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## **28th CONFERENCE OF EUROPEAN MINISTERS OF JUSTICE**

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**“Emerging issues of access to justice for  
vulnerable groups, in particular:  
- migrants and asylum seekers;  
- children, including children perpetrators of crime”**

**Report presented by the  
Minister of Justice  
of Romania**

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## I. Romanian legislative and institutional framework on migrants and asylum seekers

### 1. Legislation

The Romanian legislative framework that regulates the status of migrants and of asylum seekers, including unaccompanied minor children, has been aligned with the European Union and international law and the practice developed in this respect ensuring the observance of all the rights recognised to these categories of persons.

Romania ratified the UN Convention relating to the Status of Refugees (1951) and Protocol relating to the Status of Refugees (1967), as well as the Convention relating to the Status of Stateless Persons (1954) and the Convention on the Reduction of Statelessness (1961).

Close coordination with EU institutions, particularly with the European Commission, as well as good institutional connections in various member states have helped, over time, the Romanian authorities to cope with the important challenges posed by migration and improve both their legislative framework and administrative capacity.

We share the view of the European Commission's Vice-President Franco Frattini that immigration is "*an unavoidable phenomenon to be monitored on the basis of a realistic and visionary approach for the best of EU mobility*"<sup>1</sup>.

For Romania, the concept of *aliens* refers to those not having Romanian citizenship while having a temporary residence on Romanian territory, which includes asylum seekers and alike, as well as stateless persons.

The exercise of **free access to justice by migrants and by asylum seekers** is safeguarded based on the national legislation in this field, namely:

- *Government Emergency Ordinance no. 194/2002 on the Regime for Foreigners in Romania;*
- *Law no. 122/2006 on Asylum in Romania;*
- *Government Decision no. 1251/2006 on approving the Methodology for the Implementation of Law no. 122/2006 on Asylum in Romania.*

Persons belonging to the category of vulnerable groups have a series of special needs, which require appropriate assistance from the State. The national legislation grants particular attention to these cases, as it regulates special measures in order to meet their needs.

The asylum procedure for unaccompanied minor children, whether they are seeking asylum or they belong to other vulnerable groups, includes a number of particularities determined by their vulnerability and by the need for them to be treated appropriately.

Asylum seekers are provided with an interpreter free of charge throughout the asylum procedure, including during their appearance in court. Unaccompanied minors may be assisted by a lawyer or by a legal adviser from an NGO that is a partner in this field of competence, or from the UNHCR, under the legislation on asylum.

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<sup>1</sup> Franco Frattini's address at the High-level Conference on Legal Immigration in Lisbon, September 13, 2007

Where an application by an unaccompanied minor for the granting of a form of protection in Romania has been dismissed by a final and irrevocable court decision, the General Directorate of Child Protection and Welfare takes the steps set forth in the law for the establishment of a protection measure, requesting to the court a ruling that will place the child under a special protection service.

During the court stage of the process, the court sits *in camera*, and the asylum procedure takes place under the principle of confidentiality. Procedural rights need to be exercised either personally or through counsel. Cases concerning applications for asylum have priority in court over the other civil cases, and the court must deal with them within 30 days.

The complaint, as well as the other procedural steps relating to its resolution by the court, are exempt from the stamp fee and no court costs may be requested.

Regarding foreigners who entered Romania illegally, or whose stay in Romanian territory has become illegal, or whose visa or right of abode has been cancelled or revoked, or who have been refused the extension of the temporary right of abode, or whose permanent right of abode has ceased, as well as for former asylum seekers, the measure of return from Romanian territory may be ordered. The decision on return may be appealed.

Foreigners who have illegally crossed the State border, as well as those who are residing illegally, whose identity has not been able to be established, are issued a decision on return under escort, and they are taken into State custody. This decision may be appealed at the court of appeal in the jurisdiction in which the custody is located. The court's decision to declare a foreigner as undesirable may be appealed on points of law at the High Court of Cassation and Justice.

