

# GENERALITIES REGARDING THE UNDERAGE PERSONS REGULATIONS, BY LAW NO. 122/2006 IN REFERENCE WITH THE RIGHT FOR ASYLUM

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## **Abstract:**

*The dispositions of the Children Rights Convention regard the rights of the refugee children and of those who ask for asylum, protection, humanitarian assistance, including finding family members or the main person that was taken care prior, on legal or common basis.*

*In Law no. 122/2006, regarding the asylum in Romania, the underage unattended person represents:*

*- the underage, foreign or stateless, that has arrived in Romania, unattended by parents or any legal representative or that is not under the care of other person, according to the law;*

*- the underage that is let unattended after entering the Romanian territory.*

*The foreigners that request a form of protection must be photographed and finger printed. In the case of underage that have not reached the age of 14 the finger printing is not needed.*

*The collected finger prints will be transmitted and stocked on paper in the Romanian Immigration Bureau archives and also in electronic format in the AFIS national data base. Also, the finger prints of all the asylum requestors are transmitted and stocked in the European data base EURODAC<sup>1</sup>.*

*The interview for determining the kind of protection consists in an audience of the asylum requestor, made by a Romanian Immigration Bureau official.*

*If the requestor is underage, the interview takes place in the presence of the legal representatives, that must inform them in reference with the purpose, the possible consequences of the personal interview and must prepare them for it.*

**Key words:** Right, Asylum, Children, EURODAC

*I. Generalities.* The legal authorities provide the access to the asylum procedure for each foreign citizen found on the Romanian territory or at the frontier asking for the protection of the Romanian state<sup>2</sup>, starting with the expression of the will, written or spoken, excepting the situations stipulated in the laws.

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<sup>1</sup> A system inside the Commission. It is formed by a Central Unit that operates a computerised central data base for fingerprints stocking and comparison, and also electronic means that ensure the transmission of data between member states and central data base.

<sup>2</sup> Regarding art. 2 letter a of Law no. 122/2006 in reference with the asylum in Romania as form of protection regard: the refugee status, the subsidiary protection, the temporary and humanitarian protection

The dispositions of the Children Rights Convention regard the rights of the refugee children and of those who ask for asylum, protection, humanitarian assistance, including finding family members or the main person that was taken care prior, on legal or common basis.

In Law no. 122/2006, regarding the asylum in Romania, the underage unattended person represents:

- the underage, foreign or stateless, that has arrived in Romania, unattended by parents or any legal representative or that is not under the care of other person, according to the law;

- the underage that is let unattended after entering the Romanian territory.

If the asylum requestor is an unattended underage, the Romanian Immigration Bureau:

- Analyses with priority its request;

- Takes measures for the naming of a legal representative in order to assist him or her, during the asylum procedure. The naming of a legal representative is not necessary if the underage will reach the age of 18 in period of 15 days after the date of the request;

- informs<sup>1</sup> the legal representative and the asylum underage requestor, unattended, in a known language, regarding the possibility of a medical expertise in order to determine his age. Regarding this matter, we have the following situations:

1. When the asylum requestor declares that he or she is underage and there are no doubts regarding that, he or she will be considered underage;

2. When the unattended underage can not prove his/her age and there are serious doubts regarding the age, the Romanian Immigration Bureau requests a legal and medical expertise in order to evaluate the age of the requestor, with the prior consent of the underage person and his/her legal representative;

3. If the legal and medical expertise is refuted and no conclusive evidence are brought regarding the age, the person will be considered to be of age<sup>2</sup>. There is one exception: the situation in which after the evaluation made by a psychologist of the Romanian Immigration Bureau, it is proved that the refute was caused by strong reasons.

There are situations in practice, in which the child that requests the refugee status is attended by parents or a legal representative, case in which his/her interests are ensured by the General Department of Social Assistance and Child Protection, in the region of the specialised authority where the request will be made<sup>3</sup>.

For this purpose, a person having legal high preparation or social assistance, within the personnel of the department, a private authority in right to support the rights of the child will participate at the whole procedure.

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<sup>1</sup> The informing must contain also stipulations regarding the medical examination methods, the possible consequences of the results of the examination, the effects of a possible refute to be examined.

<sup>2</sup> It will be considered that the person has reached the age of 18 at the date the request was made.

