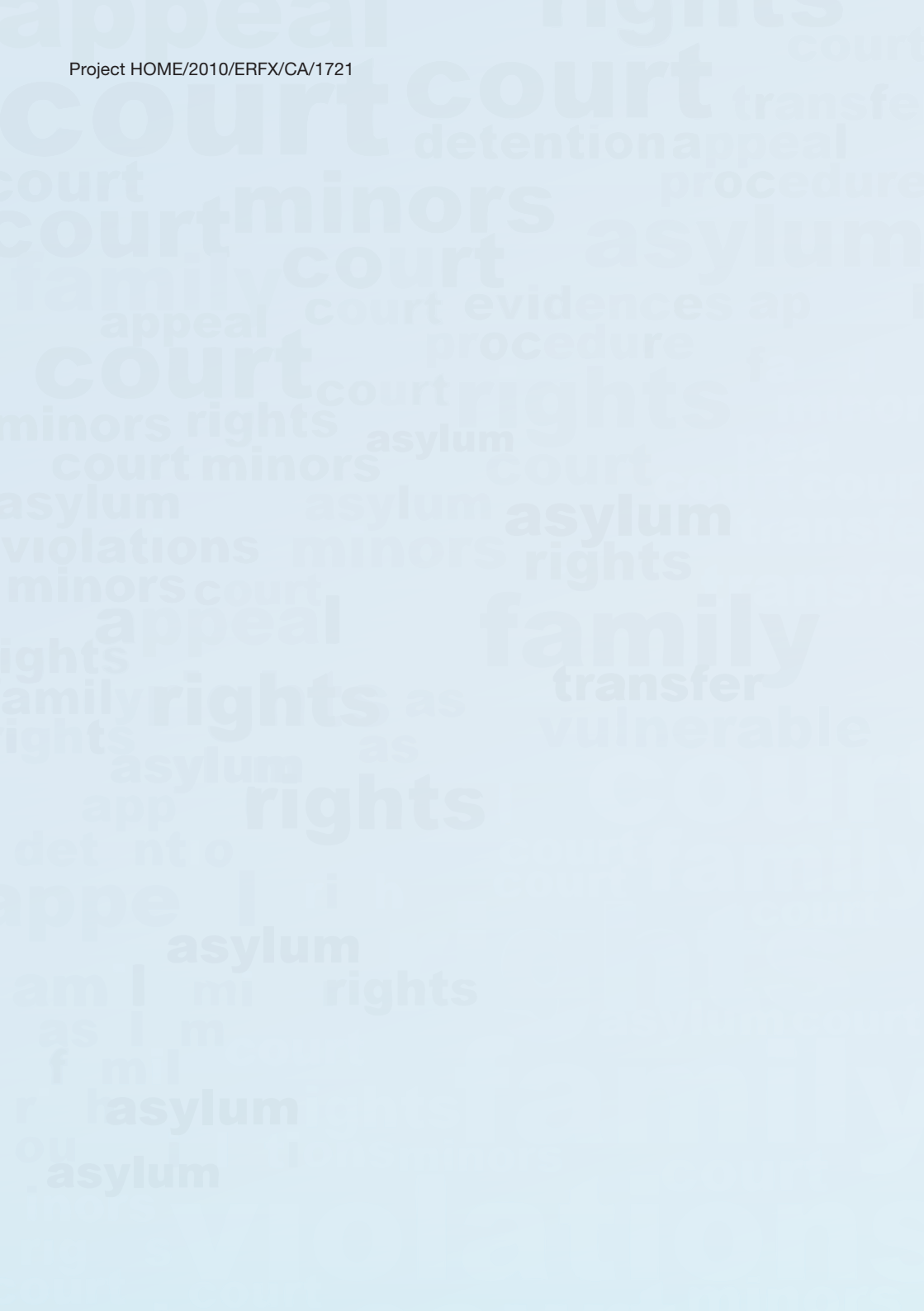


## ROMANIA



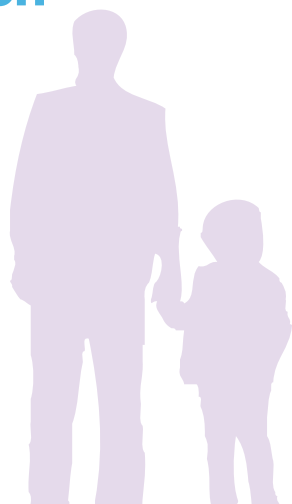
**European  
Refugee Fund**





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November 2012

**ROMANIA**

# Contents

<b>1. Introduction</b>	<b>3</b>
1.1. The Dublin II System: Perspectives and challenges at the European Level	3
1.2. Overview of the Dublin II Regulation in Romania	5
<b>2. The National Legal Framework and Procedures</b>	<b>8</b>
<b>3. The application of the Dublin Regulation in Romania</b>	<b>22</b>
3.1. The application of Dublin II Regulation Criteria	26
3.2. The Use of Discretionary Provisions	26
3.2.1. The use of the Humanitarian Clause (Art 15 Dublin II Regulation)	26
3.2.2. The use of Sovereignty Clause (Art 3 (2) Dublin II Regulation)	27
3.2.3. Accelerated Procedures	28
3.3. The Practicalities of Dublin Procedures	28
3.4. Vulnerable Persons in the Asylum Procedure	29
3.4.1. General legal framework for vulnerable asylum seekers in Romania	29
3.4.2. Unaccompanied minors	30
3.5. The Rights of Asylum Applicants in the Dublin Procedure	34
3.5.1. Right to information	34
3.5.2. Family unity in the Romania asylum procedure including the Dublin procedure	35
3.5.3. Withdrawal of the asylum application	36
3.5.4. Effective remedies	36
3.6. Reception Conditions and Detention	37
3.6.1. Reception Conditions in Romania	37
3.6.2. Detention of Asylum Seekers in Romania	40
3.7. Member State Co-operation	42
3.8. The Impact of European Jurisprudence at National Level	42
3.9. Good Practices in Romania	43
<b>4. Conclusion and Recommendations</b>	<b>44</b>
<b>ANNEXES</b>	<b>46</b>
Relevant Statistics	46
Relevant National Case Law	48

# Introduction

# 1

## 1.1 *The Dublin II System: Perspectives and challenges at the European Level*

The Dublin Regulation,<sup>1</sup> as its predecessor the Dublin Convention, was designed to ensure that one Member State is responsible for examining the asylum application of an asylum seeker and to avoid multiple asylum claims and secondary movement. It is confined to fixing uniform grounds for the allocation of Member State responsibility on the basis of a hierarchy of criteria binding on all EU Member States as well as Iceland, Norway, Switzerland and Liechtenstein. On the ten year anniversary of its entry into force this research provides a comparative overview of national practice in selected Member States on the application of this Regulation.

Our research shows that the operation of the Dublin system continues to act to the detriment of refugees, causing families to be separated and leading to an increasing use of detention. The Dublin procedure leads to serious delays in the examination of asylum claims and by doing so, effectively places peoples' lives on hold. The hierarchy of criteria is not always respected whilst Art. 10 is the predominant criterion used in connection with Eurodac. State practice demonstrates that asylum seekers subject to this system may be deprived of their fundamental rights *inter alia* the right to be heard, the right to an effective legal remedy and the very right to asylum itself as access to an asylum procedure is not always guaranteed. Reception conditions and services may also be severely limited for asylum seekers within the Dublin system in a number of Member States. There is an increasing use of bilateral administrative arrangements under Art. 23 and most States resort

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<sup>1</sup> Council Regulation (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, L 50/1 25.2.2003.

to informal communication channels to resolve disputes in the allocation of responsibility. Evidentiary requirements are very strict in some Member States, which in turn creates difficulties for asylum seekers in substantiating family links or showing time spent outside the territories of the Dublin system. A number of Member States also apply an excessively broad interpretation of absconding thereby extending the time limits for Dublin transfers further increasing delays in the examination of asylum claims. Furthermore the problems inherent in the Dublin system are also exacerbated by varied levels of protection, respect for refugee rights, reception conditions and asylum procedures in Member States creating an 'asylum lottery'.

The national reports provide an insight into the application of this Regulation at the national level whilst the comparative report outlines the main trends and developments at the European level. This research comes at a time when the Grand Chambers of both the European Court of Human Rights and the Court of Justice of the European Union have questioned the compatibility of the Dublin system with asylum seekers fundamental rights. In addition the EU institutions have recently reached a compromise agreement upon a recast Dublin III Regulation that introduces significant reforms including the creation of a mechanism for early warning, preparedness and crisis management. Despite these significant advances, the findings of this research demonstrates the continuous need to carefully evaluate the foundational principles of the Dublin system and its impact both with respect to asylum seekers' fundamental rights and Member States. It is hoped that this research will aid the Commission's review of the Dublin system within the forthcoming launch of a 'fitness check' and for any future dialogue on the assignment of responsibility for the examination of asylum claims.<sup>2</sup>

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<sup>2</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on enhanced intra-EU solidarity in the field of asylum, An EU agenda for better responsibility-sharing and more mutual trust, COM 2011 (835), 2.11.2011 p.7.