The main features of the legal regime of foreigners or stateless persons in need of a form of international protection in Romania are:

There are **three types of protection**:

1. **refugee status** – limited to persons who fulfil the refugee definition of article 1 of the Geneva Convention;
2. **conditional humanitarian protection** – limited to persons who do not meet that standard but a) who have perpetrated deeds for which they may face the death penalty in their country of origin or b) they risk being subject to torture or inhuman or degrading treatment or c) they may be exposed to dangers of a kind that threaten their life, physical integrity or freedom on account of their belonging to a category of disadvantaged or vulnerable persons;
3. **temporary humanitarian protection** – can be granted to persons coming from and during armed conflict areas in which Romania is not involved.

Voluntary repatriation is encouraged and withdrawal of the status of refugee is possible whenever a foreigner has voluntarily returned to his/her country of origin or the country where he/she resided before entering Romania or when the reasons for granting this status have ceased to exist or when there are justified reasons pertaining to public interest, national security or public order.

All persons benefiting from a form of protection can enjoy all socio-economic assistance granted free of charge by the Romanian State.

All aliens granted a form of protection in Romania have access to the following rights: (i) the right to employment and accommodation; (ii) access to medical and social assistance, (iii) the right to education, cultural orientation, counselling on the same conditions as Romanian citizens. They are also entitled to education under identical conditions as Romanian citizens. The legislation provides for an exhaustive list of persons with special needs who are entitled to additional assistance: handicapped persons, the elderly, unaccompanied minors, victims of torture, and single-parent families with minor children.

**The legal framework regarding border crime** is set forth in the following normative acts, which are aligned with community provisions:

- *Government Emergency Ordinance no. 105/2001 on the Romanian State Border;*
- *Law no. 39/2003 to Prevent and Fight Organised Crime;*
- *Law no. 678/2001 to Prevent and Fight Trafficking in Persons, as subsequently amended and supplemented.*

The legal framework on the subject in Romania has been constantly revised and adapted to the moving target of the EU *acquis*. In 2005 the Government adopted Emergency Ordinance no.102/2005<sup>2</sup> concerning the free circulation in Romanian territory of citizens of member States of the European Union and of the European Economic Area, which harmonises national legislation with EU *acquis*, including the Directive 38/2004/CE on the right of citizens of the Union and their families to move and reside freely within the territory of the Member States.

## 2. Institutions

**Two administrative structures** were created in 2004 *in the area of migration: the Authority for Aliens and the National Office for Migrations*, both under the coordination of the Ministry of Interior and the Reform of Administration, which merged into the Romanian Office for Immigrations and created a unique register of aliens, irrespective of their legal status. The Council Directive n°71/2005 on a specific procedure for the admission of third countries' nationals for purposes of scientific research was also transposed.

The new central administration is expected to fulfil the following objectives:

- to provide a unique structure to deal with migration and asylum in all five processes related to these phenomena;
- to provide a unique structure to issue work permits and other documents attesting the right to stay on Romanian soil;
- to better coordinate processes and procedures and improve quality of services and to efficiently manage all available resources.

## II. Protection and promotion of children's rights in Romania

### 1. Overview

On 1 January, 2005, new legislation entered into force in Romania regarding child protection, which was adopted as a *set of laws* during the year 2004, and was followed during 2005-2007 by a series of normative acts meant to supplement and detail the various aspects that were not dealt with in the *set of laws* adopted in the year 2004.

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<sup>2</sup> Published in the Off.J. n°646/21.07.2005.

The new legislation includes four laws:

- *Law no. 272/2004 to Protect and Promote the Rights of the Child;*
- *Law no. 273/2004 Regulating Adoption;*
- *Law no. 274/2004 Setting Up the Romanian Adoptions Office ;*
- *Law no. 275/2004 Setting Up the National Authority for Child Protection and Adoption*

The current legal framework in this field integrates all the principles and provisions in this area contained in international conventions and treaties to which Romania is a party and represents also a major leap from the previous restrictive approach, regarding the *protection of children who are in difficulty*, the regulation of legal and institutional mechanisms that allow for *ensuring the observance, protection and promotion of the rights of all children*.