<sup>3</sup> According to art 73 of Law no.272/2004 regarding the protection and promotion of the children rights.

The accommodation of the unattended children is made by a residential service, while the underage that have reached the age of 16 can be hosted in the Romanian Immigration Bureau centres.

“The Refugee Status Convention ” (1951) stipulates the international definition of the refugees. In general, the main conditions in this matter regard both children and adults and they are the following:

- The refugees must be outside the country of origin (or they can have no citizenship) due to the real threat of persecution for religious, race, adhesion to a social group or political opinion reasons and
- The refugees must not be able or must not wish to return to their country of origin.

The children and the adults that have the status of refugee can not be forced to return to their country of origin and can not be send in other country that could force them to return<sup>1</sup>.

The refugee children represent one of the most vulnerable groups in the world, because it is very likely to become victims of sexual abuse or to be recruited in military purposes. Independent on the pressure on the host country, the legal and moral obligation to protect these children is imperative.

In Romania, according to the legislation, the children that ask to obtain the refugee status, and also those who have obtained it, benefit of protection and humanitarian adequate assistance in order to ensure their rights. These children benefit over one of the protection forms stipulated by the Governmental Directive no.102/2000 regarding the status and the regime of the refugees in Romania, with the following changes:

*II. EURODAC - the system of asylum policy assistance.* The foreigners that request a form of protection must be photographed and finger printed. In the case of underage that have not reached the age of 14 the finger printing is not needed.

The collected finger prints will be transmitted and stocked on paper in the Romanian Immigration Bureau archives and also in electronic format in the AFIS national data base. Also, the finger prints of all the asylum requestors are transmitted and stocked in the European data base EURODAC<sup>2</sup>.

The elimination of the internal frontiers control, have brought into attention two important phenomena: internal migration and asylum request. Inside the European Union it is necessary the establishment of the asylum requestors identity or of the retained persons for illegal trespassing of the external frontiers of the Community. This way, each state must have a system that could allow them to verify if a foreigner living on its territory has requested for asylum in another state member<sup>3</sup>.

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<sup>1</sup> Milena Tomescu – “*Dreptul familiei. Protecția copilului*”, Ed. All, Bucuresti, 1993, pag.368.

<sup>2</sup> A system inside the Commission. It is formed by a Central Unit that operates a computerised central data base for fingerprints stocking and comparison, and also electronic means that ensure the transmission of data between member states and central data base.

<sup>3</sup> According to article 1 of the Ist Chapter of the Council Regulation (CE) no. 2725/2000 of the 11<sup>th</sup> of December 2000 regarding the establishment of „Eurodac” for the comparison of fingerprints to

The finger prints are digitally processed and send in an efficient form in order to allow an optimal operation of The Central Unit and also to allow the transmission of data from the member states to the Central Unit or backwards<sup>1</sup>.

In the central data base, the following data are stocked: the origin member state, the place and the date of the asylum request, the prints, the sex, the reference number used by the origin member state<sup>2</sup>, the date of the printing, the date of the data transmission to the Central Unit., when the data was introduced in the central data base, details regarding the receiver/receivers of the transmitted data and when these were transmitted<sup>3</sup>.

*III. The unfurl of the interview for the determination of the requested form of underage person protection, according to Law no. 122/2006.* The interview for determining the kind of protection consists in an audience of the asylum requestor, made by a Romanian Immigration Bureau official .

If the requestor is underage, the interview takes place in the presence of the legal representatives, that must inform them in reference with the purpose, the possible consequences of the personal interview and must prepare them for it.

During the interview with an underage, it must be taken under consideration the psychic, intellectual development and his/her maturity, things that must also be taken under consideration in cases of asylum requests made by underage.

The family unification, in case of unattended underage, that benefit over a form of protection is made according to the good interest of the child. Actually, this thing is available in any kind of procedure regarding a decision in which underage are involved, started by public authorities and by the private authorities, and also in causes solved by the courts of law.

The good interest of the child is imposed especially in relation with the rights and obligations that belong to the child's parents, to other legal representatives of the child.

The Romanian Immigration Bureau will start a family unification procedure, situation in which the permission of the legal representative or of the unattended underage is asked. During the whole procedure the opinion of the underage person is considered.

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obtain an efficient application of the Dublin Convention (Council Regulation CE no.343/2003 of the 18<sup>th</sup> of February 2003).