## 1.2. Overview of the Dublin II Regulation in Romania

This national report relies on desk-based research in statistics and jurisprudence, on discussions held with representatives of the relevant authorities dealing with the Dublin II Regulation, including the Dublin Unit and the Sector 4 Local Court in Bucharest, and also on the outcome of round-tables<sup>3</sup>, interviews<sup>4</sup> and discussions held with UNHCR representatives<sup>5</sup>, in order to express their views and identify the relevant jurisprudence. It includes observations, experiences and testimonies from Dublin cases where JRS Romania has intervened.

According to the statistics and as seen in practice, Romania is mainly a receiving state. The Ministry of Administration and the Interior's General Inspectorate for Immigration is responsible for The Dublin II regulation. It has two directorates: the Directorate for Migration and the Directorate for Asylum and Integration – Dublin Unit<sup>6</sup>.

Depending on the legal status of the person - asylum seeker who may or may not be under a Dublin procedure, foreign national who has not claimed asylum, or foreign national who was returned and their asylum procedure in Romania ended - one or both Directorates are in charge: the Directorate for Asylum and Integration<sup>7</sup> in the case of asylum seekers and the Directorate for Migration<sup>8</sup> for foreign nationals.

Asylum applicants under the Dublin procedure have the right to appeal against the decision not to admit them to the national asylum system, but the appeal does not have a suspensive effect.<sup>9</sup>

For asylum seekers under the Dublin procedure, their asylum procedure is suspended until a final decision is taken, although

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<sup>3</sup> Discussions held at the roundtable on the application of Dublin procedure in Romania, organized on 28 May 2012 by UNHCR Romania.

<sup>4</sup> Telephonic interview on 8 November 2012 with Dublin Unit representative.

<sup>5</sup> Discussions held at the roundtable on the application of Dublin procedure in Romania, organized on 28 May 2012 by UNHCR Romania.

<sup>6</sup> <http://ori.mai.gov.ro/detalii/pagina/en/Prezentarea-institutiei/57>

<sup>7</sup> Short GII - DAI.

<sup>8</sup> Short GII - MD.

<sup>9</sup> See chapter 2.

they still have all the rights and obligations of asylum seekers that are recognised in Romanian Asylum Law. Foreign nationals under a Dublin procedure have the rights and obligations of foreign nationals recognised by the Romanian Aliens Law.<sup>10</sup>

Detention of asylum seekers is only used in exceptional cases when the asylum seeker objects to their transfer to another Member State.

Good practice for the protection of vulnerable persons is generally applied, regardless of their legal status – asylum seekers or foreign nationals. Cooperation between the authorities and NGOs has been fruitful and has led to the use of alternatives to detention.<sup>11</sup>

Positive aspects were also identified with regard to the sovereignty clause. Dublin transfers to Greece were stopped by the Court in 2009<sup>12</sup> and totally suspended by the authorities in 2011<sup>13</sup>, following the ECHR Grand Chamber Judgement, *MSS vs. Belgium and Greece*.

The number of foreign nationals transferred to Romania saw a significant increase. Many of them absconded after submitting an asylum application, meaning they did not follow the correct asylum procedure, and their case was then closed. On return, they were considered to be foreign nationals with illegal status. In practice this meant a greater number of people were taken into detention.

As some of them left Romania without going through the entire asylum procedure and their claims were not assessed in the transferring states, many of them submitted new asylum applications on return, which also led to a higher number of subsequent asylum applications.<sup>14</sup>

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**10** See chapter 2 and 3.6.2.

**11** See chapter 3.9.

**12** See chapter 3.2.2.

**13** Press statement: <http://ori.mai.gov.ro/stiri/citeste/ro/18/15-martie-2011>

**14** See chapter 3.3.



Difficulties identified in practice were mainly related to the lack of sufficient information or understanding about the Dublin procedure - insufficient understanding of the asylum procedure; few specialised lawyers; family units not being respected in cases where members of the family had subsidiary protection, or where there were no documents to prove the marriage. The lack of suspensive effect of appeals was also criticised by practitioners, judges and the UNHCR at various meetings and events, but as the Constitutional court ruled that this provision does comply with the Romanian Constitution <sup>15</sup>, no alternative was found.

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**15** See Annex Relevant National Case Law.

# 2

## *The National Legal Framework and Procedures*

The Dublin Regulation has not been fully transposed into Romanian legislation, as it is considered to be directly applicable. It has been partially transposed into asylum-related legislation: Law no. 122/2006 concerning asylum in Romania (Asylum Law).<sup>16</sup> The competent body for dealing with persons under the Dublin procedure is the Dublin Unit within GII - DAI.

The legal appeal is under the jurisdiction of the local court with Dublin Unit competence. At the moment, only one court deals with appeals against Dublin decisions, i.e. the Sector 4 Local Court, Bucharest<sup>17</sup>, which also deals with the asylum procedure. It is a civil law court which does not specialise in asylum or migration and normally deals with civil-law-related cases.<sup>18</sup>

Transfers are enforced only when the person opposes the transfer to another Member State. In this situation, the person is taken to the public custody centre to await removal and is not transferred before an appeal is submitted or the legal term for submitting an appeal has expired.

The forms of protection recognised under Article 22 of the Asylum Law are refugee status and subsidiary protection.

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**16** The full text of the law can be found in English at: [http://ori.mai.gov.ro/api/media/userfilesfile/Legislatie/Legislatie%20nationala/L\\_122\\_2006\\_EN.pdf](http://ori.mai.gov.ro/api/media/userfilesfile/Legislatie/Legislatie%20nationala/L_122_2006_EN.pdf)  
Relevant article: art.115 Asylum Law

**17** Short: Local Court.

**18** A presentation of the Court can be found in Romanian on Ministry of Justice website at: <http://portal.just.ro/InstantaPrezentare.aspx?idInstitutie=4>

According to Article 23 of the Asylum Law, refugee status is recognised, upon request, for foreign nationals or stateless persons who, as the result of a well-founded fear of being persecuted due to race, religion, nationality, political opinion or membership of a particular social group, are outside their country of origin or usual residence and do not receive or, owing to this fear, do not want the protection of this country.

According to Article 26 of the Asylum Law, subsidiary protection can be granted to foreign nationals or stateless persons who do not fulfil the conditions for refugee status when there are well-founded reasons to believe that, if they returned to their country of origin or of usual residence, they would be exposed to a serious threat and would not receive or, due to this risk, do not want the protection of that country.

**A serious threat is:**

1. a death sentence or a conviction which may lead to such a sentence;
2. torture, inhuman or degrading treatment or punishment;
3. a serious, individual threat to one's life or integrity, as a result of generalised violence in situations of internal or international armed conflict, if the applicant is part of the civilian population.

*Procedure for claiming asylum*

A person is considered to be an asylum seeker from the moment they request asylum, in writing or orally, before the competent authorities<sup>19</sup>.

The competent authorities to receive the asylum application are the branches of:

- The General Inspectorate for Immigration (GII) – Migration Directorate (MD) and Direction for Asylum and Integration (DAI)

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<sup>19</sup> Art.34 Asylum Law.

- The Romanian Border Police
- The Romanian Police
- The National Administration of Prisons within the Ministry of Justice<sup>20</sup>.

The application is individual. It must be submitted personally or, if applicable, by the tutor or legal representative<sup>21</sup>. In family cases, the adults have to submit their asylum applications individually while the children's ones are incorporated into the application of one of the parents.

The detailed application must be submitted in writing, in the Romanian language or in any other language the person knows, and it must be signed or fingerprinted. A representative of the competent authorities will supply the form and explain how to complete it. If a person doesn't know how to write, the competent authorities will fill in the application according to the oral statement.

All the data and information regarding the asylum application are confidential.

According to law<sup>22</sup> and as observed in practice, the Romanian authorities do not apply any penal sanctions for illegal entry or residence to asylum seekers who have entered or reside without permission in Romania.

After submitting an asylum application, an appointed officer fills in a questionnaire in order to clarify some of the applicant's personal details as well as those of the family members, their travel route from the country of origin to Romania, information regarding possible asylum applications submitted in third countries or an EU Member State, and any identity or travel documents in the applicant's possession. Fingerprints are taken for all asylum applicants who, according to their statements, have reached the age of 14. This data is subsequently submitted and stored on paper, at the GII card index, and electronically, in the AFIS (Automated Fingerprint Identification Systems) national database and the

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<sup>20</sup> Art.35 Asylum Law.

<sup>21</sup> Art.37 Asylum Law.

<sup>22</sup> Art.11 Asylum Law.

EURODAC database.<sup>23</sup> The fingerprinting and transfer of the fingerprint data are done in full observance of the principles of confidentiality and personal data protection. The person in question is notified of this matter in writing.<sup>24</sup>

If the fingerprints already exist in EURODAC or if there is evidence to show that another state may be responsible for the asylum claim, the asylum procedure in Romania is suspended until a final decision is issued with regard to the responsible state.