Law no. 272/2004 sets forth the legal framework relating to the observance, promotion and safeguarding of the rights of the child. Its direct beneficiaries are children who are Romanian nationals and are located in Romanian territory, children who are Romanian nationals and are located abroad, children with no citizenship who are located in Romanian territory, children who apply for or are enjoying a form of protection under the legal regulations on the status and treatment of refugees in Romania and children who are foreign nationals and are located in Romanian territory, in situations of emergency.

The main normative directions of the current legislation are:

- the *principle of the prevalence of the child's best interest* in all steps and decisions that concern children;
- the application, in view of observance and safeguarding of children's rights, of the following *complementary principles*: equal opportunities and non-discrimination, personalised and individualised care for children, respect for the dignity of the child and protection from any form of abuse or exploitation, hearing the opinion of the child and taking such opinion into account, according to the age and the degree of maturity, ensuring stability and continuity in the growth, care and education of children, taking account of their ethnic, cultural and linguistic origins, and where a protection measure is taken, speed in decision-making, interpretation of legal norms in the field in correlation with all the regulations in this matter;
- defining the responsibility of parents as *primordial*, as regards the upbringing and development of the child, regulating, *subsidiary*, the duties of the local community that includes the child and his or her family, as well as defining the State's *complementary* intervention in view of ensuring protection and of safeguarding the observance of all the rights of the child by means of specific activities within the State institutions and the public authorities that work in this field;
- the obligation of public authorities, of authorised private bodies and of courts to involve the family in all the decisions, actions and measures that concern the child, as well as to support the care, up-bringing and education of children within their family;
- the responsibilities and procedural aspects related to decision making on the special protection of children, as well as regarding adoption, restricting the competence of administrative decisional bodies (the child protection boards) to situations of temporary separation of children from parents, when the parents consent, and providing to courts the full competence to deal with all other cases that concern children and families;
- eliminating the special protection measure of adoption of children, restricting international adoption of children to their relatives up to the second degree (siblings or grandparents) and taking special steps to promote national adoption;
- the prohibition on applying physical punishments to children, under any form and in any environment, as well as prohibition on depriving children of their rights, in situations that

- are likely to pose a threat to their lives, corporal integrity, physical or mental health and development;
- regulations intended to protect children against any form of neglect, abuse, exploitation, trafficking and other forms of violence, as well as the obligation, for all employees of public or private institutions that, by the nature of their profession, come into contact with children, to urgently notify the *General Directorate of social assistance and child protection* (GDSACP) in order for it to take the necessary steps to safeguard the rights of the child;
  - criminalisation of acts of exploiting children by encouraging or forcing them to practice beggary, including where the acts are committed by the children's parents;
  - provisions on the possibility to present *ex officio*, as evidence in court, a written statement by a child regarding abuse or forms of exploitation to which he or she has been subjected, as well as the possibility to record the child's statement by audiovisual means, in the presence of a psychologist;
  - stipulations that cases involving children must be dealt with in emergency procedure, as the periods between hearing dates and the decision on a protection measure may not exceed 10 days;
  - regulation, at an institutional level, of the duties of institutions that specialise in this field, both centrally and locally, and of the joint duties of other central and local public institutions, according to their competences in their own specific field;
  - regulations on the setting up, diversification and development of services at a local level, to meet the needs of children and families for assistance and support, by introducing the license granted by the *National Authority for Child Protection and Adoption* (NAPCR).

The following are the main lines of action:

- promoting the new legislation and creating an efficient partnership with all the central institutions, with the authorities of the local public administration and with the non-governmental organisations working in this field;
- speeding up the decentralisation of responsibilities from the county level to the level of administrative-territorial subdivisions (cities, towns, communes) by supporting the local councils in assuming their obligations relating to the promotion of children's rights and to the provision of support to families as they exercise parental rights and obligations;
- correlating the policies of the protection of children's rights with family-related policies;
- enhancing the quality of service by coordinating the process of drafting and introducing the minimum standards of quality specific to each type of service.

## **2. Access of children to justice, including that of children who are in conflict with the law**

Access to justice for children is set forth in the Constitution of Romania, in Law no. 304/2004 on the Organisation of the Judiciary, as subsequently amended and supplemented, in the Civil Code and in the Criminal Code, in the Civil Procedure Code and in the Criminal Procedure Code, in other special laws, and in Law no. 272/2004.