<sup>1</sup> According to art 2 of the Council Regulation (CE) no. 407/2002 of the 28<sup>th</sup> of February 2002 for the establishment of the implementation rules of the Regulation (CE) no. 2725/2000 regarding the establishment of „Eurodac” for the comparison of the fingerprints to obtain an efficient implementation of the Dublin Convention (The Council Regulation CE no.343/2003of the 18<sup>th</sup> of February 2003).

<sup>2</sup> The reference number of art. 5 align. 1 letter d of the Eurodac Regulation makes possible the certain relation between data and a person and the member state that transmits the data. Also, it makes possible to see if these data refer to an asylum requestor or a person that is stipulated art. 8 or art. 11 of the Eurodac Regulation.

<sup>3</sup> Reference to N. Iancu, Elena-Ana Mihaș, „EURODAC- Sistem de asistare a implementării politicii de azil în Comunitatea Europeană” in Revista de Criminalistică, Nr.3/2007, year IX, pag.5-6.

If the family of the underage was found the possibility and the conditions in which the reunification can be made is analysed.

According to the stipulations of art.75 align.1 of Law 272/2004 if the request to obtain a refugee status is definitively refuted, the General Department for Social Assistance and Child Protection informs the Romanian Immigration Bureau and requests the court of law for the establishment of the child in a special protection service.

The settlement procedure unfurls till the return of the child to the parents residence or to the country where other members of the family ready to take the child, are identified.

The interview for the identification of a protection form is recorded in writing on an interview note. After the reading, this note is signed on each page by the asylum requestor or if the case, by the legal representative and also by the translator, the defender or the official that were present during the interview<sup>1</sup>.

Also, in case of military conflicts, the states institution take the necessary measures for the development of special mechanisms meant to ensure the investigation of the measures taken for the protection of the child's rights.

The convention regarding the Children Rights stipulates that all the states must respect and also accomplish the following obligations:

- to respect and ensure the international rights normative that are applicable in cases of military conflicts;

- to take all the measures in order to ensure that persons under 15 do not participate at the hostilities;

- to not recruit persons under 15 in the military forces;

- to give priority to the elder ones at the recruit of persons between 15-18 years;

- to take all the measures in order to ensure the protection and the care of the children affected by a military conflict<sup>2</sup>.

The Children Rights Committee has underlined that the states must take measures to respect the rights of all the children found under their jurisdiction during the military conflicts.

The Romanian institutions have taken the necessary measures for the development of special mechanisms meant to ensure the observation of the measures that are adopted for the protection of the children rights in case of military conflicts. The public institutions must initiate and implement strategies and programmes, including at community and family level in order to ensure the retreat of the soldier children and to remedy the physical and psychical effects of the conflicts over the child and to promote his/her social reintegration.

In order to facilitate the access to the Romanian educational system, the member states give underage children as asylum requestors access to this system,

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<sup>1</sup> According to art 23 of the Methodologic Normative for the application of Law no.122/2006 regarding the asylum in Romania, published in Monitorul Oficial, Ist Part , no.805 of 25/09/2006.

<sup>2</sup> M. Tomescu, same reference, pag.679.

similarly with that given to the residents of the host state, as long as measures for their expulsion are not taken.

The access to the educational system can not be adjourned more than three months after the presentation of the asylum request made by the underage or his/her parents. The period can be prolonged with one year when a specific education is given, for the access to the educational system<sup>1</sup>.

In this way, the underage asylum requestors will benefit over a training for the integration in the Romanian educational system. At the end of it they will be evaluated and signed for the appropriate school level.

The methodology, the teachers, the manuals and the didactic materials needed for the training is ensured by the Education and Research Ministry.

The application forms are done by the parents or the legal representatives at the educational inspector-ships in each county or at the Educational Inspector-ship In Bucharest. Their education can be done also in the accommodation centres for asylum requestors<sup>2</sup>.

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<sup>1</sup> According to art 10 of the 2003/9/CE directive of the Council of the 27<sup>th</sup> of January 2003 for the establishment of the minimal standards for the receiving of the asylum requestors in the member states.

<sup>2</sup> According to art 6 of the Methodological Norm for the application of Law no.122/2006 regarding the asylum in Romania, published in Monitorul Oficial, 1st Part , no.805 of 25/09/2006.