A decision is issued indicating admissibility (or not) to the asylum procedure in Romania and, where applicable, the transfer to the responsible state. It contains the personal data, the communication date, the country of transfer, the acceptance or silence of the authorities with regard to the transfer and authorisation (or not) to remain.

The asylum seeker has the right to contest the decision within 2 days, personally or through the lawyer at GII – DAI or the Local Court, submitting a copy of the contested decision.

The appeal does not have suspensive effect on the transfer and must be judged within 5 days.

The asylum application is analysed on the basis of existing documents that are in the file and the reasons presented by the asylum seeker, in relation to the concrete situation in the country of origin and in relation to the person's credibility.

The interview to determine the need for protection is recorded in writing and should clarify any aspects necessary to analyse the asylum application. If GII considers it necessary there can be a second interview.

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<sup>23</sup> Art.43, 44 Asylum Law.

<sup>24</sup> Art.44 Asylum Law.

## *Normal procedure*

Within 30 days a decision is issued by an appointed officer: granting refugee status or subsidiary protection or rejecting the asylum application.

If the asylum claim is rejected or partially admitted (subsidiary protection granted instead of full refugee status) an appeal can be submitted personally within 10 days, together with a copy of the contested decision, at GII – DAI or at the Local Court.

The asylum seekers then receive a court summons at the address indicated in the appeal. The Local Court can admit the personal account of the asylum seeker when their declarations are considered to be useful. The appeal has to be resolved within 30 days from receiving it and the reasoning behind the decision has to be given within 5 days from the date of release. In practice, the appeal can last more than 30 days, as it is possible to postpone the trial in order for the defence to arrange free judicial assistance, hire a lawyer, submit evidence or country of origin information etc. In practice, the reasoning can also take much more than 5 days, depending on the workload of each Local Court or judge.

Asylum seekers have the right to be assisted by a lawyer who can be paid by them, appointed by an NGO or received through free judicial assistance<sup>25</sup>.

The Local Court issues a decision, either granting refugee status or subsidiary protection or rejecting the appeal.

If the appeal is rejected or one of the parties (the asylum seeker or the authority GII - DAI) doesn't agree with the form of protection granted, recourse can be submitted within 5 days<sup>26</sup>. The deadline for submission of the reasoning behind the recourse is 10 days from the date when the decision of the Local Court was communicated.

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<sup>25</sup> Art. 17 (b) Asylum Law.

<sup>26</sup> Art. 66 Asylum Law.

The recourse is tried within 30 days from the registration date by the Court and is definitive and irrevocable. In practice, the Court can take more than 30 days, as it is possible to postpone the trial in order for the defence to arrange free judicial help, hire a lawyer, submit evidence or country of origin information etc.

### *Accelerated procedure*

The accelerated procedure<sup>27</sup> is applied for manifestly unfounded applications, that is, applications from people who are a threat to national security or public order in Romania, or people who come from a safe country of origin<sup>28</sup>.

The asylum request is considered manifestly unfounded if the following are established<sup>29</sup>:

- lack of grounds for invoking the fear of being persecuted or exposed to a serious risk in the country of origin, under the stipulations of Article 23 paragraph (1) or Article 26;
- deliberate misleading of the competent authorities in refugee matters or resorting to the asylum procedure in an abusive or ill-willing manner.

The lack of grounds for invoking the fear of persecution or exposure to a serious risk in the country of origin exists in the following cases:

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**27** Art. 75 Asylum Law.

**28** Art. 77 Asylum Law.

The following countries shall be considered safe countries of origin: member states of the European Union, as well as other states defined as such, at the suggestion of the GII, by order of the Minister of Administration and Interior, on the basis of the following criteria:

- a) the number of asylum applications formulated by the citizens of the respective country and coefficients of granting a form of protection;
- b) the status of observance of fundamental human rights;
- c) the functioning of the democratic principles, political pluralism and free elections, as well as the existence of functioning democratic institutions to guarantee the observance and respect of the fundamental human rights;
- d) the existence of stability factors.

[2] Other evaluation criteria except from the ones foreseen under paragraph (1) may also be taken into consideration.

**29** Art.76 Asylum Law.

- the applicant does not invoke any fear of persecution in the sense of Article 23 paragraph (1) or any exposure to a serious risk to the effect of Article 26;
- the applicant does not provide data or information to prove her or his exposure to a fear of persecution or a serious risk, or her or his accounts do not contain circumstantial or personal details;
- the application clearly lacks credibility, meaning that the applicant's account lacks coherence, is contradictory or visibly untruthful with respect to the situation in the country of origin;
- the applicant had the possibility of internal refuge, also recognized by the United Nations High Commissioner for Refugees (UNHCR).

Deliberately misleading the competent authorities in refugee matters or resorting to the asylum procedure in an abusive or ill-willing manner shall be recorded in all cases when the applicant, without providing a plausible explanation, finds herself or himself in one of the following situations:

- has submitted the application using a false identity or has presented false or forged documents, claiming their authenticity;
- after submitting the application, deliberately presented false evidence related to it;
- has destroyed, deteriorated, discarded or transferred the travel document or a document relevant for the application, in an ill-willing manner, either to establish a false identity for the purposes of requesting and being granted refugee status, or to hamper the processing of the application;
- has deliberately concealed information about a previous submission of an asylum application in one or several other countries, especially when having claimed a false identity;
- has submitted an application for refugee status with the obvious purpose of hindering the imminent enforcement of a measure ordered by the competent authorities of removal from the country, such as extradition or expulsion, despite the fact that the foreign national had the opportunity to submit such an application prior to this measure;



- has flagrantly violated the obligations of Article 21 of the Asylum Law;
- has submitted the asylum application after having an asylum application rejected, which was examined under adequate procedural guarantees, according to the provisions of the Geneva Convention, in a safe third country.

After conducting the interview and analysing the reasons given, the appointed officer will issue a decision within 3 days. If a negative decision is issued or the asylum application is partially admitted (granting subsidiary protection and not refugee status) an appeal can be submitted in person within 2 days, together with a copy of the contested decision, at GII – DAI or at the Local Court. The asylum seeker has the right to remain on Romanian territory for the duration of the resolution of the appeal.

The Local Court rules within 10 days and gives the reason for their decision, either admitting the appeal and dealing with the case under ordinary procedure or rejecting the appeal.

In this procedure, the decision of the Local Court is final and irrevocable.

### *Procedure at the state border checkpoints<sup>30</sup>*

If the application is submitted at the state border checkpoints, a decision is issued within 3 days:

- granting a form of protection and access to the territory or,
- granting access to the territory and to the ordinary asylum procedure or,
- rejecting the application as manifestly unfounded.

If a negative decision is issued or the asylum application is partially admitted, an appeal can be submitted in person within 2 days, together with a copy of the contested decision, to GII – DAI or at

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<sup>30</sup> Art. 86 Asylum Law.

the Local Court. The Local Court rules within 5 days and gives the reason for its decision:

- accepting the appeal, granting access to the country and dealing the case under the ordinary procedure or,
- rejecting the appeal.

The decision of the court is final and irrevocable.

Any asylum seeker who applies for a form of protection in Romania at the state border checkpoints must remain in the transit area of the state border checkpoint until they receive a decision on whether they are allowed to enter the territory or, as the case may be, up to the moment the final decision to reject the asylum application becomes irrevocable, but no longer than 20 days after entering the transit area.

In all the procedures, in the judicial phase in Court, the procedure can last for a longer period of time, due to the lack of an interpreter, the absence of the lawyer, the time needed to submit proof etc.

When a final decision is issued by GII or by the competent courts, GII –MD will issue any requirement to leave the territory according to the Aliens Law no. 194/2002, republished and modified (Alien Law)<sup>31</sup>.