Under Law no. 272/2004, the term **child** means, in accordance with the definition included in the UN Convention on the Rights of the Child, "a person who has not reached the age of 18 years and has not acquired full legal capacity under the law" (Art. 4, a)). From the legal viewpoint, the terms *child* and *minor* are interchangeable.

Until they reach the age of 14, because they have no legal capacity, children have access to justice through their legal representative, namely a parent or a person designated under the law to exercise parental rights and fulfil parental duties towards the child. After they reach the age of 14, children acquire restricted legal capacity, and they are able to conclude legal documents on their own, however with the previous consent of their legal representative.

Special protection for children is defined as the set of measures, steps and services aiming at caring for and ensuring the development of children who are temporarily or permanently deprived of the protection of their parents or who, in order to protect their interests, may not be left in their parents' care.

Children receive the special protection provided for in the law until they acquire full legal capacity or, if they continue their studies and request such protection, until the age of 26. The measures of special protection set forth are to be enjoyed by: a) children whose parents are deceased, unknown, deprived of the exercise of parental rights or have had the penalty of divestment of parental rights imposed on them, or have been incapacitated, or have been declared dead or missing by a court judgement, whenever guardianship cannot be instated; b) children who, in view of protecting their interests, cannot be left in the care of their parents for reasons not imputable to the parents; c) children who have been abused or neglected; d) found children or children abandoned by their mothers in healthcare units; e) children who have committed an act provided in criminal law and who are not criminally responsible.

The measures of special protection may be ordered, as appropriate, by using a person or a family, preferably from the child's extended family, or a registered child-minder or a care centre licensed under the law. For children who are older than 14 years, special protection measures are ordered only with their consent. Should the child refuse a certain measure, only a court may override the child's refusal, in properly justified cases and in the child's best interest.

Parents, as well as children who are older than 14 years, are entitled to appeal in court against the special protection measures ordered, and enjoy legal assistance free of charge, under the law.

In the event of emergency placement in foster care, as a measure ordered for children who have been abused or neglected, and for found children or for children abandoned in healthcare units, the exercise of parental rights is suspended *de jure*, until a court decides whether this measure is to be upheld or replaced and decides also about the exercise of parental rights. Throughout the suspension, the parental rights and duties are exercised and fulfilled by the person, family, registered child-minder or the head of the care service that has received the child in emergency foster care.

The Criminal Code provides that "minors who are younger than 14 years shall not be criminally responsible. Minors aged 14 to 16 years shall be criminally responsible provided that they can be proven to have committed the act with discernment. Minors older than 16 years shall be criminally responsible."

For children who commit acts provided in criminal law and who are not criminally responsible, at the proposal of the General Directorate of Social Assistance and Child Protection (GDSACP) which has jurisdiction over the child, with the consent of the parents or other legal representative of the child, or of the court when there is no consent, *the measure of placement in foster care or the measure of specialised supervision* is provided.

When ordering such measures, account has to be taken of the following circumstances: a) the conditions in which the act was committed; b) the degree of social danger represented by the act; c) the environment in which the child grew up; d) the risk of the child committing another act provided in criminal law; e) any other elements that are likely to provide more information about the child's situation.

The measure of specialised supervision consists of keeping the child with his or her family, provided that the child complies with certain obligations, such as: a) attending school; b) using day-care services; c) undergoing medical treatment, counselling or psychotherapy; d) not



frequenting certain places or not coming into contact with certain persons. Where it is impossible to keep the child with his or her family or where the child fails to comply with the obligations included in the measure of specialised supervision, the child protection board or, if appropriate, the court, may place the child with his or her extended family or with a foster family. Where the act committed has a high level of social danger, the child must be placed in a specialised care centre.

The Criminal Code provides that criminally responsible minors may have an educative measure or a penalty imposed on them taking into account the degree of social danger represented by the act committed, the minor's physical condition, his or her degree of intellectual and moral development, his or her behaviour, the conditions in which the child was living and any other elements. Penalties are imposed only when the court believes that taking an educative measure would not be sufficient to correct the minor.

For cases governed by this law, there is no obligation to pay the judicial stamp fee and to buy a judicial stamp.