The legal, social and economic rights of asylum seekers in Romania are<sup>32</sup>:

- the right to be informed, when applying for asylum, in a language that they understand, about their rights and obligations related to the asylum procedure that they must follow;
- the right to protection of their personal data and any other personal information related to their application;

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**31** The full text of the law can be found in English at but not in consolidated version:  
[http://ori.mai.gov.ro/api/media/userfilesfile/Legislatie/Legislatie%20nationala/OUG\\_194\\_2002\\_2007\\_EN.pdf](http://ori.mai.gov.ro/api/media/userfilesfile/Legislatie/Legislatie%20nationala/OUG_194_2002_2007_EN.pdf)

The latest modifications of Aliens Law can be found in Romanian at:  
[http://ori.mai.gov.ro/api/media/userfiles/Legea%20157%202011\(1\).pdf](http://ori.mai.gov.ro/api/media/userfiles/Legea%20157%202011(1).pdf)

**32** Art.17-19 Asylum Law.

- the right to be issued with a temporary identity card which will be periodically prolonged by GII;
- the right to remain on Romanian territory for 15 days after the end of the asylum procedure, except for situations where their asylum application was processed in an accelerated or border procedure;
- the right to be accommodated in regional centres, run by the GII, until their right to remain in Romania expires, if they do not have the necessary financial resources;
- the right to adequate conditions of accommodation and assistance in the regional centres if they have any disability;
- the right to be assisted and advised by a representative of Romanian or foreign non-governmental organizations;
- the right to be represented by a lawyer;
- the right to be provided with an interpreter, free of charge;
- the right to be assisted by an officer of the UN Agency for Refugees – UNHCR;
- the right to participate in activities for cultural orientation;
- the right to the financial assistance necessary for subsistence (food, accommodation and other expenses);
- the right to receive, free of charge, basic medical assistance and any necessary medical treatment, urgent medical assistance in hospital and free treatment for chronic or acute diseases which constitute a threat to their life, through the national emergency system of medical assistance and primary qualified medical help;
- the right to work under similar legal conditions as Romanian citizens, if one year has expired from the date of their asylum application and their application is still ongoing;
- for minors - the right to have access to the compulsory education system under similar legal conditions as for Romanian children.

## *The Dublin Regulation is triggered in the following situations*

For asylum seekers: after the submission of the asylum application, the GII officer will interview the asylum seeker about their itinerary and fingerprints will be taken. The person should be informed that their data can be transferred among other EU states or states signatory to the Dublin Regulation.

If the fingerprints are found in EURODAC, or if there is reason to presume that another state may be responsible for their asylum claim, the asylum procedure will be suspended but the person will have the right to stay on the territory until the end of the procedure for determining the responsible state.

For foreign nationals – the Dublin Regulation is triggered if they are apprehended on Romanian territory without a visa or are staying illegally, if they are taken into public custody and have submitted an asylum request, if they have fingerprints or a visa, or if there is proof that they were previously in another EU state or states signatory to the Dublin Convention.

GII checks the fingerprints of a foreign citizen with regard to their previous submission of an asylum request on the territory of an EU state if:

- the foreign national states that they claimed asylum without indicating the member state;
- the foreign national does not request asylum but opposes return to their country stating that they are in danger;
- the foreign national tries to prevent their removal and refuses to cooperate in the process of identification, and submits false identity documents or no document.

As a foreign national, they will stay in a public custody centre until they submit an asylum application, are given access to Romanian territory or are transferred if they do not wish to claim asylum in Romania. The maximum period for public custody is 18 months.

## *Persons transferred to Romania*

If a person is transferred to Romania, their legal status depends on whether they requested asylum before leaving Romania and whether they have followed the procedure or not.

If the person has applied for asylum and their procedure is still pending, they have the same rights as all asylum seekers under Romanian legislation.

If the person did not apply for asylum before leaving Romania, they will be taken into public custody upon return but if they submit an asylum application, they will be released and will have all the rights of an asylum seeker. They can also be repatriated voluntarily if they do not wish to apply for asylum in Romania.

If the person applied for asylum, but the procedure ended when they absconded, they will be taken in public custody on return and considered to be an illegal alien, according to the Aliens Law. As a foreign national, they may have recourse to different legal remedies such as a subsequent asylum application (submitting a new asylum application), return (including voluntary return or assisted voluntary return) or toleration<sup>33</sup>. Toleration is granted for foreign nationals who have objective reasons that prevent them from leaving Romanian territory:

- they are not allowed to leave the country and do not fulfil the legal conditions to receive a permit to stay;
- the detention measure has ended;
- their temporary presence on the territory is necessary for the public interest, on the request of the public institutions or authorities;
- their removal is prohibited and their permit to stay cannot be granted or renewed;
- there are well-founded reasons to believe that the aliens are victims of human trafficking. In this case, toleration shall be granted on the request of the prosecutor or of the court;

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**33** Art.102-104 Aliens Law.

- the removal under escort could not be done within 24 hours but there are well-founded indications that they do not need to be taken into detention;
- GII considers they have temporary objective reasons not to leave the territory.

They can be in detention for a period up to 18 months<sup>34</sup>, during which time they can be voluntarily repatriated, or be forcibly removed if a subsequent asylum procedure is not pending. If the person submits a request to access to a new asylum procedure, they cannot be removed from the territory until a final decision granting access or rejecting it is has been issued. An appeal against a negative decision rejecting the request for access to a new asylum procedure does have suspensive effect.

They can ask for access to a new asylum procedure if the fear of return to their country of origin persists and they can present new evidence, according to Asylum Law<sup>35</sup>.

The conditions for submitting an application to request access to a new asylum procedure are:

- the application to grant access to a new asylum procedure can be submitted only if the following conditions are fulfilled cumulatively:
  - a. It must be submitted personally, the person should be on Romanian territory; and
  - b. Any previous asylum procedure or, in some cases, the application for access to a new asylum application, must have been finalised without the foreign national having obtained any form of protection, or the cancellation or cessation procedure should have been finalised and any protection granted must have been annulled or stopped.

The previous procedure is considered to have ended on the date when the decision to close the file is communicated, on the expiry of the legal deadline to submit an appeal against the decision of the GII –DAI, at the expiry of the deadline to submit recourse or, in some cases, at the

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<sup>34</sup> Art. 97 Aliens Law.

<sup>35</sup> Art. 88 Asylum Law.

moment when the decision is pronounced by the court of last resort. Access to a new asylum procedure will be granted if one of the following conditions is fulfilled:

- during the previous asylum application or after its resolution, the applicant offers new evidence that could not be presented previously for reasons beyond their control, as long as this evidence is not the result of actions deliberately taken in order to obtain protection from the Romanian state. The applicant must submit proof to support the new claim, and the impossibility of presenting it before the date of submission of the application to grant access to a new asylum procedure;
- since the date of the resolution of the previous procedure, in the sense of paragraph (1), letter b), transformations of a political, social, military or legislative nature have taken place in the country of origin that could have serious consequences for the applicant.

The personal submission of the application will not be compulsory in the case of foreign nationals that are taken into public custody by the GII – DAI and its territorial structures, or that are in preventive custody or in the course of carrying out a sentence of imprisonment. In these situations, the person submits the application at the institution where they are in custody or where they have been arrested or detained. The institution must forward it to GII- DAI.

# 3

## *The application of the Dublin II Regulation in Romania*

Romania is mostly a Receiving Member state, due to the fact that it is usually seen as a transit country. When applying for asylum in Romania, if it is their point of entry, many asylum seekers do not see Romania as their destination country and therefore inevitably move on, either before or after a decision has been taken regarding their status.

According to official statistics, in the first half of 2012, 89.43% of the total number of asylum applications were submitted at the border, by people trying to cross the border illegally: 1,155 asylum application representing 79.27% of the total at the Western border, 90 asylum applications, representing 6.18% of the total at the Eastern border; 56 asylum applications, representing 3.84% of the total at the Southern border and 2 asylum applications, representing 0.14% of the total at the Northern border<sup>36</sup>.

The right to seek asylum is respected by the border police, so that foreign nationals apprehended after crossing the border in an irregular manner are granted access to asylum procedures if they express a fear of persecution. The increased number of asylum applications submitted to the border police since mid-2011, mainly at the Romanian-Serbian border, confirms this reality. From the total number of 1,457 asylum applications registered in Romania in the first 6 months of 2012, some 1,200 applications were submitted to the border police at the external EU border (these are foreign nationals who were apprehended when entering Romania in an irregular manner and who then applied for asylum with the border police)<sup>37</sup>.

<sup>36</sup> <http://ori.mai.gov.ro/api/media/userfiles/analiza%20statistica%20sem%20I.pdf>

<sup>37</sup> "Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodical Review: ROMANIA ", Human Rights Liaison Unit.



It was observed in practice that out of those applying for asylum who left Romania without following the asylum procedure, many submitted their application only when they were caught by the police. Some asylum seekers also stated that their destination was not Romania because they had family or community links in other countries, or they doubted their chances of getting any form of protection, but they were fooled by smugglers or caught by the police.

If they leave Romania and enter another EU Member State illegally, when they are caught or when they submit an asylum application in another EU member state, they end up being transferred back to Romania.

The Romanian administrative authorities decided in February 2011 to suspend all transfers to Greece under the Dublin II Regulation and no cases were reported in practice<sup>38</sup>.

The main challenges in applying the Dublin Regulation in Romania are the increasing numbers of persons who are sent back to Romania under the Dublin Regulation and the application of some of its provisions.

According to the official statistics provided by GII, the number of asylum applications has increased from 1,038 in 2010, to 2,064 during 2011. 887 first-time asylum applications and 151 repeat claims were submitted in 2010, while in 2011, 1,720 first-time asylum applications and 344 repeat claims were submitted. Algeria, Morocco and Tunisia were the main countries of origin. The main route of entrance was the South-Western border with Serbia.