### **3. Placing children in care centres**

The placing of children in care centres is carried out as a special protection measure, ordered either by the child protection board (the measure of placement in foster care) or by the General Directorate of Social Assistance and Child Protection (the measure of emergency placement in foster care), when the parents/other legal representative consents, or by a court when there is no such consent, under the law. Care centres are specialised services subordinated to the GDSACPs or to authorised private bodies, and are licensed based on the minimum quality standards specific to each service. Care centres include: care centres, emergency centres for children who were abused, neglected and/or exploited, maternal centres, and other types of services. The protection provided in a care centre is provided by the law only in situations where it is impossible to place the child with his or her extended family, with another person or family or with a child-minder.

According to the official statistics of the NAPCR the number of children in care centres is approximately 26600. Currently, in Romania there are 1206 public centres, holding 21847 children, and 409 centres managed by private organisations, holding 4752 children. The number of personnel working in the centres is approximately 20200. For the restructuring of the still-existing 119 classic centres, national programmes, external funding programmes and local initiatives are ongoing.

### **4. The protection of children against sexual abuse and exploitation for commercial purposes**

These issues are a real concern for Romania since Romania has been one of the main European countries of origin and transit of the victims of this form of exploitation.

In Romania sexual abuse and exploitation of children are criminalised by Law No. 272/2004 to Protect and Promote the Rights of the Child, Law No.678/2001 to Prevent and Fight Trafficking in Persons, as subsequently amended and supplemented, Law No. 196/2003 to Prevent and Fight Pornography, as amended and supplemented by Law No. 496/2004, and they are provided as specific offences in the Criminal Code.

The current Criminal Code criminalises in its *Chapter III – Offences Relating To Sexual Life* – the following forms of sexual exploitation and abuse of children : **rape** (Art.197); **sexual intercourse with a minor** (Art. 198) – which includes the punishment, as an aggravating circumstance, of sexual intercourse with minor children for the purpose of producing pornographic material; **seduction** (Art. 199); **sexual perversion** (Art. 201) – which includes also the punishment, as an

aggravating circumstance, of sexual perversion with minor children for the purpose of producing pornographic material; **sexual corruption** (Art. 202); **incest** (203); **prostitution** (Art. 328); **pimping** (Art.329) – which includes trafficking in children for prostitution.

To prevent and fight such forms of abuse and exploitation of children, including the trafficking of children for such purposes, a **National Plan of Action to Prevent and Fight Abuse and Sexual Exploitation of Children for Commercial Purposes** was implemented in connection with the **National Plan of Action to Prevent and Fight Trafficking in Children** and the **National Plan of Action to Prevent and Fight the Exploitation of Children through Labour**. This approach was guided by the very comprehensive provisions of the ILO Convention No. 182/1999 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour and by the definition and provisions existing in national legislation and in the international regulations assumed by Romania in the matter of trafficking in persons, which include the issue of sexual exploitation of children.

As regards the existing statistics, which demonstrate a small number of registered cases of sexual abuse and exploitation, we believe that they are still far from representing the real magnitude of this problem.

It is necessary to continue to develop efforts in this field, both to increase awareness in all environments about the consequences of these forms of abuse of children and to adopt a new conceptual and methodological framework with inter-institutional coordination in the field of child abuse, neglect and exploitation.

These targets are currently provided in the **Draft National Strategy to Protect and Promote the Rights of the Child for the period 2007-2013 and in the related Operational Plan**, which is currently being endorsed.

## **5. International cooperation**

On 1 November 2007, the Convention on Contact concerning Children (Strasbourg, 15.05.2003) will enter into force, for Romania. Thus, Romania will become the 5<sup>th</sup> Member State of the Council of Europe to become party to this Convention. Romania is also a party to the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children (Strasbourg, 20.05.1980) and to the Hague Convention on Civil Aspect of International Child Abduction (Hague, 25.10.1980) and it has signed the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children. The draft Law for the ratification of this convention, elaborated by the Ministry of Justice, was approved by the Government in September 2007 and submitted to the Parliament.

As a Member State of the European Union, Romania applies also the EU Regulations in this matter, including the Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