In 2012, there were 2,547 asylum applications submitted before the end of September, out of which there were 2,197 first-time asylum applications and 350 repeat claims. The main countries of origin and routes of entrance were the same as in 2011. The number of asylum requests accepted before the end of September was 155, that is 131 by GII- DAI and 24 by the courts.

The number of persons accommodated in the open centres for asylum seekers and refugees also increased, affecting reception conditions and leading to a general climate of tension among asylum seekers.

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Division of International Protection UNHCR, July 2012.

**38** Press statement: <http://ori.mai.gov.ro/stiri/citeste/ro/18/15-martie-2011>

Asylum seekers who crossed the border without respecting the asylum procedure deadlines and were sent back to Romania under a Dublin procedure had a different legal status upon return, as follows.

When those whose asylum procedure ended due to abscondment were sent back to Romania, they were taken into public custody as illegal foreign nationals<sup>39</sup>. This also led to an increase in the number of persons taken in public custody.

For those whose asylum procedure was still pending upon return, they were able to continue their asylum procedure and enjoy all the rights granted to asylum seekers, according to the law.

One of the issues previously raised by JRS Romania is effective access to the asylum procedure. For persons who are sent back to Romania after absconding from the territory and are then taken into public custody in order to be removed from the territory, if the person did not have a refugee status determination interview before leaving Romania, they risk not getting an asylum interview at all. Furthermore, if the person is sent back to their country of origin, there is a risk that the principle of non-refoulement is not respected.

Many of those persons have submitted subsequent asylum applications (sometimes based on the advice of the refugee community within the public custody centre and at other times, with legal counselling from lawyers or specialised NGOs). Their applications are treated as requests for access to a new asylum procedure and new evidence must be provided. For those who do not have a lawyer, or are not assisted by a specialised NGO, and due to the fact that they are in a public custody centre and their access to the outside world is limited, it is very difficult for them to provide new evidence, even if they are assisted by lawyers or NGOs.

The reasons why asylum seekers leave Romania without respecting the procedure deadlines have not been subject to in-depth analysis and study. There are significant differences of opinions between practitioners and the authorities on this, as expressed during round tables and at meetings.

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**39** For details see chapter 2.

Another issue of concern that was identified in practice was the situation of families where one of the members has subsidiary protection. As the Dublin Regulation does not apply to beneficiaries of subsidiary protection, there are cases where members of the same family, with different legal statuses, are separated. One member of the family can be sent to one responsible state while another family member, with subsidiary protection, is in another responsible state.

From the point of view of the refugees, as expressed during counselling sessions, the Dublin Regulation seems unfair, especially when they think they have a better chance of getting some form of protection in another EU state. During the counselling sessions, many of them confessed that they cannot understand why the authorities accept them back if they do not wish to grant them protection.

From the point of view of the authorities, the number of persons claiming asylum and also the number of persons sent back to Romania has increased, and there is a stronger need for information and counselling on Dublin procedures, the risks of abscondment and options upon return<sup>40</sup>, as well as assistance with this.

There are no Dublin Liaison officers employed in other Member States<sup>41</sup>.

Specific information on administrative costs for the application of Dublin - staff in the Dublin unit, Eurodac machine cost, administrative process cost, cost of actual transfers (if enforced), other related time and resources costs such as contact between the different Member State Dublin units etc. could not be provided by the authorities, as according to their statements, there are no data available<sup>42</sup>.

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<sup>40</sup> Discussions held at the roundtable on the application of Dublin procedure in Romania, organized on 28 May 2012 by UNHCR Romania.

<sup>41</sup> Telephonic interview on 8 November 2012 with Dublin Unit representative.

<sup>42</sup> Telephonic interview on 8 November 2012 with Dublin Unit representative.

### *3.1. The application of Dublin II Regulation Criteria*

Romania respects the hierarchy of the criteria stated in Article 5 (1) Dublin II Regulation.

After submitting the asylum application, the asylum seeker's fingerprints are taken. If these are already in the Eurodac database, there will be Dublin consultations – this is the preferred initiation of a Dublin procedure. If there is no Eurodac hit, the applicant is interrogated about their route from their country of origin to Romania. These interviews provide information about a possible stay in another Member State.

According to the statements of the Dublin Unit representatives, the Articles are applied as follows: Article 9, Dublin II Regulations, Article 10 and Article 15.

### *3.2. The Use of Discretionary Provisions*

#### *3.2.1 Use of the Humanitarian Clause (Article 15, Dublin II Regulation)*

According to the statements of the Dublin Unit officers (from telephone interviews and public meetings) the humanitarian clause is applied for Dublin cases. In one case, a Dublin returnee was sent from Austria to Romania, and was taken into public custody upon return. Access to a new asylum procedure was granted on the presentation of proof of family links in Austria, and he stated that his family was not in Austria with him when he first submitted an asylum application in Romania. Later on, after getting access to the Romanian asylum procedure, he was transferred back to Austria to his wife and children, who had subsidiary protection.

### 3.2.2 *Use of the Sovereignty Clause (Article 3 (2) Dublin II Regulation)*

According to the statements of Dublin Unit officers<sup>43</sup>, the sovereignty clause is applied for Dublin cases, but so far, only for transfers to Greece.

An official statement was published on the GII - DAI website in February 2011, regarding the suspension of transfers to Greece due to the failings in the asylum system<sup>44</sup> there.

Transfers to Greece were suspended previously in 2009, by the Sector 4 Local Court which admitted the appeals in 3 cases. This was based on an evaluation of the asylum system in Greece, following the country of return information provided by JRS Romania and the Centre for Research and Documentation of Country of Return Information (see Annex C. Relevant National Case Law).

The asylum applicant, their legal representative and the legal advisor have the right to request the application of the sovereignty clause, which nevertheless remains the prerogative of the authorities. Either the decision is negative and the authorities have to provide legal reasoning in their decision as to why the sovereignty clause was not applied, or in the event of a positive decision, a note is included, explaining that the sovereignty clause was applied and giving the reasons for this decision. In cases where asylum seekers opposed transfers to Italy or Bulgaria, the sovereignty clause was not applied. Appeals were made but none of them were admitted.

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<sup>43</sup> Discussions held at the roundtable on the application of Dublin procedure in Romania, organized on 28 May 2012 by UNHCR Romania and telephonic interview on 8 November 2012 with Dublin Unit representative.

<sup>44</sup> Press statement: <http://ori.mai.gov.ro/stiri/citeste/ro/18/15-martie-2011>

### 3.2.3 *Accelerated Procedures*

A bilateral co-operation agreement with Bulgaria, on a fast Dublin transfer procedure, was signed on 23 September 2010 at Sofia.

The cooperation agreement was needed due to the common desire to simplify working procedures and to shorten the deadline for the transmission and examination of requests for take back or take charge of asylum seekers.

The aim of the Convention, for the Romanian part, was to ensure the quicker transfer of asylum seekers for whom the Republic of Bulgaria is responsible, and who are on Romanian territory and have submitted an illegal asylum request.

On 29 November 2011, representatives of Romania, Greece and Bulgaria met in Sofia to make a Common declaration for cooperation on asylum and migration, intended to strengthen operational cooperation in this area.

## 3.3. *The Practicalities of Dublin Procedures*

The general time-frames given in the Dublin II Regulation are respected.

The request for another Member State to take charge can be made for up to 3 months after the submission of the asylum request. The time allowed for a response is 2 months maximum or one week minimum (in urgent cases).

The transfer of the applicant can be made: within six months of acceptance of the request that charge be taken; within 12 months if the person is in prison or carrying out a sentence; within 18 months if the person disappears or absconds.

Circumstantial evidence is not defined by Romanian law. It is difficult to assess what GII - DAI accepts as circumstantial evidence, due to

the large number of cases that are to be sent to another country and the fact that they are not usually handled by JRS Romania.

In family cases, applicants must provide documents such as birth certificates, marriage certificates etc. in order to prove their family status.

If an asylum applicant stays outside the EU for more than three months and is able to prove it, they have quite a good chance of being re-admitted to have their asylum claim examined in Romania. They must prove that they left the EU as well as proving the duration of their stay outside. Ideally this evidence is provided by an exit visa or document, documents from an authority from another state, or documents from an NGO which provided assistance when leaving the country.

### *3.4. Vulnerable Persons in the Asylum Procedure*

#### *3.4.1 General legal framework for vulnerable asylum seekers in Romania*

Asylum seekers with special needs will have accommodation and assistance adapted to suit their special needs in the accommodation centres and they have the right to receive adequate medical aid<sup>45</sup>. They are evaluated by GII - DAI in order to be included in the category of persons with special needs and may also receive psychological assistance provided by specialised staff at GII<sup>46</sup>.

The evaluation can be based on oral information from the asylum applicant, a medical diagnosis from a doctor inside the reception centre or observations by an asylum officer or a prison guard in a detention centre. The persons that are normally considered vulnerable in practice are unaccompanied minors, minors with families, single mothers, pregnant women, elderly persons, persons with disabilities, persons with psychological/ psychiatric disorders, victims of trauma etc.

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<sup>45</sup> Art.17 Asylum Law.

<sup>46</sup> Art. 5 Methodological norms for the implementation of Asylum Law.

Interviews during the asylum procedure are conducted by specialised officers of GII - DAI and take the particular circumstances into consideration.

GII may notify specialised institutions able to provide needed assistance and may collaborate with non-governmental organizations<sup>47</sup>.

Foreign nationals returned to Romania under Dublin, whose asylum procedure has ended due to abscondment, are taken in public custody. Despite the fact that separate rooms are allocated for vulnerable persons, limited facilities are available to those in public custody, due to the fact that the centres are not specially designed to provide separate facilities for vulnerable cases.

For some vulnerable persons, alternatives to detention were considered and they were not taken in detention if they could prove they had a place to stay and could give an address. GII – MG contacted NGOs (JRS Romania), asking them to provide assistance and to find alternative accommodation for a woman with a new-born baby. The woman and her child were accommodated by someone from her country. They later submitted a request for access to a new asylum procedure, and were subsequently granted subsidiary protection.

### 3.4.2 *Unaccompanied minors*

The fact that an asylum applicant is an unaccompanied minor does not necessarily affect their right to access the Romanian procedure, or make the transfer to another country illegitimate.

For asylum seekers (under Asylum Law) Asylum Law is applied with due regard for the best interest of the child<sup>48</sup>.

These guarantees include the priority processing of the asylum applications of minors, the appointment of a legal guardian for the entire RSD procedure and access to education. Furthermore, asylum applications submitted by unaccompanied minors may not be processed in the accelerated or border procedure<sup>49</sup>.

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<sup>47</sup> Art. 5 Methodological norms for the implementation of Asylum Law.

<sup>48</sup> Art.8 Asylum Law.

<sup>49</sup> "Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodical Review: ROMANIA ", Human Rights Liaison Unit



The interests of a foreign minor are protected by the legal representative to whom the asylum application is submitted<sup>50</sup>.

In the case of an unaccompanied foreign minor who has expressed the will to obtain asylum, in writing or orally, before the competent authorities, they are registered as an asylum seeker, and the asylum application is submitted as soon as a legal representative is named. If they have reached the age of 14, the asylum application can be submitted personally<sup>51</sup>.

GII - DAI immediately notifies the child protection authority<sup>52</sup> in order to begin the procedure of naming a legal representative. The asylum procedure is suspended but the minor has the same rights as other asylum seekers<sup>53</sup>.

Unaccompanied minors are granted the same protection offered to Romanian minors in difficult circumstances.

Interviews are conducted in the presence of their legal representatives, who inform them about the purpose and possible consequences of the personal interview and undertake the necessary steps to prepare the minor for the interview. Interviewing is done wherever possible, according to their degree of psychic and intellectual development and their maturity<sup>54</sup>.

Access to education is free, unconditional and the same as for Romanian minors who are citizens. GII can provide adequate space for studying and buy school supplies.

When the asylum seeker states they are under age and there is no serious doubt about this, they are treated as a minor.

If they cannot prove their age and there are serious doubts with regards to their age, GII- DAI can ask for a medical opinion to determine their age, with the written consent of the asylum seeker and of their legal representative. If they refuse the medical check

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Division of International Protection UNHCR, July 2012.

**50** Art.16 Asylum Law.

**51** Art.39 Asylum Law.

**52** General Direction for Social Assistance and Child Protection.

**53** Art.40 Asylum Law.

**54** Article 47 Asylum Law.

and do not present evidence, they are treated as an adult from the point of submission of the asylum application<sup>55</sup>.

For foreign nationals (according to the Aliens Law)

Unaccompanied minors who are sent back under a Dublin procedure and do not wish to request asylum, or those whose asylum procedures have ended due to abscondment, are not taken in public custody centres, and are accommodated in the special centres of the child protection authority. They are accommodated there until a legal solution is identified - either voluntary return, upon identification of their family or submission of a request to access to a new asylum procedure.

Although the Aliens Law does not contain a specific reference to the best interest of the child, it provides safeguards against detention for unaccompanied minors who are staying irregularly in Romania. These minors are accommodated in centres for children. They can only be removed from the Romanian territory for the purpose of family reunification; in the absence of such a solution they are granted the right to stay in Romania<sup>56</sup>.

For under-age foreign nationals who enter the territory of Romania unaccompanied, or who remain unaccompanied after having entered Romanian territory, GII and its territorial units first establish their identity as well as the route by which they have entered the country. Irrespective of the manner in which they have entered Romania, they should be ensured representation by a competent institution under the law, which should also provide the necessary protection and care, including accommodation in special centres for the protection of minors under the same conditions as for Romanian minors.

Measures to identify the parents are initiated, regardless of the parents' place of residence, for the purpose of family reunification. If the minor's parents do not reside on the Romanian territory, they are returned to the parents' country of residence or to the country

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**55** Article 41 Asylum Law.

**56** "Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodical Review: ROMANIA ", Human Rights Liaison Unit Division of International Protection UNHCR, July 2012.

where other family members have been identified, with their agreement. If the parents or any other family members cannot be identified or if the minor is not accepted by their country of origin, they are granted the right to temporary residence on the Romanian territory. Before the parents have been identified, minors of school age are granted access to the education system.

Age assessments are conducted by GII in cases when the minor doesn't have documents to prove their age. In some cases, copies of the documents have been accepted.

A child who is first registered as an adult, and later on as unaccompanied minor in another Dublin country, can either prove their age with supporting documents or undergo medical examination to determine their age.

If a person was registered as an unaccompanied minor in another country, upon transfer/take back, they are considered to be an unaccompanied minor. Only if the person was initially registered as an adult in Romania and there are serious doubts that they are under age (no documents to prove their age, no medical examination made either in Romania or in the transferring Member State) will the person have to supply proof and undergo medical examination.

In practice, in the case of an Afghan transferred under Dublin, who stated that he was an unaccompanied minor, and who had been previously registered as adult in Romania, the authorities considered him to be an adult as there was an age assessment made by the U.K. authorities which indicated he was over 18 years old, and the birth certificate he presented was considered to be a fake document.

Minors with families can be taken into detention, accompanying their family if it is considered that staying with the family rather than being separated is in their best interest.

This situation is problematic because the detention centres are not adapted to their specific needs. Even if the family are accommodated together in one private room, they share the common areas with all the other detainees. No specific activities or specialised staff are available and despite the fact that the Aliens Law mentions

that they have free access to the educational system<sup>57</sup>, in practice they are not enrolled at school and are offered no educational or recreational activity within the centre. According to the authorities' statements, there is a lack of staff available to accompany the children to school each day.

In practice, in some cases, alternatives to detention were considered for families with children and they were not taken into detention. With the help of an NGO (JRS Romania) they were placed in a community house until a legal solution was identified for their juridical status. A case-by-case assessment is done by the authorities to consider alternatives to detention, also taking into account the risk of abscondment.

## *3.5 The Rights of Asylum Applicants in the Dublin Procedure*

### *3.5.1 Right to information*

The right to information is mentioned in Article 118 from Asylum Law 122/2006, which says that GII or its territorial units will inform the applicant in writing when information about them and their request, including their fingerprints, is exchanged with other EU states or states signatory to the Dublin convention, with the aim of establishing the member state responsible for examination of the application.

In practice the asylum seeker does receive written information about the information presented above.

If the asylum seeker is accommodated in one of the open centres for asylum seekers and refugees managed by GII, they are directed towards the NGOs providing legal assistance and they receive legal counselling and a clear explanation of the information provided, upon request<sup>58</sup>.

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<sup>57</sup> Art. 99 Aliens Law.

<sup>58</sup> For details see also chapter 3.6.1.

Despite having received written information and legal counselling, many persons under the Dublin procedure stated that they were not aware of the consequences of the fingerprinting and the outcome of their abscondment. During the counselling sessions, some stated that an initial negative decision made them leave the country; other stated that they wanted to be close to their family members present in other countries.

### *3.5.2 Family unity in the Romanian asylum procedure including the Dublin procedure*

Family unity and the definition of a family member were not transposed into Romanian legislation, as it was considered that the Dublin Regulation applies directly and does not require a full transposition.

In practice, the persons are asked about other family members when they submit the asylum request, during the preliminary interview or when the interview to determine a form of protection takes place.

Partners from unmarried relationships are not considered as family members if they do not have a marriage certificate.

In the case of one family from the Occupied Territories, who were sent back from Germany and taken into detention upon their return, the authorities initially accommodated them separately as they could not prove their marriage. As they enrolled in the voluntary return program, the embassy was contacted and it offered a document attesting their marriage, so that during the proceedings they could stay together in the same room.

In another case of an Iraqi woman transferred from Switzerland with her 5-months-old baby, the mother and baby were transferred together, despite the fact that the baby did not appear on the laissez-passer of the mother, nor in the transfer acceptance decision. They were both granted subsidiary protection, despite the fact that the baby was not born when the mother initially entered Romania. Her husband joined them from Germany, and was also granted a form of protection.

### 3.5.3 *Withdrawal of the asylum application*

In Romania, if an asylum seeker withdraws their asylum application in the administrative phase, they are informed by the responsible authority about the consequences of this withdrawal. The file is closed, and they receive a decision certifying this. This decision is not subject to appeal (Article 51, Asylum Law 122/2006).

If an asylum seeker withdraws their asylum application in the judicial phase, the judge takes account of this withdrawal and issues a decision. GII issues a decision stating the 15 days that the former asylum seeker has to leave the Romanian territory.

### 3.5.4 *Effective remedies*

According to Articles 121(1) and 123(1) of Asylum Law 122/2006, appeals against the transfer decision do not have a suspensive effect. According to Articles 121(6) and 123(6) of Asylum Law 122/2006, the transfer can be made, and if the appeal is admitted and the transfer is annulled, but the person has already been transferred, it is up to the GII to make all the arrangements for the person to be readmitted into Romanian territory. No such case has been identified so far.

The Constitutional Court ruled that the fact that the appeal has no suspensive effect does not infringe the Romanian Constitution<sup>59</sup> (in Decision number 604, from 20 May 2008, with regard to Article 121 from Asylum Law 122/2006).

The cases of Dublin returnees who have never had an interview and were finally rejected without a proper asylum procedure raised concerns about the risk of lack of effective access to the asylum procedure and the risk of refoulement. For persons who are sent back to Romania after absconding from the territory, and are taken into public custody in order to be removed from the territory, if the person did not have a refugee status determination interview before leaving Romania, they risk not having an interview at all. In all the transit countries where they may have applied for asylum, the procedure would have been suspended without having an interview.

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<sup>59</sup> See Annex C. Relevant National Case Law.

Furthermore, if upon return to Romania the person is sent back to their country of origin, as they do not fulfil the criteria for access to a new asylum procedure, JRS Romania and UNHCR consider that there is a risk that the principle of non-refoulement has not been respected.

## *3.6 Reception Conditions and Detention*

### *3.6.1 Reception Conditions in Romania*

With regard to reception, the asylum regulations provide a general framework for reception conditions, transposing the minimum European standards into Romanian law. Problems are related to the legislation or limited financial resources.

Asylum seekers and refugees are able to access reception conditions of a decent standard, comparable with similar countries. The management and security staff at regional reception centres are aware of these standards.

In Romania, the reception conditions are regulated by Law 122/2006, in particular Articles 17 and H.G (G.D) 1251/2006.

The total accommodation capacity of the GII-DAI in its 6 regional centres is 920 places, divided as follows: Bucharest (320), Galati (250), Timisoara (50), Radauti (100), Somcuta Mare (100) and Giurgiu (100). Asylum applications are processed in each regional centre, with a total of 17 GII staff working in the RSD procedure (including 9 decision-makers and 8 legal counsellors).

In spite of the generally positive protection environment in Romania, the accommodation facilities and processing capacity of the GII regional centres are under strain with the current number of arrivals. In light of the continuing increase in the numbers of asylum seekers arriving in Romania, UNHCR is concerned that

the quality of the asylum system and reception conditions may be affected, unless the existing capacities are further expanded<sup>60</sup>.

People residing in the centres can travel outside the centres (the daily programme is between 6 a.m. and 10 p.m.). Asylum seekers can also leave their place of residence for up to three days, with the approval of the Director from the Regional Centre.

The six open Regional Centres provide accommodation for asylum seekers who have no means of livelihood, social counselling, emergency medical assistance, financial assistance for food, facilities for food preparation (kitchen equipped with stove, refrigerator, dishes for cooking, washing machines etc. that are used by asylum seekers).

Upon arrival at the Centre, after submitting the application, the staff of the Regional Centres perform the following actions:

- provide information on rights and obligations that asylum seekers have and the asylum procedure to be followed;
- fingerprint and photograph each applicant, explaining that their personal data will be recorded and processed;
- issue a temporary identity document certifying the category of asylum seeker and their right to stay in Romania until a final decision on their application for asylum;
- arrange a medical examination, to check whether the person concerned suffers from any medical condition and whether or not there is evidence that the person was a victim of torture or other inhuman or degrading treatment.

Asylum seekers are accommodated in one of the dormitories.

Each applicant receives a kit consisting of 2 sheets, 1 pillow, and personal hygiene items (soap, toothpaste, toothbrush, toothpaste and razors, and so on). They also receive vessels for cooking and dining.

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<sup>60</sup> "Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodical Review: ROMANIA ", Human Rights Liaison Unit Division of International Protection UNHCR, July 2012.



The Internal Rules of the Regional Centre are presented to each asylum seeker, so that they understand what rights and obligations they have.

At least one NGO is present in each Regional Centre for Accommodation and Procedures for Asylum Seekers. NGOs are usually specialised in legal counselling, social assistance, assistance to vulnerable groups etc.

Asylum seekers that have livelihoods can reside outside the regional Centres but they must have a rental contract and communicate their address to the authority responsible for processing asylum applications.

The overall conclusion regarding reception conditions for asylum seekers in Romania, according to both UNHCR and EU standards, is that in general reception conditions are met. There are more serious problems related to food, the insufficient allowances and the lack of supplementary support for vulnerable persons (pregnant women, women who have just given birth, new-born babies, elderly persons, etc.) according to their specific needs.

Due to the deteriorating economic situation in Romania, the material support provided by GII in its reception centres has remained unchanged since the Asylum Law came into force (approximately 30 USD/month). This amount is insufficient to cover the basic needs of asylum seekers, who receive no other regular in-kind support from NGOs or other actors.

Although GII is fully aware of this situation and is planning to revise the Asylum Law to increase material assistance or to complement it with food, the situation is affecting many persons in need of international protection, especially asylum seekers with specific needs.

Asylum seekers' access to recreational activities, language classes, vocational training, cultural orientation and psychological and medical assistance (especially for victims of trauma and torture) is still insufficient in GII Regional Centres, in spite of the ERF-funded projects that address these issues<sup>61</sup>.

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<sup>61</sup> "Submission by the United Nations High Commissioner for Refugees for the

### 3.6.2. *Detention of Asylum seekers in Romania*

With regard to detention conditions and the rights of aliens in Romania as regulated by Law 194/2002, (in particular Articles 98, 99, 100):

The centres are closed places, specially designed, managed by GII - MD, and are designed for the temporary accommodation of foreign nationals considered to be undesirable or against whom a measure of return or expulsion has been issued.

Foreign nationals accommodated in centres have the rights provided by law and by the international treaties and agreements to which Romania is party.

Foreign nationals accommodated in centres are entitled to legal, medical and social assistance, and respect for their religious, philosophical and cultural beliefs.

Foreign nationals accommodated in centres have the right to be informed immediately after being brought there, in the language they speak, or in a language they understand, about the main reasons for these measures, and the rights and obligations they have during their stay in these centres. The reason for the detention and the rights and obligations of foreign nationals accommodated in centres should be communicated in writing by the persons appointed to lead these centres.

During the entire period of stay in these centres, foreign nationals are ensured communication with diplomatic and consular representatives of their State of origin. As asylum seekers are not detained, they are excluded from the application of the Aliens Law<sup>62</sup>. Dublin returnees taken into detention because their asylum procedure ended due to abscondment are considered to be foreign

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Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodical Review: ROMANIA ", Human Rights Liaison Unit Division of International Protection UNHCR, July 2012.

**62** With the exception of persons convicted with expulsion and foreign nationals declared undesirable; in their cases, the right to submit an asylum application is respected but they detained and contacts with the diplomatic and consular representatives of their State of origin are not made at least until the end of the asylum procedure.

nationals staying illegally, and as failed asylum seekers are not dealt with under Asylum Law, contacting the embassies and consulates is not considered a breach of the confidentiality principle.

Staff at the centres should treat any foreign nationals accommodated without discrimination on the grounds of race, sex, age, culture, nationality, religion or membership of a particular social group.

Minors placed in these centres have free access to compulsory education.

Foreign nationals in detention are entitled to health care, free medicines and medical supplies.

Medical services are provided by the medical service of the accommodation centres or the health establishments of the Ministry of Administration and the Interior or the Ministry of Public Health.

There are two detention centres, one at Otopeni (near Bucharest) and one at Arad (near the Western border).

Some problems were identified in the last year with regards to detention conditions, such as an increased number of rejected asylum seekers from Timisoara, who did not follow the RSD procedure, as well as finally-rejected asylum seekers following the accelerated procedures; lack of information with regard to the previous asylum procedure(s) for detainees applying for access to a new procedure; low standards in the detention regime (lack of recreational activities, security measures, a ban on getting food from outside etc.), as well as lack of proper communication with detainees; lack of proper documentation with regard to Dublin transfers.

### *3.7. Member State Co-operation*

The Government Decision regarding the approval of the Administrative Convention between the Romanian Ministry of Administration and the Interior and the Ministry of Internal Affairs in the Republic of Bulgaria, concerning the practical modalities of a simplified application of the Council Regulation (EC) No. 343/2003 of 18 February 2003, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, signed at Sofia on 23 September 2010.

The aim of the Convention, for the Romanian part, is to ensure a quicker transfer of asylum seekers for whom the Republic of Bulgaria is responsible and who are on Romanian territory and have submitted an illegal asylum request.

A tripartite declaration was signed in November 2011 by Romania, Bulgaria and Greece regarding cooperation in the field of asylum and migration for a better management of the migratory flux within the EU external borders.

### *3.8. The impact of European Jurisprudence at National Level*

Following the *MSS v Belgium and Greece* (App. No. 30696/09), Romania decided in February 2011 to suspend all transfers to Greece under the Dublin II Regulation and no cases were reported.

### 3.9. Good Practice in Romania

#### *Sovereignty clauses*

The application of the sovereignty clause with regard to transfers to Greece was an aspect of good practice. It was firstly the Romanian courts in charge (Sector 4 Local Court) who admitted the appeals against transfers in 2009. The practice of GII was changed and followed the same trend. Even in cases when asylum seekers stated that they wanted to return to Greece, counselling was offered by NGOs and the person did not return. In 2011, following the *MSS v Belgium and Greece*, GII made an official statement that transfers to Greece would be suspended<sup>63</sup>.

#### *Alternatives to detention*

Following the introduction of a new provision in the Aliens Law that allows the authorities to consider alternatives to detention, some vulnerable cases benefited. GII-DM did not take into custody foreign nationals who were sent to Romania under a Dublin procedure and whose asylum procedure ended due to abscondment, if they were vulnerable and could find alternative accommodation, supported by NGOs.

#### *Effective access to the asylum procedure*

Following the advocacy and the round tables organised for the authorities and judges dealing with Dublin, general practice has improved. In many cases where asylum seekers left Romania without having an interview, GII granted access to a new asylum procedure on return so that an assessment of the need for international protection could take place. This has recently been acknowledged by GII and additional safeguards were introduced. Rejected asylum seekers who had not undergone an interview on merit, before abandoning the RSD procedure, are now given the opportunity to apply for a new asylum procedure upon their return to Romania under the provisions of the Dublin Regulation<sup>64</sup>.

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<sup>63</sup> Press statement: <http://ori.mai.gov.ro/stiri/citeste/ro/18/15-martie-2011>

<sup>64</sup> "Submission by the United Nations High Commissioner for Refugees for the Office

# 4 *Conclusion and Recommendations*

With regard to the application of Articles 7 and 8 of the Dublin Regulation in Romania, the humanitarian clause is applied, according to the authorities, in relation to the respect for family unity<sup>65</sup>. In practice, many people we assisted stated that they had family members in other Member states (like Austria, Norway or the U.K.) but they were still transferred to Romania. In some situations, upon return to Romania, they were taken into detention, and treated like other foreign nationals. Only if they could prove their family connections with supporting documents, could they get access to a new asylum procedure and be released. In one case, protection was granted, as the other family member in U.K. enjoyed refugee protection. In others, the asylum case is still pending.

A broader use of the humanitarian clause as well as a better investigation of family connections upon submitting the asylum application should be made.

With regard to the right to information, as many persons stated they were not completely aware of what the Dublin procedure means and the consequences of absconding, more efforts should be made by the authorities and by NGOs to ensure that proper information is provided.

An in-depth analysis of why asylum seekers leave Romania, often without respecting the procedural deadlines, should be made, in order to identify and propose solutions.

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of the High Commissioner for Human Rights' Compilation Report - Universal...  
Periodical Review: ROMANIA ", Human Rights Liaison Unit  
Division of International Protection UNHCR, July 2012.

**65** According to statements of the Dublin Unit representative during telephonic interview on 8 November 2012.

Effective access to the asylum procedure has seen positive evolution. Although in the past, if persons sent back under a Dublin procedure applied for access to a new asylum procedure and did not have a positive outcome, their credibility was affected, the situation has changed.

However, practice is not consistent and cases that did not benefit from the assistance of an NGO or lawyer may have seen a negative outcome. This has led to tension and misunderstandings between detainees who cannot understand why some get access and others don't.

Clear guidelines should be established and applied so that no person who did not have an asylum interview misses the chance to have access to a fair and efficient asylum procedure.

Last but not least, there is still a need for training to be done on the application of Dublin II, for lawyers and legal counsellors, as well as to update the competent court with changes at European level and the latest jurisprudence.

# Annexes

## Relevant Statistics

### *Eurostat statistics concerning Romania*

	Incoming requests		Outgoing requests
	2010	2011	2010
Belgium	0	-	0
Bulgaria	-	13	-
Czech Republic	-	1	-
Denmark	0	-	1
Germany (including former GDR from 1991)	4	9	69
Estonia	0	0	0
Ireland	0	1	0
Greece	-	-	0
Spain	6	1	0
France	9	2	25
Italy	9	7	15
Cyprus	0	1	0
Latvia	0	-	0
Lithuania	0	0	0
Luxembourg	0	1	1
Hungary	7	-	52
Malta	0	0	0
Netherlands	0	0	14
Austria	10	7	90
Poland	-	-	0
Portugal	0	0	0
Romania	0	0	0
Slovenia	0	0	0
Slovakia	4	-	0
Finland	0	3	4
Sweden	2	-	-
United Kingdom	2	-	10
Iceland	-	-	-
Liechtenstein	-	0	-
Norway	2	3	4
Switzerland	3	5	26



## GII official statistics – transfers of Dublin cases (returnees)

Period covered: 2011 and 2011

Country of origin	Transfers of Dublin cases to internal border points of access 2011	Transfers of Dublin cases to countries of origin 2011
Moldova Republic		
Turkey		
Afghanistan	2	1
China		
Algeria	1	
Nepal		
Morocco		
Tunisia	1	
Georgia		
Ukraine		
Other Countries	5	5
<b>Grand Total</b>	<b>9</b>	<b>6</b>

Country of origin	Transfers of Dublin cases to internal border points of access 2010	Transfers of Dublin cases to countries of origin 2010
Moldova Republic		
Turkey		
China		
Ukraine		
Tunisia		
Iraq		1
Albania		
Syrian Arabic Republic		3
Afghanistan	1	1
Vietnam		
Other Countries	3	6
<b>Grand Total</b>	<b>4</b>	<b>11</b>

## GII official statistics – asylum applications

Period covered: 2010 – 30 of September 2012

YEAR	First asylum application submitted	Second asylum application submitted	TOTAL submitted	Granted by GII			Granted by court	Total granted	Rejected
				Geneva Convention 1951 -Refugee status	Subsidiary protection	Total granted by GII			
2010	887	151	1038	82	2	84	39	123	618
2011	1720	344	2064	68	7	75	33	108	1417
2012	2197	350	2547	105	26	131	24	155	1589

### Other important data (GII official statistics of the 1<sup>st</sup> semester 2012):

- 1,457 asylum requests submitted
- 1,617 foreign nationals were found to be staying illegal (25 of these were awaiting a transfer decision under the Dublin procedure)
- 1,195 return decisions were issued
- 322 illegal foreign nationals were taken in public custody
- 69 illegal foreign nationals were returned under escort

### Relevant National Case Law

- Decision 604/20, May 2008, Constitutional Court
- Decision no. 1/30, March 2009, Local Court
- Decision no.2/15, June 2009, Local Court
- Decision no. 3/22, June 2009, Local Court
- Decision no.4/01, July 2009, Local Court
- Decision no.5/ 05, June 2009, Local Court



# European network for technical cooperation on the application of the Dublin II Regulation

By creating a European-wide network of NGOs assisting and counselling asylum seekers subject to a Dublin procedure, the aim of the network is to promote knowledge and the exchange of experience between stakeholders at national and European level. This strengthens the ability of these organisations to provide accurate and appropriate information to asylum seekers subject to a Dublin procedure.

This goal is achieved through research activities intended to improve knowledge of national legislation, practice and jurisprudence related to the technical application of the Dublin II Regulation. The project also aims to identify and promote best practice and the most effective case law on difficult issues related to the application of the Dublin II Regulation including family unity, vulnerable persons, detention.

During the course of the project, national reports were produced as well as a European comparative report. This European comparative report provides a comparative overview of the application of the Dublin II Regulation based on the findings of the national reports. In addition, in order to further enhance the knowledge, we created information brochures on different Member States, an asylum seekers' monitoring tool and a training module, aimed at legal practitioners and civil society organisations. They are available on the project website.

The Dublin II Regulation aims to promptly identify the Member State responsible for the examination of an asylum application. The core of the Regulation is the stipulation that *the Member State responsible for examining the asylum claim of an asylum seeker is the one where the asylum seeker first entered.*

[www.dublin-project.eu](http://www.dublin-project.eu)

## European Partner Organisations:

