COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

T-ES(2014)GEN-RO

LANZAROTE CONVENTION

Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse

Replies to the general overview questionnaire

ROMANIA

Replies registered by the Secretariat on 31 January 2014

GENERAL FRAMEWORK

GENERAL MENTIONS:

1. At this moment, Romania is in the process of a vast reform of the legislation in criminal matters, process which will finalize by entering into force of the new Criminal code (Law 286/2009 regarding the Criminal code) and of the new Criminal procedure code (Law 135/2010 regarding the Criminal procedure code) at 1st of February 2014.

At the same date a series of other new laws will enter into force, of which we mention the laws for implementing the new codes: Law 187/2012 for implementing Law 286/2009 regarding the Criminal code and Law 255/2013 for implementing of the Law no. 135/2010 on the Code of Criminal Procedure and for amending and supplementing certain normative acts which comprise some criminal proceedings.

The reform aims to setting up a modern legislative framework in the field of criminal law, criminal procedure law, criminal executional law and the organization of probation services, in order to fully comply with the requirements of a modern justice, adapted to the social expectations.

In this context, the replies to the questionnaires, in what regards the legal provisions, reproduce and refer to the new legislation, which will be into force from 1st of February 2014.

The jurisprudence and other practical examples, as natural, regard the practice during the application of the old legislation in criminal matters.

2. The replies to the questionnaires were centralized by the Ministry of Justice (http://www.just.ro/).

3. The institutions that have sent contributions for the replies to the two questionnaires are:

- **The Ministry of Labor, Family, Social Protection and Elderly (http://www.mmuncii.ro/j3/index.php/en), which also collected information from the General Departments for Social Assistance and Child Protection (GDSACP) in the territory;**
- **The Ministry of Internal Affairs (http://www.mai.gov.ro/Home/index.htm)**
- **The Ministry of National Education (http://www.edu.ro/)**
- **The Ministry of Public Finances (http://www.mfinante.ro/acasa.html?method=inceput&pagina=acasa)**
- **The Superior Council of Magistracy, (http://www.csm1909.ro/csm/index.php?cmd=0&lb=en), which also collected information from the courts and prosecutors offices in the country;**
- **The National Institute of Magistracy (http://www.inm-lex.ro/)**
- **The Public Ministry – The Prosecutor's Office Attached to the High Court of Cassation and Justice (http://www.mpublic.ro/)**

- **The Directorate for Investigating Organised Crime and Terrorism (http://www.diicot.ro/)**

- **The National Audiovisual Council of Romania (http://www.cna.ro/-English-.html)**

Question 1: Definition of "child"

a. Does the notion of "child" under your internal law correspond to that set out in Article 3, letter (a), i.e. "any person under the age of 18 years"?

Answer:

In the sense of the Civil Code and of Law No. 272/2004 concerning the protection and fostering of children's rights:

Domestic legislation uses for the definition of the person who has not reached the age of 18 two concepts: the concept of „minor" and the concept of „child".

According to the Civil Code and to Law No. 272/2004 concerning the protection and fostering of children's rights, a child is a person who has not reached the age of 18 and has not acquired, according to the legal provisions, full capacity to act[1]. The minor is the person who has not reached the age of 18[2].

This means that the child is the minor who has not reached full capacity to act.

---

[1] **- Law No. 272/2004 concerning the protection and fostering of children's rights:**

ART. 4

In the sense of the present law, the following terms and expressions shall have the following meanings:

a) child - person who has not reached the age of 18 and has not acquired, according to the legal provisions, full capacity to act;

(…)"

- **Civil code (Law No. 287/2009 concerning the Civil Code)**:

ART. 263

The principle of the best interests of the child

(1) Every decision concerning a child, no matter its author, shall be taken in light of the child's interests.

(2) Competent authorities shall, in every application brought before them, affecting the interest of a child give any necessary guidance for the parties to make use of methods of amicable resolution of conflicts.

(3) Procedures concerning the relationships between parents and children shall ensure that the wishes and interests of the parents concerning the children can be brought to the knowledge of the authorities and that the authorities take them into consideration in the decisions they make.

(4) Procedures concerning children shall be carried out within a reasonable time so that the best interests of the child and the family relationships are not affected.

(5) In the sense of the legal provisions concerning child protection, a child shall be the person who has not reached the age of 18 and has not acquired full capacity to act, according to the legal provisions.

[2] **Civil Code (Law No. 287/2009 concerning the Civil Code):**

„ART. 38

Beginning of the capacity to act

(1) Full capacity to act shall begin on the date when the person attains full age.

(2) The person attains full age when reaching the age of 18."

As a general rule, full capacity to act is acquired at the age of 18 which means that **the concept of minor is synonymous to the concept of child and designates the person who has not reached the age of 18 yet**. There are, however, some **exceptions**, namely the two cases when, according to the Civil Code, the minor can acquire anticipated full capacity to act before reaching the age of 18:

- Anticipated acquiring full capacity to act after reaching 16 years of age with hearing of the parents and of the minor, as well as of the family council[3], whenever necessary.
- The minor's marriage after reaching the age of 16, based on a medical opinion, with the consent of his/her parents or, as case be, of the guardian and with the authorization of the guardianship court[4].

---

[3] **Civil code (Law No. 287/2009 concerning the Civil Code)**:

Family council

ART. 124

The role of the family council

(1) The family council can be established with the purpose of supervising how the tutor exercises his rights and fulfills the obligations of tutorship in relation to the minor and his property.

(2) In case of fostering of the minor through parents, through adoption or, as case may be, through other measures of social protection provided for by law, the family council shall not be established.

ART. 125

Members of the family council

(1) The guardianship court can establish a family council formed of 3 relatives or in-laws, considering the kinship and the personal relationships to the minor's family. In default of relatives or in-laws other persons who had friendship relations with the minor's parents or who take a particular interest in the latter's situation can also be appointed.

(2) The spouses cannot be together members of the same family council.

(3) Under the same conditions, the guardianship court shall also appoint two substitutes.

(4) The guardian cannot be a member in the family council.

(…)

ART. 130

Duties

(1) The family council gives advisory notices, upon the request of the guardian or of the guardianship court, and makes decisions in the cases provided for by law. Advisory notices and decisions shall be made with the majority of the family council's members, the council being headed by its eldest member.

(2) When making decision the minor who has not reached the age of 10 shall be heard, the provisions of art. 264 being applicable accordingly.

(3) The decisions of the family council shall be motivated and registered in an especially designated registry which shall be kept by one of the members of the council, appointed to this effect by the guardianship court.

(4) Acts closed by the guardian in default of the advisory notice can be annulled. Closing the act in disregard of the notice only engages the guardian's responsibility. The provisions of art. 155 are applicable accordingly.

[4] - **Civil code (Law No. 287/2009 concerning the Civil Code)**:

ART. 107*)

The guardianship court

(1) The procedures herein provided on the protection of the individual fall under the competence of guardianship and family court established in accordance with the law, hereinafter called the guardianship court.

(2) In all cases the guardianship court shall immediately solve these requests.

- Law No. 76/2012 concerning the implementation of Law No. 134/2010 concerning the Code of civil procedure:

ART. 76

Furthermore, art. 1 of Law No. 18/1990 concerning the ratification of the Convention concerning the children's rights defines the child as any human being under the age of 18, excepting cases in which the law applicable to the child sets the limit of full age under this age.

We would like to mention that according to domestic legislation treaties and conventions ratified by Romania belong to domestic legislation and are directly applicable.

In the sense of the criminal law:

Criminal law generally operates with the concept of „minor" without making distinction depending on acquiring the full capacity to act of the minor, so that the provisions concerning the minor's protection in the field of the criminal law are applicable to all persons who have not reached the age of 18.

Hence, the minor who has not reached the age of 14 is not held criminally liable, as there is a legal absolute presumption of his/her mental incompetence, whereas the minor aged between 14 and 16 years is held criminally liable only if it is proven that he/she committed the offence as mentally competent; the minor who has reached the age of 16 is held criminally liable, except the case in which it is established, based on a medical-forensic report that at the moment he/she committed the offence the person was mentally incompetent[5]. Also, the person who has not reached the age of 18 is considered to be a vulnerable witness, without taking into consideration whether he/she has acquired full capacity of act or not.

Other special laws concerning victim protection:

The provisions concerning the protection of minor victims contained in other special laws (for example Law No. 211/2004 concerning some measures for ensuring the protection of victims of offences, Law No. 678/2001 concerning the prevention and fight of trafficking in human beings), which will be referred to within the answers to the next questions, are also applicable to all persons who have not reached the age of 18.

b. What legislative or other measures have been taken to ensure that when the age of a victim is uncertain and there are reasons to believe that the victim is a child, the protection and assistance provided for children are accorded to him or her in accordance with Article 11, para. 2?

ANSWER:

Romanian legislation has no clear provision on this situation.

However, most of the responds from the main public service provider for children victims of sexual abuse and exploitation, namely the General Departments

---

Until the organization of the guardianship and family courts, local courts or, as case be, regional courts or specialized regional courts for minors and family shall act as guardianship and family courts, having the competence established according with the Civil Code, Code of Civil Procedure, the present Law, as well as the applicable special regulations.

[5] **Civil code (Law No. 287/2009 concerning the Civil Code)**:
ART. 113
Limits of the criminal liability
(1) The minor who has not reached the age of 14 shall not be held criminally liable.
(2) The minor aged between 14 and 16 years is held criminally liable only if it is proven that he/she committed the offence as mentally competent.
(3) The minor who has reached the age of 16 is held criminally liable according to the law.

for Social Assistance and Child Protection (which will be abbreviated GDSACP, in the following answers), organized at the level of the counties and sectors of Bucharest, mention that practice is based on this presumption and if the age is not known, the child receives the necessary services meanwhile the procedures for identity and age determination are initiated.

c. Please state whether the age for legal sexual activities is below 18 years of age and if so, please specify the age set out in internal law.

ANSWER:

In criminal matters, there is no definition of the age for legal sexual activities, but the new Criminal Code sanctions the sexual intercourse with a minor beginning with the age of 15.

This means that the age for sexual activities can be considered the age of 15. If the minor has not reached 13 years, the penalty threshold is higher. The sexual intercourse with the consent of the persons involved between whom the difference of age is less than 3 years is not sanctioned in relation to any of the persons involved[6].

As regards legislation in civil matters, there is the provision according to which the marriage can be closed if the future spouses have reached the age of 18 and, for grounded reasons, the minor who has reached the age of 16 can get married based on a medical opinion – art. 272 Civil Code[7].

---

[6] ART. 220

Sexual intercourse with a minor

(1) Sexual intercourse, oral or anal sexual intercourse, as well as any other acts of vaginal or anal penetration committed against a minor aged between 13 and 15 years shall be punished by imprisonment from one to 5 years.

(2) The act provided in para. (1), committed against a minor who has not reached the age of 13, shall be punished by imprisonment from 2 years to 7 years and the interdiction of the exercise of some rights.

(3) The act provided in para. (1), committed by an adult against a minor aged between 13 and 18 years, when the adult abused his authority or influence on the victim, shall be punished by imprisonment from 2 years to 7 years and the interdiction of the exercise of some rights.

(4) The act provided in para. (1) - (3) shall be punished by imprisonment from 3 years to 10 years and the interdiction of the exercise of some rights when:

a) the minor is a relative in direct line, brother or sister;

b) the minor is in a relationship of care, fostering, education, guarding or treatment with the offender;

c) the offence was committed with the aim of producing pornographic materials.

(5) The acts provided in para. (1) and para. (2) shall not be sanctioned if the difference of age does not exceed 3 years.

[7] ART. 272

Marriageable age

(1) The marriage can be contracted if the future spouses have reached the age of 18.

(2) For grounded reasons, the minor who has reached the age of 16, can get married based on a medical opinion, with the consent of his/her parents or, as case may be, of the guardian and with the authorization of the guardianship court having jurisdiction over the minor's domicile. If one of the parents refuses to render his/her consent concerning the marriage, the guardianship court shall also rule in connection with this dispute, under consideration of the child's best interests.

(3) If one of the parents is deceased or cannot express his/her will, the consent of the other parent shall be enough.

(4) Furthermore, according to art. 398, the consent of the parent who exerts the parental responsibility shall be enough.

Question 2: Non-discrimination

Is discrimination, on grounds such as the ones mentioned in the indicative list in Article 2, prohibited in the implementation of the Convention, in particular in the enjoyment of the rights guaranteed by it? If so, please specify. If not, please justify.

ANSWER:

Discrimination of any kind is forbidden by Romania's fundamental law, the Constitution, as well as by a series of legal instruments having the value of laws.

According to art. 4 of the Constitution, Romania is the common and indivisible country of all its citizens, no matter race, nationality, ethnic origin, language, religion, sex, opinion, political orientation, wealth or social origin.

Art. 16 of the fundamental law provides for the principle of equal rights, stipulating that „Citizens are equal before the law and the public authorities, with no privileges and discriminations". According with the case law of the Constitutional Court, the principle comprised in art. 16 shall be interpreted in relation to art. 4, above mentioned, which offers the main criteria for discrimination.

According with art. 7 of Law No. 272/2004 concerning the protection and fostering of children's rights: ,,The rights provided herein shall be guaranteed to all children without any discrimination, no matter race, colour, sex, language, religion, political or other orientation, nationality, ethnic background or social origin, financial situation, level and type of a disability, statute at birth or acquired statute, difficulties in terms of education and development or of any other type of the child, his/her parents or other legal representatives or any other distinction".

Further such provisions can also be found in the following rules and regulations, for example:

- Emergency Ordinance No. 137/2000 concerning the prevention and sanctioning of all forms of discrimination;
- Law No. 202/2002 concerning equality of chances between females and males, with subsequent amendments and supplements,
- Law No. 123/2006 concerning the statute of the probation staff: during the exercise of rights and fulfilment of obligations and of the duties provided for herein discrimination on grounds of sex, sexual orientation, age, race, ethnic background, religion, social origin, family situation or other discrimination criteria shall be forbidden.

As a general remark we would like to state that the Romanian legislation does not provide for any provision containing discriminatory aspects depending on the criteria under art. 2 of the Convention.

Question 3: Overview of the implementation

Please indicate (without entering into details):

a. the main legislative or other measures to ensure that children are protected against sexual exploitation and sexual abuse in accordance with the Convention;

Answer:

a) Legislative measures:

- **Protection by means of criminal law**:

---

(5) If there are no parents and no guardian who can consent to the marriage, the consent of the person shall be necessary who has been entrusted to exercise the parental rights.

The new Penal Code[8] incriminates the offences against freedom and sexual integrity, including special provisions in respect of minors, trafficking in minors, child

[8] The New Penal Code– Law no. 286/2009
CHAPTER VIII
Offences against freedom and sexual integrity

ARTICLE 218
Rape
(1) The sexual intercourse, oral or anal sexual act with a person, committed by means of coercion, rendering the victim in the impossibility to defend themselves or to express their will and taking advantage of that condition, shall be punished with 3 to 10 years imprisonment and the prohibition of certain rights.
(2) The same sentence shall also be imposed against any other acts of vaginal or anal penetration committed under the conditions of paragraph (1).
(3) The sentence shall be 5 to 12 years imprisonment and the prohibition of certain rights when:
a) the victim is under the perpetrator's care, protection, education, custody or treatment;
b) the victim is a direct line relative, or a sibling;
c) the victim has not turned 16;
d) the offence was committed for the purpose of producing pornographic material;
e) the offence resulted in bodily harm;
f) the offence was committed by two or more persons together.
(4) If the offence resulted in the victim's death, the sentence shall be 7 to 18 years imprisonment and the prohibition of certain rights.
(5) The penal action for the offence provisioned for in paragraphs (1) and (2) shall be initiated upon the preliminary complaint of the prejudiced person.
(6) Attempting to commit the offences provisioned for in paragraphs (1) - (3) shall be punished.
ARTICLE 219
Sexual assault
(1) The sexual nature act, other than as provisioned for in Article 218, with a person, committed by means of coercion, rendering the victim in the impossibility to defend themselves or to express their will and taking advantage of that condition, shall be punished with 2 to 7 years imprisonment and the prohibition of certain rights.
(2) The sentence shall be 3 to 10 years imprisonment and the prohibition of certain rights when:
a) the victim is under the perpetrator's care, protection, education, custody or treatment;
b) the victim is a direct line relative, or a sibling;
c) the victim has not turned 16;
d) the offence was committed for the purpose of producing pornographic material;
e) the offence resulted in bodily harm;
f) the offence was committed by two or more persons together
(3) If the offence resulted in the victim's death, the sentence shall be 7 to 15 years imprisonment and the prohibition of certain rights.
(4) If the sexual assault acts were preceded or followed by the perpetration of the sexual acts provisioned for in Article 218 paragraphs (1) and (2), the act shall constitute rape.
(5) The penal action for the offence provisioned for in paragraph (1) shall be initiated upon the preliminary complaint of the prejudiced person.
(6) Attempting to commit the offences provisioned for in paragraphs (1) and (2) shall be punished.
ARTICLE 220
Sexual act with a minor
(1) Sexual intercourse, oral or anal sexual act, as well as any other vaginal or anal penetration acts committed with a minor aged between 13 and 15 shall be punished with 1 to 5 years imprisonment.
(2) The offence provisioned for in paragraph (1), committed against a minor who has not turned 13, shall be punished with 2 to 7 years imprisonment and the prohibition of certain rights.
(3) The offence provisioned for in paragraph (1), committed by an adult with a minor aged between 13 and 18, when the adult abused their authority or influence over the victim, shall be punished with 2 to 7 years imprisonment and the prohibition of certain rights.
(4) The offence provisioned for in paragraphs (1) - (3) shall be punished with 3 to 10 years imprisonment and the prohibition of certain rights, when:
a) the minor is a direct line relative, or a sibling;
b) the minor is under the perpetrator's care, protection, education, custody or treatment;

c) it was committed for the purpose of producing pornographic material.

(5) The offences provisioned for in paragraphs (1) and (2) shall not be punished if the age difference does not exceed 3 years.

ARTICLE 221

Sexual corruption of a minor

(1) Committing a sexual nature act, other than as provisioned for in Article 220, against a minor who has not turned 13, as well as determining the minor to do or have done on them such an act shall be punished with 1 to 5 years imprisonment.

(2) The sentence shall be 2 to 7 years imprisonment and the prohibition of certain rights, when:

a) the minor is a direct line relative, or a sibling;

b) the minor is under the perpetrator's care, protection, education, custody or treatment;

c) the offence was committed for the purpose of producing pornographic material.

(3) The sexual act of any nature committed by an adult in the presence of a minor who has not turned 13 shall be punished with 6 months to 2 years imprisonment or a fine.

(4) An adult determining a minor who has not turned 13 to assist in the perpetration of exhibitionist nature acts or performances or shows during which sexual acts of any nature are committed, as well as providing the latter with pornographic material shall be punished with 3 months to one year imprisonment or a fine.

(5) The offences provisioned for in paragraph (1) shall not be punished if the age difference does not exceed 3 years.

ARTICLE 222

Recruitment of minors for sexual purposes

The adult who proposes to a minor who has not turned 13 to meet, for the purpose of committing any of the acts provisioned for in Article 220 or Article 221, including when the proposal was made by means of remote communication, shall be punished with one month to one year imprisonment or a fine.

(…)

CHAPTER VII

Trafficking in and exploitation of vulnerable persons

ARTICLE 211

Trafficking in minors

(1) Recruiting, transporting, transferring, harbouring or receiving a minor, for the purpose of their exploitation, shall be punished with 3 to 10 years imprisonment and the prohibition of certain rights.

(2) Where the offence was committed under the conditions of Article 210 paragraph (1) or by a public officer when exercising his office duties, the sentence shall be 5 to 12 years imprisonment and the prohibition of certain rights.

(3) The consent of the victim to the trafficking cannot be used as defence.

ARTICLE 213

Procurement

(1) Determining or facilitating the practice of prostitution or gaining property benefits from the practice of prostitution by one or several persons shall be punished with 2 to 7 years imprisonment and the prohibition of certain rights.

(2) If the commencement or continuation to practice prostitution was determined by coercion, the sentence shall be 3 to 10 years imprisonment and the prohibition of certain rights.

(3) Where the offences are committed against a minor, the special limits of the sentence shall be increased by half.

(4) The practice of prostitution shall mean engaging in sexual acts with various persons for the purpose of gaining property benefits for themselves or for a third party.

ARTICLE 216

Using the services of an exploited person

The offence of using the services provisioned for in Article 182, supplied by a person whom the beneficiary knows to be the victim of trafficking in human beings or trafficking in minors, shall be punished with 6 months to 3 years imprisonment or a fine, unless the act is a more severe offence.

ARTICLE 217

Attempt is punished

Attempting to commit the offences provisioned for in Articles 209 - 211 and Article 213 paragraph (2) shall be punished.

ARTICLE 374

Child pornography

pornography, as well as any other acts of sexual exploitation or sexual abuse against children.

For instance, rape is punished with 3 to 10 years imprisonment and the prohibition of certain rights in the simple form, while its aggravated forms, also including the cases when the victim is under the perpetrator's care, protection, education, custody or treatment, the victim is a direct line relative, sibling, or the victim has not yet turned 16 shall be punished with 5 to 12 years imprisonment.

The sexual act with a minor who has not turned 13 shall be punished with 2 to 7 years imprisonment and the prohibition of certain rights and where the minor is aged between 13 and 15, the sentence shall be 1 to 5 years imprisonment.

Sexual assault, when the victim has not turned 16 shall be punished with 3 to 10 years imprisonment and the prohibition of certain rights.

Furthermore, the Penal Code punishes by prison the sexual corruption of children, trafficking in minors, child pornography, and procurement.

- Further to the enactment of the new Penal Code, the offences of exploitation and sexual abuse against minor were grouped, for better organization, within the Penal Code, many of them having been taken over by special laws.

The other provisions on the protection of children against abuses and sexual exploitation were kept in special laws.

- Law no. 272/2004 on the protection and promotion of children's rights, published in the Romanian Official Journal, Part I issue no. 557 of 23 June 2004;

- Law no. 678 of 21 November 2001 on the prevention and control of trafficking in human beings, published in the Romanian Official Journal issue no. 783/11 December 2001 and Government Decision no. 299/2003 approving the Regulation for the enforcement of the provisions of Law no. 678/2001 on the prevention and control of trafficking in human beings;

- Law no. 217/2003 on the prevention and control of family violence (sexual violence being one of the forms of family violence).

- Ratification by Law no. 18/1990 of the Convention on the Rights of the Child, adopted by the United Nations' General Meeting on 20 November 1989;

- Ratification by Law no. 470/2001 of the Facultative Protocol to the International Labour Organisation Convention no. 182/1999 concerning the prohibition and immediate action for the elimination of the Worst Forms of Child Labour, protocol concerning the rights of the child, the sale of children, prostitution involving children and child pornography (2001), published in the Romanian Official Journal issue no. 601 /27 September 2001;

- Government Decision no. 1238/2007 approving the specific national standards for specialised services to assist the victims of human trafficking;

---

(1) Producing, holding in view of displaying or disseminating, purchasing, storing, displaying, promoting, disseminating, as well as providing, in any manner whatsoever, pornographic materials with children shall be punished with 1 to 5 years imprisonment.

(2) Where the offences provisioned for in paragraph (1) were committed by means of an IT system or another IT data storage medium, the sentence shall be 2 to 7 years imprisonment.

(3) Unlawfully accessing pornographic materials with minors, by means of IT systems or other electronic communication means, shall be punished by 3 months to 3 years imprisonment or a fine.

(4) Pornographic materials with minors shall mean any material showing a minor having explicit sexual behaviour or which, despite not being a real person, simulates, in a credible manner, a minor having such a behaviour.

(5) Attempt shall be punished.

- Joint Order no. 286/2007 of the Minister of the Administration and Administrative Internal Affairs, of the Minister of Education, Research and Youth, of the Minister of Public Health, of the Minister of Labour, Family and Equal Opportunities, of the President of the National Authority for the Protection of Child Rights, of the President of the National Agency for Equal Opportunities between Women and Men, of the President of the National Employment Agency, of the President of the National Agency for Roma concerning the setting up, organization and operation of the Task Force for the national coordination of the protection and assistance to victims of human trafficking, published in the Romanian Official Journal no. 799 of 23 November 2007;

- Joint Order no. 335/2007 of the Minister of the Administration and Internal Affairs, of the Minister of Education, Research and Youth, of the Minister of Public Health, of the Minister of Labour, Family and Equal Opportunities, of the President of the National Authority for the Protection of Child Rights, of the Minister of Foreign Affairs, of the General Prosecutor and the Minister of Justice approving the national mechanism for the identification and referral of victims of human trafficking

- Government Decision no. 49/2011 approving the Framework Guidelines for the prevention and multi-disciplinary and network intervention in the cases of violence against children and family violence (annex 1) and the Guidelines for the multi-disciplinary and inter-institutional intervention concerning children who are exploited or in the jeopardy of labour exploitation, children who are victims of human trafficking, as well as migrant Romanian children victims of other forms of violence in the territory of other states (annex 2);

- Government Decision no. 1434/2004 on the powers and Framework Regulation for the organization and operation of the General Directorate of Social Assistance and Child Protection, with subsequent amendments and supplements – the department for intervention in cases of abuse, negligence, trafficking, migration and repatriation.

- Order of the State Secretary of the National Authority for Child Protection and Adoption[9] (ANPCA) no. 177/2003 approving the mandatory minimum standards (MMS) concerning the counselling centre for abused, neglected and exploited children, as well as the mandatory minimum standards concerning the community resource centre for preventing child abuse, neglect and exploitation;

- Order of the State Secretary of National Authority for Child Protection and Adoption (ANPCA) no. 89/2004 approving the mandatory minimum standards concerning the emergency reception centre for abused, neglected and exploited children;

- Law no. 252/2010 for ratification designated the institutions in charge with the implementation of the Lanzarote Convention:

➢ The General Inspectorate of the Romanian Police within the Ministry of Administration and Internal Affairs as the institution in charge with the implementation of the provisions of Article 37 paragraph 1 of the Convention.

➢ The Advocate of the People as the independent national institution in charge with the protection of child rights until the setting up of another independent national institution;

[9] Currently, DPC-MMFPSPV (The Department for Child Protection within the Ministry of Labour, Family, Social Protection and Protection for Elderly)

➢ The Ministry of Labour, Family and Social Protection as the national institution in charge with the promotion of child rights until the setting up of an independent national institution to promote and protect child rights,

➢ The Ministry of Labour, Family and Social Protection as the institution in charge, in accordance with the provisions of Article 10 paragraph 2 letter b) of the Convention,

➢ The Ministry of Justice, as the central institution in charge with the coordination and monitoring of the harmonization of domestic legal frame to the provisions of the Convention, as well as the institution that will represent Romania in the parties' Committee, in accordance with Article 39 paragraph 1 of the Convention.

Other measures:

- All 47 DGASPC set up the above-mentioned specialized department and intervene in all cases of sexual abuse of exploitation brought to their attention. At the same time, specialized services for children victims of violence are also provided to children who are victims of sexual abuse and exploitation.

b. whether your country has adopted a national strategy and/or Action Plan to combat sexual exploitation and sexual abuse of children. If so, please specify the main fields of action and the body/bodies responsible for its/their implementation;

ANSWER:

- The programmatic elements provided for in **the National strategy in the field of the protection and fostering of children's rights 2008-2013**, as well as in the **Operational plan for the implementation of the National strategy in the field of the protection and fostering of children's rights 2008-2013**, approved by the **Government's Decision No. 860/2008**, are applicable.

The main lines of action, as extracted from the strategy, are as follows:

- Raising awareness of the family with respect to its responsibility for the raising, upbringing and education of their own children;
- Promotion and respect of children's rights and civil liberties;
- Enhancing the access to health care services and adaption of medical and health care services to children's needs;
- Ensuring equal access to education for all children;
- Respect of children's right to rest and promotion of recreational and cultural activities;
- Monitoring of children's rights;
- Respect of children's right to protection by multidisciplinary and inter-institutional intervention, against abuse, negligence and exploitation;
- Promotion of professional training;
- Prevention of the separation of the child from its parents and special protection of children separated by their parents by:
    - raising awareness within the local communities for the prevention of the separation of the child from its parents and support of families for the raising, upbringing and education of their own children;
    - continuation of the reform of social services for child and family;
    - protection of some vulnerable groups of children and young people who need special attention (homeless children, child offenders, disabled children, children suffering of HIV/AIDS and other serious chronic /

terminal diseases, young people who are about to leave the protection system).

The institutions in charge with the application of the strategy are indicated in Chapter VI of this programmatic document like follows:

- ✓ authorities of the local public administration;
- ✓ the Ministry of Internal Affairs with the emphasis on the role of police in the prevention of the separation of the child from its parents, especially in cases of abuse, negligence and exploitation, including acts of domestic violence against the child, by monitoring families who pose a risk to this respect and mandatory activation of authorities of the local public administration which are legally in charge with the intervention in such cases;
- ✓ National Anti-Drug Agency, having regard to alcohol, tobacco and drug consumption within children and teenagers;
- ✓ Ministry of Foreign Affairs, having regard to the complex reality of illegal migration, trafficking in children, the presence of Romanian children who are not accompanied by parents in other countries, repatriated children and children refugees, in cooperation with the Romanian authorities which are competent in the field, especially with the Ministry of Internal Affairs, Ministry of Justice and Ministry of Labour, Family, Social Protection and Elderly – Direction for Social Assistance and Child Protection;
- ✓ Ministry of Culture;
- ✓ Ministry of Education;
- ✓ Ministry of Labour, Family, Social Protection and Elderly;
- ✓ Ministry of Health;
- ✓ Ministry of Justice;
- ✓ National Audiovisual Council

- The National strategy against trafficking in human beings for the period 2012-2016 and **the National action plan 2012-2014 for the implementation of the National strategy against trafficking in human beings for the period 2012-2016,** approved by Government's Decision No. 1142/2012 set out a series of strategic objectives for the investigation of trafficking in human beings offences, especially cases of trafficking in children.

The main lines of action of the strategy are set out in Chapter VII and can be summarized as follows:

- ➢ Prevention of trafficking in human beings
- ➢ Protection, assistance and social reintegration of victims of trafficking in human beings
- ➢ Fight of trafficking in human beings
- ➢ Monitoring and assessment of trafficking in human beings and of the policy implementation
- ➢ Inter-institutional and international cooperation

The institutions which are in charge with the implementation of the strategic objectives specific to this programmatic document are indicated under point IX of the strategy, that is:

- ✓ Ministry of Internal Affairs by its specialized structures: National Agency Against Trafficking in Human Beings, General Inspectorate of the Romanian Police and its subordinated units all over the country, General Inspectorate of Border Police and its subordinated units all over the country, General Inspectorate for Immigration, the Prefect

✓ Ministry of Justice by its specialized structures: Department for Probation, Department for International Law and Judicial Cooperation, the Office for Crime Prevention and Cooperation with the asset recovery offices in the member states of the European Union, Department for European Affairs

✓ Ministry of Labour, Family, Social Protection and Elderly as a ministry for the merging and coordination of the implementation of Government's strategies and policies in the field of labour, family, equality of chances, social protection and children's rights

✓ Ministry of Education

✓ Ministry of External Affairs

✓ Ministry of Health

✓ General Prosecution Office by the Department for the Investigation of Organized Crime and Terrorism

✓ Superior Council of Magistracy

In this context, in spite of the fact that no strategy is applicable exclusively to the fielf of sexual exploitation of children, the programmatic documents mentioned comprise lines of action and strategic objectives which are specific to the field of reference.

The body responsible for the monitoring of the strategies is the Ministry of Labour, Family, Social protection and Elderly via the Direction for Child Protection, the bodies responsible for the implementation being all relevant ministries and local authorities.

- Government Decision no. 1156/2012 approving the **National Strategy for the prevention and control of the phenomenon of family violence** in the period comprised between 2013-2017 and the **Operational Plan** for the implementation thereof.

c. whether your country has any guidelines to ensure a child-friendly implementation of the laws, measures and strategies referred to in letters (a) and (b) above. If so, please specify. With regard to judicial proceedings, please specify whether the Council of Europe Guidelines on Child-friendly Justice were taken as inspiration for your guidelines.

ANSWER:

- Guide concerning **the identification of victims and potential victims of trafficking in human beings**, approved by the Order of the Ministry of Labour, Social Protection and Family No. 33/20.02.2012;

- **Intervention guidelines in cases of domestic violence** of the National Agency for Family Protection (http://www.mpublic.ro/minori_2008/minori_5_11.pdf).

- Order of the secretary of state with the National Authority for Child Protection and Adoption[10] (ANPCA) No. 177/2003 concerning the approval of mandatory minimum standards (SMO) in relation to the counselling centre for abused, neglected and exploited children, as well as of the mandatory minimum standards in relation to the centre for community resources for the prevention of child abuse, negligence and exploitation;

- Order of the secretary of state with the National Authority for Child Protection and Adoption (ANPCA) No. 89/2004 concerning the approval of mandatory minimum standards (SMO) in relation to the centre for emergency reception of abused, neglected and exploited children;

[10] Currently the Direction for Child Protection in the Ministry of Labour, Family, Social Protection and Elderly (DPC-MMFPSPV)

- The guide for the hearing of children within court proceedings, UNICEF Romania, Alternative Sociale Iaşi and the National Institute for Magistracy, 2009

The guides mentioned above take into consideration the European provisions regarding child protection.

Question 4: Child participation

a. Please indicate what steps have been taken to encourage the participation of children, according to their evolving capacity, in the development and the implementation of state policies, programmes or other initiatives concerning the fight against sexual exploitation and sexual abuse of children (Article 9, para. 1);

ANSWER:

Participation of children takes place in the process of elaboration of legislation in the field of child rights, in decision making process towards children within child protection system and education and also in peer education in the field of violence prevention. Examples of good practices:

- During December 3-4, 2013, representatives of the National Council for Pupils participated in the consultation for the future national strategy in the field of child protection and promotion, having input for participation chapter;

- Children's Councils are stipulated by Order of the state secretary of the NACPA no. 21/2004 for the approval of the MMS for residential services for children, implementation procedure no. 8.3: *"Children should be encouraged to organize themselves in a Children's Council, which will be consulted periodically or at any time is needed when taking decisions regarding all children living in the residential service.*"

- 2002 Phare Programme *"Education campaign on child rights",* special actions for children component, implemented by DPC-MMFPSPV, during the period 2005-2007, included the Initiative Children's Council SPUNE! in partnership with Ministry of Education and Pupils' Council in Romania. This was a debate forum for children from Romania to give them the opportunity to express their point of view and to be listened in the family, school, by authorities and media. Activities implemented in the first year of the project were finalized through the adoption of the Children's Report on child rights in Romania, which was included in the state report submitted by Romanian Government in 2007 to Child Rights Committee.

- **National Council of Pupils (NCP)** is the representative structures of pupils at national level, promoting projects and programmes encouraging personal development, voluntaries' activity and community involvement. The main aim of NCP is to protect and promote the rights and interests of pupils and to involve pupils in educational act, civic, social and cultural life and to implement a viable and functional partnership within the Romanian education system.

NCP is a consultative structure of Ministry of Education, in both private and public pre-college education system, established in 207 by Order of minister of education no. 2782 and its regulation of organization and functioning was approved by **Order of minister of education no. 4247/2010**. NCP has 45 members: 41 presidents of County Pupils' Councils, president and 3 vice-presidents of the Municipal Pupils' Council. The members of the CNE are elected by democratic vote

at the level of each county / city of Bucharest (in each institution of education there is a Pupils' Council).

- During 2004 – 2009, the National Steering Committee for the Prevention and Combat of Child Labour (NSC), established by GD no. 617/2004, had a group of children as an observer in its meetings, children who were voluntaries in Save the Children's projects in this field.

- Project Sigur.info (see point 8a[1]) includes a component on children's involvement in prevention activities regarding safety on internet. During 2008-2013, there were organized: 3 European summer schools with the participation of 120 children from 10 states and 650 volunteers were trained and further involved in other activities of the project.

Such provisions are also included in the ***Regulation for the organization and functioning of pre-college institutions of education*** approved by Minister's Order No. 4925/2005:

- ✓ According with art. 27, 33, 38, 44 – pupils have the possibility to express their opinion and to get involved into different administrative structures of the institution of education as follows:
- ✓ Pupils aged between 14 – 18/19 years can participate as members both in the Board of the school, and in the Commission for quality assessment and control;
- ✓ Pupils can participate as guests in the meetings of the Teachers' Council.

- By provisions included in the **Law concerning national education No. 1/2011**, with subsequent amendments and supplements:

- ✓ Art.3, para. u – the principle of the respect of the right to freedom of opinion of the pupil / student as direct beneficiary of the education system;
- ✓ Art. 80 para. (1) guarantees consultation with the representatives of the primary beneficiaries of education, namely the National Pupils' Council or other representative structures of the pupils in taking decisions concerning education.

- Since 2005 the Ministry of National Education has been implementing in partnership with the Association *Assistance and Programs for Sustainable Development - Agenda 21*, **the project „Pupil's lawyer"** which aims at creating in schools a context favourable for raising awareness of pupils concerning their responsibility in making use of their right to freedom of opinion and expression, as well as the establishment of some mechanisms and viable instruments for identification and solving of cases of violation of children's rights. Currently, within each County Pupils' Council there is the department „Pupil's lawyer" which manages the issues concerned with the identification and solving of cases which hinder school participation of children.

b. In particular, please indicate whether, and if so, how child victim's views, needs and concerns have been taken into account in determining the legislative or other measures to assist victims (Article 14, para. 1).

ANSWER:

The best interest of the child is a principle of the entire legislation.

The Romanian Constitution sets out in art. 49 that all children and young people shall benefit of special protection and assistance in the realization of their rights.

Exploitation of children, their use for activities which could damage their health, morality or which could endanger their life or normal development are forbidden by the same article in the Constitution.

The Civil Code, as well as Law No. 272/2004 concerning the protection and fostering of children's rights expressly enshrine the principle of the best interests of the child[11].

[11] The Civil Code:

ART. 263

The principle of the best interests of the child

(1) Every decision concerning a child, no matter its author, shall be taken in light of the child's interests.

(2) Competent authorities shall, in every application brought before them, affecting the interest of a child give any necessary guidance for the parties to make use of methods of amicable resolution of conflicts.

(3) Procedures concerning the relationships between parents and children shall ensure that the wishes and interests of the parents concerning the children can be brought to the knowledge of the authorities and that the authorities take them into consideration in the decisions they make.

(4) Procedures concerning children shall be carried out within a reasonable time so that the best interests of the child and the family relationships are not affected.

(5) In the sense of the legal provisions concerning child protection, a child shall be the person who has not reached the age of 18 and has not acquired full capacity to act, according to the legal provisions.

Law No. 272/2004:

ART. 2

(1) The present law, any other regulations adopted in the field of the respect and fostering of children's rights, as well as any legal act issued or, as case may be, drafted in this field shall be necessarily subject to the principle of the child's best interests.

(1^1) The child's best interests is part of the child's right to a normal physical and mental development, to social and affective balance and to family life.

(2) The principle of the child's best interests is imposed including in relation to the rights and obligations of the parents, other legal representatives of the child, as well as to any other persons to which the child has been legally entrusted.

(3) The principle of the child's best interest shall prevail in all acts and decisions which concern children, undergone by public authorities and authorized private authorities, as well as in cases solved by courts.

(4) The persons set out under para. (3) shall be obliged to involve the family in all decisions, actions and measures concerning the child and to support the raising, upbringing and formation, development and education within the family.

(5) In determining the child's best interests at least the following shall be taken into consideration:

a) the needs for physical, psychological development, education and health, security and stability and affiliation to a family;

b) the child's opinion, depending on the age and level of maturity;

c) the child's history, having regard especially to situations of abuse, negligence, exploitation or any other form of violence against the child, as well as potential risk situations which can occur in the future;

d) the capacity of the parents or persons who shall raise and care for the child to react to the child's concrete needs;

e) the preservation of the personal relations with persons to which the child has developed affection.

(…)

ART. 6

The respect and safeguarding of the child's rights shall be ensured according to the following principles:

Art. 7^1 of Law No. 272/2004 sets out that „in any case which concerns children's rights the court shall verify if agreements between the parents or between parents and other persons are in the best interest of the child".

Law No. 211/2004 provides for psychological assistance for minor victims for 6 months (for adults it is 3 months), minors being exempted from the obligation to seize judicial authorities with a view to be granted legal aid free of charge.

Law No. 678/2001 provides for special protection and assistance, depending on their age, to minors who are victims of trafficking in human beings.

Regarding the drafting of **GD (Government Decision) no. 49/2011,** which details the modalities of assistance for children victims of any form of violence against children and domestic violence and specifically for the children victims of child labor, trafficking in human beings and Romanian migrant children victims of other forms of violence on the territory of other states (annex 2 of the Government Decision): the draft was based on previous consultation of children in related projects/ actions:

In 2008, DPC-MMFPSPV implemented a project with UNICEF support for drafting a National Action Plan for the prevention and combat of violence against children and a group of children was involved with Save the Children support.

The opinion of child laborers was included in the informative materials produced by The International Program for the Elimination of Child Labor implemented in Romania by International Labor Organization during 2000-2009. Also, the opinion of the children's group in NSC meetings was noted.

Question 5: Specialised bodies/mechanisms

a. Please indicate the independent institution(s) (national or local) in charge of promoting and protecting the rights of the child. Please specify its/their responsibilities and indicate how resources are secured for it/them (Article 10, para. 2, letter (a));

---

a) respect and promotion of the child's best interest as a priority;

b) equality of chances and non-discrimination;

c) raising the awareness of parents about the making use of rights and fulfilling parental obligations;

d) fundamentality of parental responsibility concerning the respect and safeguarding of children's rights;

e) de-centralizing of the services for child protection, multi-sectorial intervention and the partnership between public bodies and authorized private organizations;

f) ensuring of an individual and tailored care for each child;

g) respect of the child's dignity;

h) listening the child's opinion and taking it into consideration, depending on the child's age and its level of maturity;

i) ensuring the stability and continuity concerning the care, raising and education of the child, taking into consideration its ethnic, religious, cultural and linguistic background, when a protection measure is taken;

j) celerity in taking any decision concerning the child;

k) ensuring the protection against abuse, negligence, exploitation and any form of violence against the child;

l) interpretation of any legal provisions concerning child's rights in correlation with all provisions in this field.

ANSWER:

The independent institution in Romania which includes within its duties the protection of children's rights is **the Ombudsman** (Law No. 35/1997 concerning the organization and functioning of the institution of the Ombudsman).

The institution of the Ombudsman is in charge with the protection of the rights and freedoms of natural persons in their relation with public authorities.

The Ombudsman has, inter alia, the following duties:

- coordinates the activity of the institution of the Ombudsman;
- decides on the petitions filed by natural persons whose rights and freedoms have been infringed by the authorities of the public administration;
- checks the activity of legal processing of in-coming petitions and requests the authorities or civil servants in question to stop the infringement of the rights and freedoms of natural persons, the reinstatement of the petitioner in his rights and compensation;
- drafts reports at the request of the Constitutional Court;
- can seize the Constitutional Court in relation with the un-constitutionality of laws, prior to their promulgation;
- can seize the Constitutional Court directly with incidents of un-constitutionality of laws and ordinances;

(…)

The Ombudsman can delegate the exercise of these duties to his deputies or to persons with managerial function within the institution.

The Ombudsman is assisted by **deputies** who specialize in different fields of activity, one of which being the protection of the rights of children, family, young people, retirees, disabled people.

The Ombudsman’s deputies fulfil inter alia the following duties:

- coordinate the activity in their field of activity;
- inform the Ombudsman about the activity in their field of activity;
- distribute petitions within their field of activity;
- fulfil any other duties established by the Ombudsman within the legal provisions.

According to its law concerning its organization and functioning, in fulfilling its role of protector of civil rights and freedoms the Ombudsman has the following competences:

In case, after the examination of in-coming petitions, it is established that the petition of the natural person is grounded, the Ombudsman shall write to the authority of the public administration which has infringed the rights of the natural person and shall request it to repair or revoke the administrative act and to compensate the damages, as well as to reinstate the natural person in his rights.

The public authorities in question shall take immediately all necessary measures for removing the illegal acts ascertained, compensation and removing of all causes which have generated or favoured the infringement of the natural person’s rights and shall inform the Ombudsman to this effect.

In case the authority of the public administration or the public servant do not remove within 30 days from the date of the intervention the illegal acts, the Ombudsman shall inform the higher public authorities which shall inform the Ombudsman within 45 days at the latest about the measures taken.

The Ombudsman is entitled to inform the Government about any illegal administrative act or fact emanating from the central public administration and from the prefects.

Non-adoption by the Government within 20 days at the latest of the measures concerning the illegality of the administrative acts or facts reported by the Ombudsman shall be communicated to the Parliament.

According with the same law concerning the organization and functioning, the financing of the Institution of the Ombudsman is performed from the state budget.

b. Which legislative or other measures have been taken to set up or designate mechanisms for data collection or focal points, at the national or local levels and in collaboration with civil society, for the purpose of observing and evaluating the phenomenon of sexual exploitation and sexual abuse of children, with due respect for the requirements of personal data protection? (Article 10, para. 2, letter (b));

ANSWER:

- **Administrative measure since 2006**: Monitoring form for situations of child abuse, neglect and exploitation, which contains also disaggregated data regarding sexual abuse and exploitation. This data is collected at national level by the Department for Child Protection within the Ministry of Labour, Family, Social Protection and Elderly (DPC-MMFPSPV) and is provided from local level by the 47 GDSACP. Data collection from GDSACP is based on the mandatory reporting stipulated by Law no. 272/2004 on the protection and promotion of child rights, reporting could be made by any person or institution, including non-governmental organizations (NGO). Data is available on www.copii.ro/ statistici starting with 2008. The most recent statistics are attached to the current report.

- **GD no. 49/2011 for the approval of the Framework Methodology on multidisciplinary and networking prevention and intervention in case of violence against children and domestic violence** includes operational definitions for all forms of violence against children and domestic violence and stipulates a monitoring mechanism for these phenomena. An unitary set of tools will be approved by the minister of labour, family, social protection and elderly.

Data collected by central and local public authorities are in line with the requirements of personal data protection.

c. Which legislative or other measures have been taken to organise the collection and storage of data relating to the identity and to the genetic profile (DNA) of persons convicted of the offences established in accordance with this Convention? What is the national authority in charge of the collection and storage of such data? (Article 37, para. 1).

ANSWER:

In order to prevent and fight some categories of offences by which fundamental rights and liberties of the individual are seriously affected, especially the right to life and to physical and mental integrity, as well as to identify bodies with unknown identity, missed persons or casualties resulted from natural disasters, mass accidents, homicide or terrorist acts, based on **Law No.76/2008[12],** the **National**

[12] *concerning the organization and functioning of the National System for Forensic Genetic Data,* with subsequent amendments and supplements;

System for Forensic Genetic Data (S.N.D.G.J.) has been created covering whole Romania.

According with art. 9 para. (1) of the above mentioned Law, the authority which is responsible for the processing of the date in the S.N.D.G.J. is the General Inspectorate of the Romanian Police within the Ministry for Internal Affairs via the Forensic Institute (*Institutul de Criminalistică*) which is the administrator of the S.N.D.G.J.

The beneficiaries of the data in the S.N.D.G.J. are criminal prosecution authorities and courts, the Romanian Security Service for the fulfilment of legal duties in the field of the prevention and fight of terrorism, as well as judicial authorities of other states, based on reciprocity or based on international treaties to which Romania is a party, according with art.9 para. (3) of Law No.76/2008.

It contains:

- the personal data base;
- the data base for data concerning the file and the data base with data concerning genetic profiles;
- the personal data base – the S.N.D.G.J. component which contains: personal data base with data concerning the persons provided for in art. 4 para. (1) lit. a) and b) (suspects and persons convicted based on a final court decision) and data about the offence committed or subject to investigation;
- the data base for data concerning the file - the S.N.D.G.J. component which contains information concerning the offence and other information relevant for police work, correspondences of genetic profiles of the biological evidence secured at the site of crime and not ascribed to an offender;
- data base with data concerning forensic genetic profiles - the S.N.D.G.J. component which contains the genetic profiles of persons provided for in art. 4 para. (1) lit. a) and b) and of biological evidence secured at the site of crime;

In Annex No. 1 to the Methodological Rules for the Application of Law No.76/2008 concerning the organization and functioning of the National System for Forensic Genetic Data and for the Creation of the Internal Legal Framework for the Implementation of the Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, related to the automatic transfer of genetic profiles, with subsequent amendments and supplements, based on which the National System for Forensic Genetic Data (S.N.D.G.J.) is created, in order to prevent and fight some categories of offences by which fundamental rights and liberties of the individual are seriously affected, especially the right to life and to physical and mental integrity, as well as to identify bodies with unknown identity, missed persons or casualties resulted from natural disasters, mass accidents, homicide or terrorist acts, approved by the Government's Decision No. 25/2011, the offences are listed in relation to which biological evidence can be secured with a view to feeding the genetic profiles in the S.N.D.G.J.

Among these offences we also have rape, sexual intercourse with a minor, sexual perversion, sexual corruption, trafficking in minors, ill-treatments applied to a minor, procuring.

Question 6: National or local coordination, cooperation and partnerships

a. Please describe how coordination on a national or local level is ensured between the different agencies in charge of the protection from, the prevention of and the fight against sexual exploitation and sexual abuse of children. In particular, please

provide information on existing or planned coordination between the education sector, the health sector, the social services and the law enforcement and judicial authorities (Article 10, para. 1);

ANSWER:

Law No. 272/2004 concerning the protection and fostering of children's rights sets out in art. 101 – 106[13] the institutions and services which are competent in this field.

---

[13] **CHAPTER 7**

Institutions and offices having duties in the field of child protection

SECTION 1 Institutions at central level

ART. 100

Monitoring of the respect of the principles and rights established by the present law and by the Convention of the United Nations on the Rights of the Child, ratified by Law No. 18/1990, republished, as well as the coordination and control of the activity of protection and fostering on children's rights is performed by the Ministry of Labour, Family, Social Protection and Elderly.

ART. 101

The protection of children's rights and liberties in their relationship with public authorities with the aim of promoting and improving children's situation is also performed by the institution of the Ombudsman.

SECTION 2 Institutions and offices at local level

ART. 102

The authorities of the local public administration shall guarantee and promote the respect of the rights of children in the administrative-territorial units, ensuring the prevention of the separation of the child from its parents, as well as the special protection of the child, who is deprived, temporarily or not, by the care of his/her parents.

ART. 103

(1) The authorities of the local public administration shall involve the local community in the process of identification of the community needs and of solving at local level the social needs referring to children.

(2) To this purpose consulting community structures can be created, containing, without restricting however, to local business people, priests, teachers, physicians, local counselors, police workers. The role of these structures is both the solving of concrete cases, as well as to respond to the global needs of the respective community.

(3) The mandate of the consulting community structures shall be set out by acts issued by the authorities of the local public administration.

(4) In order to fulfill the role for which they have been created, the consulting community structures shall benefit of training programs.

ART. 104

(1) The district council and the local councils of the sectors of Bucharest have in their subordination the commission for child protection as their specialized body, with no legal capacity, having the following main duties:

a) settlement of the level of disability and school orientation of the child;

b) opinion, according to the legal provisions, concerning proposals about establishment of a child special protection measure;

c) processing applications for the issuance of the certificate of foster parent;

d) other duties as established by law.

(2) The organization and methodology for the functioning of the commission for child protection shall be provided for by Government's decision.

(3) The president, vice-president and the members of legally established commissions for child protection, as well as their secretary, shall be entitled to a meeting fee in an amount equivalent to 1% of the fee of the president of the president of the district council or of the sector mayor of Bucharest, respectively.

(4) The fee shall be paid from the budget of the district or of the sector of Bucharest, respectively, within the limit of the budget approved for this type of expenses and not exceeding the maximum threshold for staff expenses as established by law.

ART. 105

(1) The specialized child protection public service within district and local councils of Bucharest, as well as the social assistance public service within districts and the sectors of Bucharest shall be restructured as a general direction for social assistance and child protection.

(2) The general direction for social assistance and child protection is a public institution with legal personality subordinated to the district council and the local councils of the sectors of Bucharest, which takes over the duties of the social assistance public service within the district and the duties of the social assistance public service within the sectors of Bucharest.

(3) The institution provided for in para. (2) shall exert in the field of the protection of children's rights the duties provided for in the present law, as well as in other legal instruments in force.

(4) The organizational structure, number of staff and the financing of the general direction for social assistance and child protection shall be approved by decision of the district council or of the local council of the sector of Bucharest, which establishes it, so as to ensure the appropriate fulfillment of its duties, as well as the full realization and effective use of children's rights.

(5) The duties and the framework-regulation for organization and functioning of the general direction for social assistance and child protection shall be approved by Government's decision at the proposal of the Ministry of Labour, Family, Social Protection and Elderly.

ART. 105^1

The general direction for social assistance and child protection shall exert the following main duties in the field of the protection and fostering of children's rights:

a) coordination of the activities of social assistance and protection of family and children's rights at the level of the district or of the sector of Bucharest;

b) coordination, at district level, of the activities and measures for the implementation of the objectives of the district strategy in the field of the protection and fostering of children's rights;

c) ensures the methodological guidance of the activities carried out by the social assistance public services;

d) ensures, at district level, the unitary application of the provisions of the legislation in the field of the protection and fostering of children's rights;

e) monitors and analyses the respect of children's rights at district/sector level and proposes measures for situations in which they are infringed;

f) monitors the activity authorized according to art. 87^1 performed by children in cultural, artistic, sports, publicity and modeling field, in its territorial jurisdiction;

g) requests information and documents, according to the legislation, from any public or private legal person or from natural persons involved in its field of competence, whereas they shall make them available within 10 calendar days from the date of request.

ART. 106

(1) Social assistance public services organized at the level of municipalities and towns, as well as persons with social assistance competences from the own staff of communal local councils shall have the following duties in the field of child protection:

a) monitor and analyze the situation of children in the respective territorial unit, as well as the way children's rights are respected, ensuring the centralization and summarization of relevant data and information, based on a monitoring form approved by order of the minister of labour, family, social protection and elderly;

b) perform the activity of preventing separation of the child from its family;

c) identify and evaluate the situations which require the allocation of services and/or allowances for the prevention of the separation of the child from its family;

d) elaborate the documentation necessary for the allocation of services and/or allowances and grants these services and/or allowances according to the legislation;

e) ensure the consulting and information of families with children on their rights and obligations, on children's rights and on services available at local level;

f) ensure and follow the application of measures for the prevention and fight of alcohol and drug consumption, for the prevention and fight of domestic violence, as well as of criminal behavior;

g) visit regularly at their home the families and children which benefit of services and allowances and follow the way the allowances are used, as well as the families which care for children whose parents work abroad;

h) submit proposals to the mayor in case a certain measure for special protection is needed, according to the legislation;

i) follow the development of the child and the way in which its parents exert their rights and fulfill their obligations concerning the child who was subject to a measure of special protection and was reintegrated into its family;

Law No. 304/2004 concerning judicial organization provides in art. 63 lit. g, among other duties of the General prosecution Office, for the duty to ensure through prosecutors the protection of the legitimate interests of minors.

Also Law No. 211/2004 concerning some measures for ensuring the protection of victims of offences and Law No. 682/2002 concerning witness protection provide for institutions in charge with protecting the rights of children victims rights (the probation services, The National Agency against trafficking in human beings within the Ministry of Administration and Interior).

At national level the activity is coordinated via the DPC-MMFPSPV. Furthermore, in the context of the monitoring of the activity, it should mentioned that the following has been achieved so far:

- National Committee for the Prevention and Fight of Child Exploitation through Labour (CND), created based on the Government's Decision No. 617/2004, decided to extend its duties to all forms of violence on children and domestic violence in 2009.
- By the Government's Decision No. 1156/2012 for the approval of the National Strategy for the Prevention and Fight of Domestic Violence for the period 2013-2017 and of the Operational Plan for its implementation, the extended CND was recognized.
- A draft Government's Decision for the organization and functioning of the extended CND was elaborated and approved by the current CND.
- In December 2013 the first meeting of the extended CND took place.

The extended CND is made up of the relevant ministries, including institutions which are subordinated to them (Ministry of Labour, Family, Social Protection and Elderly MMFPSPV, Ministry of Health, Ministry of National Education, Ministry of Internal Affairs and Ministry of Justice), the civil society (associations of the district councils, General Direction for Social Assistance and Child Protection DGASPC, NGOs, universities) and international organizations (UNICEF).

At local level, the Local Intersectorial Team for the prevention and fight of violence on children and domestic violence (EIL), provided for in Government's Decision No. 49/2011, Annex 1, by extending the duties of the EIL for the prevention and fight of child exploitation through labour, ensured the coordination of actions in this field, including the prevention and fight against sexual exploitation and abuse of children. To date the extended EIL are functional in 19 districts and 2 sectors of Bucharest. We would like to remind you of the fact that sexual exploitation is one of the most serious forms of child labor, hence the relevance of the classical EILs meaning that these are operational in 25 districts and 3 sectors of Bucharest.

---

j) cooperate with the general direction for social assistance and child protection in the field of child protection and forward to it all data and information requested from this field;

k) follow the implementation of the decisions of the commission for child protection/guardianship court concerning the performance of actions or works of local interest, according to art. 63 para. (2).

(2) At the level of the sectors of the city of Bucharest, the duties under para. (1) are exerted by the general direction for social assistance and child protection.

(3) The methodology concerning the cooperation between the general directions for social assistance and child protection and the social assistance public services, as well as the standard model of the documents elaborated by them shall be approved by Government's decision at the request of the Ministry for Labour, Family, Social Protection and Elderly, in cooperation with the Ministry for Regional Development and Public Administration.

- The minimum consistency of the EIL for the prevention and fight of child exploitation through labour: DGASPC, the territorial labour inspectorate, the police inspectorate, the school inspectorate, the public health agency and NGOs;
- The minimum consistency of the extended EILs includes, additionally to letter a), the gendarmerie inspectorate.

According to the Government's Decision No. 1142 from 27.11.2012 for the approval of the National Strategy Against Trafficking in Human Beings for the period 2012-2016 and of the Action Plan 2012 – 2014 for the implementation of this Strategy, as well as of the Government's Decision No. 1238/10.10.2007 concerning the approval of the National specific standards for specialized services of social assistance and protection of victims of trafficking in human beings, the guidelines, general objectives and specific objectives have been set out, as well as the national network of services of protection and assistance of victims of trafficking in human beings in which the competent institutions are involved, namely: the National Agency against trafficking in human beings within the Ministry of Administration and Interior, the General Inspectorate of the Romanian Police, the General Inspectorate of Border Police, General Inspectorate for Immigration, the Prefect, the Office for crime prevention within the Ministry of Justice, Ministry of Labour, Family and Social Protection, Ministry of Education, Ministry of Foreign Affairs, Ministry of Health and the General Prosecution Office.

There are programs of inter-institutional assessment and the direct contact between the institutions in charge in the field, in concrete current cases.

On 31.10.2013 a protocol of cooperation was enforced between the Ministry of National Education, the Ministry of Justice, the General Prosecution's Office and the Superiour Council of Magistracy, the objective of this protocol being the promotion of legal education in schools and high schools, from the starting age of the mandatory education, by facilitation of the access of pupils to elementary legal knowledge.

- As regards the National Agency Against Trafficking in Human Beings, its vital role – as a structure subordinated to the Ministry of Internal Affairs, is of coordination of activities focused against trafficking

According with art.6 of the Government's Decision No. 460/2011 concerning the organization and functioning of the National Agency Against Trafficking in Human Beings, the initial assessment of the situation of the victims of trafficking in human beings, aimed at the identification of the needs of specialized assistance, is carried out through the 15 ANITP regional centres at national level, which have been established in counties where there are courts of appeal.

At inter-institutional coordination level regional centres organize, regularly, meetings of the county inter-institutional anti-trafficking teams aimed at enhancing the visibility of the ANITP at local level and the consolidation of connections previously established with institutions involved in the field of the trafficking in human beings.

ANITP regional centres also organize and support training sessions for specialists who have contact with victims / potential victims of trafficking in human beings. The above mentioned sessions have been and are organized both at the initiative of the ANITP and upon request of partners, public institutions and / or non-governmental specialized organizations.

Mention should also be made of the cooperation of the criminal investigation bodies with the structures which are active in the field of the fight against organized

crime, of the Security Department and the Romanian Intelligence Service meant to collect information about paedophilia cases, especially concerning foreigners and their connections to different towns in Romania, with a view to the prevention and fight against sexual exploitation and abuse on children.

As regards the existing cooperation between the criminal investigation bodies and structures in the education sector the following activities are envisaged: ensuring a permanent exchange of information with a view to finding out the family situation of some pupils; organization of preventive actions in schools, dormitories, assistance centres, etc., with the participation of some representatives of the school inspectorate and teachers; participation in the elaboration and implementation of some joint measure plans; information of school inspectorates about circumstances which can favour offences of sexual exploitation and abuse on children.

A special relevance has the cooperation of police structures in the country with the General Directions for Social Assistance and Child Protection at county level in the field of reporting the cases of minors in difficult situations; to this effect a permanent exchange of information is maintained concerning changes which occur in their family or school situation. Mention should also be made of the cooperation with prefects and municipalities for the performance of the following activities: (quarterly) analysis of crime rate among minors and of their victimization, of causes and favouring factors, with a view to the establishment of joint preventive measures; provision of data for the elaboration of some documentary materials meant to contribute to making the public aware about the favoring factors of crime and juvenile victimization, anti-crime education of children; joint organization, based on semester measure plans, of actions for making the current legal framework in the field of the protection of children rights and not only better known, as well as the way the family can prevent the sexual exploitation and abuse on children.

Health care facilities cooperate with the relevant police structures and have the obligation to report to the police authorities which have jurisdiction in the area they are located any case in which a minor is the victim of sexual exploitation or abuse.

We would also like to mention the cooperation of the county gendarmerie inspectorates with the authorities of the relevant local public administration and the representative civil society, whereas partnership activities are carried out on a regular basis in the field of child protection against abuse, negligence and exploitation, as well as in the field of raising the awareness of the parents or of the persons who are legally liable about children about their responsibility in relation to the exercise of their parental rights and obligations, respect of the child's right to freedom of opinion, to equality of chances and non-discrimination.

In applying art. 31 of the Government's Emergency Ordinance No. 44/2004[14], the General Inspectorate for Immigrations subordinated to the Ministry of Internal Affairs in its quality as institution coordinating the activities concerning the integration of foreign citizens who acquired international protection in Romania, organizes quarterly meetings for the coordination with central and local authorities which are competent in the field of integration. Based on art. 32 of the same legal instrument, the General Inspectorate for Immigration submits to the Ministry of National Education, the Ministry of Labor, Family, Social Protection and Elderly, the National Agency for Employment, the Ministry of Health and the National Health Insurance Company a

[14] concerning the social integration of foreign citizens who have acquired a form of protection or a right of residence in Romania, as well as of the citizens of the member states of the European Union and of the European Economic Space, with subsequent amendments and supplements

report on the estimated number of persons which shall be subject to integration activities in the next year.

As concerns **judicial authorities**, there are within prosecution offices attached to local courts, regional courts and courts of appeal specially designated prosecutors who deal with and participate in the investigation of criminal and civil files which relate to rights and interests of minors.

b. Is cooperation with a view to better preventing and combating sexual exploitation and sexual abuse of children encouraged between the competent state authorities, civil societies and the private sector (Article 10, para. 3)? If so, please specify how;

- As shown under point 6a, the civil society is involved both at central level and local level. Additionally, for the EILs the Government's Decision Nr. 49/20011, Annex 1, also recommends the involvement of the representatives of municipalities, trade unions, employer's associations, churches, probation offices, forensic units, emergency reception units and regional centers with the National Agency Against Trafficking in Human Beings within the Ministry of Internal Affairs. The participation of the private sector, namely of the business environment, is set out in the Government's Decision No. 49/2011, Annex 2, the chapter referring to community consultative structures.

- As regards the **audio and visual media**, we would like to mention some examples:

a. The CNA partnership with the General Inspectorate of the Romanian Police, the General Prosecution Office and the Romanian Centre for Missing and Sexually Exploited Children – FOCUS. For further details search the **National Alert System for kidnapped / missing children** available under: http://www.cna.ro/article3085,3085.html.

b. The partnership agreed in Marched 2013 by the CNA with the Ministry of Education and with the School Inspectorate of Bucharest for the media education of children.

Given the specificity of the audio and visual media in the member states, mention should also be made at this point of the **international cooperation** - which is very important also in cases in which minors are victims of sexual exploitation and / or abuse – among all regulatory authorities in this field, both directly and via the contact committee created under the auspices of the European Commission according to art. 29 of the Audiovisual Media Services Directive. We would like to mention in this respect the cooperation partnership concluded by the CNA with similar authorities from the Czech Republic, Hungary, Poland, Serbia, Slovakia within the Central European Regulatory Forum (CERF), the one at regional level with the regulatory authorities in the field of audio and visual media in the Black Sea states – within the Broadcasting Regulatory Authorities Forum, as well as the membership of CNA starting 2000 in the European Regulatory Authorities Forum (BRAF) which currently reunites 52 members, but also the membership in the REFRAM alongside with other 22 similar bodies in Europe, Africa and Canada, within the **Réseau Francophone des Régulateurs des Médias.**

- At the level of probation services:

With persons who are subject to criminal prosecution or on trial for offences of the type provided for in the Lanzarote Convention, probation officers have the possibility

to cooperate with community specialists, according with the provisions of art. 7 para. (2) of the Regulation for the implementation of the provisions of the Government Ordinance No. 92/2000 concerning the organization and functioning of the probation services: any time it is deemed necessary, the probation service shall request the competent authorities to designate specialists with a view to the elaboration of the evaluation report. These specialists can be psychologists, sociologists, teachers, doctors or any other specialists whose opinion is considered to be necessary.

With persons convicted for the offences provided for in the Lanzarote Convention who have been released on parole there is the possibility to cooperate with different community institutions, non-governmental organizations with a view to the inclusion of these persons into intervention or counselling programs, according with the provisions of art. 46 para. (1) of the Regulation for the implementation of the provisions of the Government Ordinance No. 92/2000 concerning the organization and functioning of the probation services: „within 20 working days from the reception of the written application of the person released on parole by which the person requests assistance and counselling the probation service can take the necessary measures for the inclusion of the respective person into a specialized intervention program, adapted to the needs of the respective person, when possible. The activity provided for in para. (1) can be carried out based on a protocol of cooperation with institutions or organizations which provide social reintegration services".

c. Are partnerships or other forms of cooperation between the competent authorities promoted with particular regard to the recipients of intervention programmes and measures for persons subject to criminal proceedings or convicted of any of the offences established in accordance with the Lanzarote Convention (Article 15, para. 2 and Article 16)?

ANSWER:

- See partnerships mentioned under point b).
- **At the level of the ANITP** cooperation protocols and action plans have been concluded with local partners. The cooperation protocols existing at the level of the ANITP, initiated and monitored both at central and regional level, aim at the implementation of activities of prevention of trafficking in human beings and at assisting the victims of this offence. The action plans concluded at local level with institutional partners, like for example county gendarmerie inspectorates, county police inspectorates, directions for public health, county school inspectorates, etc., aim at the coordination of the preventive activities carried out by the partners, separated and jointly, as well as of the training sessions for specialists who have contact with victims of the trafficking in human beings.
- A number of protocols / partnerships of inter-institutional cooperation have been concluded between the main actors involved in the field, namely: county gendarmerie inspectorates, county police inspectorates, county school inspectorates, directions for public health at county level, general directions for social assistance and child protection, regional ANITP centres, county agencies for employment, county centres for anti-drug prevention, assessment and counselling, territorial labour inspectorates, probation services attached to regional courts.

- Based on the above mentioned partnerships, a number of preventive and educational campaigns have been organized at local level, of which we would like to mention just some which have been carried out by the county gendarmerie inspectorates:

- Campaigns for information, prevention and social dialog *„Youth against violence”* (carried out in the period 03.01.2013-31.12.2013) and *„Stop to violence and discrimination in schools”* (in the period 01.09.2013-31.12.2013), carried out by the County Gendarmerie Inspectorate (IJJ) Arad in partnership with the County School Inspectorate;
- Educational Partnership Program „*We all say NO to violence*” (school year 2012-2013) and Educational Partnership Program „*Too rebel to be led*” (school year 2012-2013), carried out by the County Gendarmerie Inspectorate (IJJ) Braila in partnership with the County School Inspectorate;
- Educational and preventive campaigns: ,,*Violence kills – Kill violence*” (in the period 21.01.2013 – 28.02.2013), „Be aware, Not violent” (in the period 11.03.2013 – 30.04.2013), „*Violence doesn't make you stronger*” (in the period 15.05.2013 – 15.07.2013), ,,*A safe school together with the Gendarmerie*” (in the period 12.09.2013 – 20.12.2013), carried out by the County Gendarmerie Inspectorate (IJJ) Mehedinti in partnership with the County School Inspectorate;
- Information campaigns: „*Safety in school – a priority”*, *„Stop to violence in schools! Indiference hurts”* and *„Together for the safety of the children of today and grown-ups of tomorrow”*, carried out in the school year 2013-2014 by the County Gendarmerie Inspectorate (IJJ) Prahova in partnership with the County School Inspectorate;
- Educational campaigns: *,,Your school is safe”, „From violence to offence is just one step!”* şi *„My anti-drug message”***,** carried out by the County Gendarmerie Inspectorate (IJJ) Timiş;
- *,,Program for the prevention of juvenile crime and trafficking in human beings”* and *,,Stop to violence and discrimination in schools”*, carried out by the County Gendarmerie Inspectorate (IJJ) Vâlcea.

- **At the level of the General Prosecution Office**: there are protocols of cooperation with the county directions for social assistance and child protection and the probation services attached to regional courts;

Question 7: International cooperation

Has your country integrated prevention and the fight against sexual exploitation and sexual abuse of children in assistance programmes for development provided for the benefit of third states (Article 38, para. 4)? Please give examples.

We do not have any such examples.

PREVENTION OF SEXUAL EXPLOITATION AND SEXUAL ABUSE

Question 8: Education, awareness raising and training

a. Which legislative or other measures have been taken to:

- **ensure that children, during primary and secondary education receive information on the risks of sexual exploitation and sexual abuse, as well as on the means to protect themselves, adapted to their evolving capacities? (Article 6, Explanatory Report, paras. 59-62). Please also specify whether this information includes the risks of the use of new information and communication technologies (Article 6, Explanatory Report, para. 63);**

ANSWER:

Within the pre-college education system pupils get information on children's rights, human rights, cases of infringement of these rights, typology of violence cases, as well as other ways of action in such cases:

- by the mandatory national curricula:

✓ by the humanities, such as: *Civic education* (3rd grade, 4th grade), *Civic culture* (7th grade, 8th grade).

✓ By the discipline *Orientation and counselling* (1st to 12th grade) in which the management of risk situations (among which we can also name violence and sexual abuse) is looked at in the chapter „Life style quality".

- By the curricula established by each school on their own by the optional discipline *Education for health* (1st to 12th grade) which looks explicitly at the issue of violence and abuse in the chapter „Accidents, violence, abuse, humane values". The discipline makes available to teachers both a coherent curricula, structured on school years, approved by the Ministry's Order No. 4496/2004, and a methodical guide and an informative one which can be used as teacher's guide as they are expressly elaborated for teachers use.

- By extra-mural educational activities within projects and programs centred on the respect of children's rights (for example the National educational program for democratic citizenship).

- For safe use of computer and internet by children, the Ministry of National Education has implemented at national level projects in partnership with a number of companies specializing in IT, like for example *Magic Desktop*, *Wild Web Woods* – especially created for minors.

In the time frame 1-5 of April which has been denominated in the school curricula within the pre-college education system *School – a different approach*, CNA was present in schools and high schools in order to talk with pupils about their rights and freedoms in the field of the audio and visual media, including topics related to the presentation in the media of cases in which minors are either victims, or accused of having committed acts of sexual abuse. In order to continue this dialogue with the pupils, but also with teachers, CNA has created a hotline: **0800.888.555.**

Regarding the risk of violence through internet, there must be mentioned the multiannual Sigur.Info program. The project, co-financed by the European commission and coordinated on a national level by Save the Children Romania in collaboration with FOCUS and Positive Media has been raising awareness about children's internet safety ever since September 2008. The main target groups are parents, teachers, children and also, guardians or professionals working with children. The two main ways in which Sigur.Info has done this in Romania is by a media and television campaign and peer-to-peer informative sessions in schools all over Romania. One of the television spots, part of our campaign that aired on national television, approaches the theme of grooming. Also, the informative sessions that are currently taking place in schools in 14 major cities across Romania, approach the topics of personal data misuse, sexting, contact with unknown people. The total number of persons reached since the beginning of the program is 980.541. Sigur.Info program also includes the Helpline, a counselling line, intended to offer support and guidance for children, teenagers, parents or teachers who are dealing

with issues regarding internet safety. The Helpline component collaborates both with Child Protection Services and Police.

Besides the Awareness and Helpline, the program has a third component, the Hotline. This line receives reports and deals with removing illegal or harmful content, such as child pornography.

The program offers the public an online portal in which interested parties can find relevant information, advice, news articles and resources tailored to every target group. All materials developed within the Sigur.Info program can be found on the website (www.sigur.info).

- In 2011 – 2013 the organization Save the Children also developed a program, Interact, which targeted children in care facilities. Preliminary studies have shown that these children, lacking parental supervision or guidance, may be more at risk of grooming or trafficking. Consultations and informative sessions regarding internet safety were held with children and professionals in five centers, located in 3 large cities in Romania: Bucharest, Iasi and Targoviste.

- **encourage awareness of the protection and rights of children among persons who have regular contacts with children in the education, health, social protection, judicial and law-enforcement sectors and in areas relating to sport, culture and leisure activities? (Article 5, para. 1);**

- **ensure that persons, referred to while replying to the bullet point above, have an adequate knowledge of sexual exploitation and sexual abuse of children, of the means to identify them and of the possibility of reporting suspicions of a child being the victim of such acts? (Article 5, para. 2).**

ANSWER:

8a2 and 8a3:

As regards the Ministry of Labor, Family, Social Protection and Elderly, the DGSACP units, social workers and other categories of personnel that have regular contact with children:

Professional training is stipulated by Law no. 272/2004:

„Art. 143 – (1) The initial training in the field of child protection is mandatory for all staff categories in the system, and for the individuals who have decision-making responsibilities concerning the child.

(2) Permanent education and lifelong professional training in the field of special child protection is provided for all staff categories in the system.

(3) Ministry of Labour, Family, Social protection and Elderly together with the Ministry of National Education, the Ministry of Health as well as, according to the case, the other interested public or private institutions, will provide the initial and lifelong training of the staff who, in exercising their responsibilities, come across the protection and promotion of the rights of the child.

Consequently, GDSACP ensure annually training programmes for the staff on various topics, according to the legal provisions and the identified training needs, one of the topics being the protection of children against violence. There is no information available on the specific topic regarding the prevention and combat of sexual abuse and exploitation of children. Examples of training programs for the staff of GDSACP on topics regarding the violence against children and domestic violence:

- Alba: 299 trained persons during 2007-2013;
- Bihor: 423 trained persons in 2008;

- Bistrita Nasaud: 90 trained persons during 2011-2013;
- Bucuresti sector 5: 260 trained persons during 2007-2013;
- Calarasi: 144 trained persons during 2011-2013;
- Dolj: around 1,000 trained persons during 2007-2013;
- Gorj: around 500 trained persons annually;
- Hunedoara: 211 trained persons during 2007-2013;
- Neamt: 230 trained persons during 2009-2013;
- Olt: 190 trained persons during 2009-2013;
- Timis: 267 trained persons during 2007-2013;
- Tulcea: 42 trained persons during 2009-2013.

Example of projects:

Project *"Improvement of organizational efficacy of child care system in Romania"* implemented by DPC-MMFPSPV in partnership with SERA Foundation, during the period 2011-2013, co-financed by Social European Fund within the framework of the Operational Programme for Administrative Capacity Building (PODCA): 127 training sessions on child protection and child rights for 3,673 professionals from GDSACP, public services of social assistance (PSSA) and city halls. Two manuals were elaborated and published, which are available on www.copii.ro/ programe internationale: one for the professionals and the other for the decision making factors working in the institutions for child protection.

Project *"Capacity building for Ministry of Labour, Family and Social Protection for coordinating the process of implementation of UN Convention on child rights in Romania"* implemented by DPC-MMFPSPV, during the period 2011-2012, co-financed by PODCA: 38 training sessions on monitoring of child rights for 884 professionals from GDSACP (421), PSSA (317), MLFSPE (38), consultative council of the former National Authority for the Protection of Child Rights (18), justice (21), health (21), education (27) and social protection (21). Five manuals were elaborated and published, which are available on www.copii.ro/ programe internationale: a general manual for the monitoring of child rights and 4 specific manuals for professionals from justice, health, education and social protection sectors.

Project *"Street Children Initiative"* implemented by MLFSPE, during the period 2008-2011, funded by a loan from the Council of Europe Development Bank: 4 training sessions on child rights and protection of street children for 134 professionals from services of GDSACP for street children.

2002 Phare Project *"Education campaign on child rights",* professional training component, implemented by DPC-MMFPSPV, during the period 2005-2007: 182 training sessions on child rights for 5,000 professionals (teachers, priests, social workers, doctors, judges and prosecutors, policemen). Six manuals were elaborated and published, which are available on www.copii.ro/ programe internationale:

- Manual „Role and responsibilities of the teachers in the field of protection and promotion of child rights" approved by Ministry of Education and Research;
- Manual „Role of the priests in the field of protection and promotion of child rights" Romanian Patriarchate and State Secretariat for Worship Organizations;

- Manual „Role and responsibilities of the doctors and nurses in the field of protection and promotion of child rights" approved by Ministry of Public Health and Order of Nurses from Romania;
- Manual „Role and responsibilities of the social workers in the field of protection and promotion of child rights" approved by National College of Social workers from Romania;
- Manual „Role and responsibilities of the policemen in the field of protection and promotion of child rights" approved by General Inspectorate of the Romanian Police;
- Manual „Role and responsibilities of the judges and prosecutors in the field of protection and promotion of child rights" approved by National Institute for Magistrates and Ministry of Justice.

Also, GD no. 860/2008 for the approval of the National Strategy in the field of protection and promotion of the rights of the child 2008-2013 and Operational Plan for its implementation (chapter 8: Promotion of professional training) has provision for mandatory initial training on protection and promotion of child rights for the professionals interacting with children, such as: social workers, doctors, nurses, teachers, priests, legal advisors, policemen. Consequently, the manuals - elaborated within the framework of the 2002 Phare Project mentioned above were approved by the ministries and institutions for on-going professional training and can be used both for initial and on-going professional training in these sectors.

Most of MMS (Minimum Mandatory Standards) approved for the child protection services have provisions for on-going training on prevention of the child abuse, neglect and exploitation for the professionals working in these services:

- Order of the state secretary of the NACPA no. 35/2003 for the approval of the MMS for ensuring the child protection by professional foster family and the methodological guide for its implementation;
- Order of the state secretary of the NACPA no. 177/2003 for the approval of the MMS for the children's hotline, counselling center for the abused, neglected and exploited child and community resource center for the prevention of child abuse, neglect and exploitation;
- Order of the state secretary of the NACPA no. 21/2004 for the approval of the MMS for the residential services for children;
- Order of the state secretary of the NACPA no. 24/2004 for the approval of the MMS for the day care centers for children;
- Order of the state secretary of the NACPA no. 25/2004 for the approval of the MMS for the day care centers for children with disabilities;
- Order of the state secretary of the NACPA no. 27/2004 for the approval of the MMS for the residential services for children with disabilities;
- Order of the state secretary of the NACPA no. 89/2004 for the approval of the MMS for the emergency placement center for the abused, neglected and exploited child;
- Order of the state secretary of the National Authority for the Protection of Child Rights[15] (NAPCR) no. 101/2006 for the approval of the MMS for mother and baby center and the methodological guide for its implementation.

[15] See 2

These MMS and the other ones, which have no specific provisions in this field (national adoption procedure, service for life skills development, service for support of the child reintegration/ integration in family, counselling and support service for the parents and services for the street children – day and night shelter, day care center, emergency center and street social service) include a chapter on on-going training on child protection and the specific issue related to the service (e.g. life skills development for the professionals working in the life skills development service).

As regards the educational system:

The initial professional training of teachers is carried out through the program for psycho-pedagogical studies, organized by the departments for the training of teachers / departments specializing in psycho-pedagogical studies within higher education institutions. The program is made up both of modules of pedagogy and discipline didactics and of modules of psychology, communication, counselling and educational orientation and ends with 60 credits and the certificate of graduation.

As regards teachers training in the field of the protection of children's rights, it is carried out by training sessions organized within projects focused on this topic.

As regards the activity of the judiciary and law enforcement agencies:

Within the curricula of education institutions of the Ministry of Internal Affairs (police forces being subordinated to the Ministry of Internal Affairs), as well as within continuous training programs there are topics which also tackle child protection.

Initial training of police workers is performed in schools subordinated to the Ministry of Internal Affairs and their curricula, approved by the Ministry of Education and Ministry of Internal Affairs, also include relevant topics in this field, among which we would like to specify:

- ✓ *Protection of the victims of offences;*
- ✓ *Way of intervention in relation to certain categories of persons* – Intervention in relation to minors or young people;
- ✓ *Crime investigation* – Respect of human rights in the activity of police workers; Protection of the victims of offences; Respect of human rights in the activity of police workers.

Furthermore, the „Al. I. Cuza" Police Academy in Bucharest has included in the training of its students, according to the curricula, the discipline: „Legal protection of human rights" which aims not only to acquiring basic legal knowledge and the study of the relevant legislation, but also the analysis of concrete cases, like for example:

- ✓ *Fight of trafficking in human beings – Sexual exploitation of minors* (topic studied within the discipline „Fight of organized crime", 3. academic year, for police and gendarmerie students);
- ✓ *Particularities in the investigation of the offence of sexual exploitation of children* (topic studied within the specialization „Criminal investigations" by the students of the Police Faculty, 2. academic year).

The continuous professional training of the staff of the Ministry of Internal Affairs is performed at the level of the structures in its subordination or coordination, under the surveillance of immediate managers, as well as by taking part into courses, seminars, conferences, round tables, etc., organized in Romania or abroad. The Institute for Public Order Studies also offers courses in the relevant fields, among which we would like to mention:

- ✓ *Role of police workers in the protection and fostering of children's rights,* organized between 2009-2010, which tackled issues concerning criminal investigations as follows:
- Results of the evaluation of the programs for the prevention and fight of juvenile crime and children victimization;
- Information on the work methodology for carrying out activities for crime prevention;
- Concrete ways of performance of analysis within programs for crime prevention;
- Identification of risk categories specific to police for the prevention and fight of illegal acts committed by minors and their victimization;
- Children, victims of sexual abuse – investigation and prosecution;
- Paedophilia and crimes provided for by the Criminal Code which belong to this type of crime;
- Handbook of good practices concerning police action in case of missed or abused children, trafficking in human beings and child pornography on the internet.

- ✓ *Protection of the individual's rights and liberties*

As regards the protection of judges and prosecutors:

The National Institute for Magistracy (INM) has the duty according with the applicable legal provisions to ensure the initial training of future judges and prosecutors and the continuous professional training of current judges and prosecutors.

Within the initial training of judges and prosecutors there are no classes dedicated especially to the topic of justice for children, having regard to the fact that according with Law No. 272/2004 the application of special protection measures is within the competence of regional courts which do not have trainees judges.

In this quality the National Institute for Magistracy ensures, beside initial training classes, the organization of seminars and conferences concerning relevant issues of the judiciary. Among them there is also children protection, both in civil and criminal matters. For example within continuous training activities in the field of justice for children topics are looked at regularly concerning hearing of children within judicial proceedings and acquisition of skills and competences which are necessary in dealing with children cases.

b. Which policies or strategies have been implemented to promote or conduct awareness-raising campaigns targeted at the general public where the focus is directed especially towards the risks and realities of sexual exploitation and sexual abuse of children? Please describe the material used for the campaign/programme and its dissemination. If possible, please provide an assessment of the impact of the campaign/programme. If there are currently plans for launching a (new) campaign or programme, please provide details (Article 8, para. 1);

ANSWER:

Activities of MMFPSPV and local DGASPC:

Campaigns on child rights, violence against children and domestic violence are constantly implemented at national and local level. Examples:

- 2002 Phare Project *"Education campaign on child rights",* the component of communication campaign for parents *"You can be a better parent"*, implemented by DPC-MMFPSPV, during the period 2005-2007: 4 tv video clips, 3 posters and 4 radio

clips broadcasted in 2007, 8 training sessions for journalists organized in 2007 together with the Center for Independent Journalism and using UNICEF translated into Romanian language Manual Media and child rights (www.copii.ro/ programe internationale).

- *"Programme for the victims of domestic violence"* implemented by DPC-MMFPSPV based on the Loan Agreement no. 4825 RO between Romania and International Bank for Reconstruction and Development, ratified by Law no. 40/2006, aims to improve life conditions and social inclusion of the victims of domestic violence. During November 2012 – January 2013, an awareness campaign was implemented *"Domestic violence should not let you indifferent"*: 7 regional conferences, a poll, 35 street events like caravan on three routes in the country, one video clip for television and one radio clip (www.copii.ro/ prima pagina).
- GDSACP celebrates regularly the international and national days for children and combat of various forms of violence against children, through action with and for children, mostly in partnership with schools and police: March 21 – International day for street children, May 25 – International day for missing children, June 1st – International day for children, June 5 – National day for combat violence against children, June 12 – International day for combat of child labour, June 26 – International day for combat trafficking in drugs, September 23 – International day for combat sexual exploitation and trafficking in women and children, November 19 – International day for combat child abuse and neglect, November 20 – International day for child rights.
- GDSACP Alba: 2009, campaign „Open your heart, don't close your fist!";
- GDSACP Bihor: campaign „Together against violence" on topic of domestic violence in 2009 and 2012, Cup „Friendship and non-violence" sport competitions for children from placement centers, schools and high schools, annually, during 2010-2012;
- GDSACP Bistrita-Nasaud: 2011-2013, campaigns in schools regarding violence against children, 400 pupils informed;
- GDSACP Bucuresti sector 5: 2010-2011, campaign „Say further" in schools;
- GDSACP Hunedoara: 2009, campaign on combat child labour, school drop-out, juvenile delinquency and drugs; 2010, campaign „Street, shelter or trap";
- GDSACP Iasi: 2012, „Information campaign on good practices regarding prevention, identification and working techniques with children victims, potential victims of violence and their families", „Information campaign on domestic violence"; 2013, „Information campaign on ICT role at county level, prevention, identification and working techniques with children victims, potential victims of violence and their families, as well as methodology for combat domestic violence and protection order for the victim";
- GDSACP Mehendinti: 2013, campaign against domestic violence;
- GDSACP Olt: annual campaigns for raising awareness on helpline 0800800564 at the level of city halls, hospitals, schools and family doctors;
- GDSACP Prahova: 2013, campaign „Violence leave marks", 120 children informed.

Activities of the Ministry of National Education:

The Ministry of National Education, the school inspectorates and the schools have the role to prevent any kind of violence. MNE is member of the Safer Internet Romania Advisory Board and has participated in the activities in which the partners have been involved since 2008.

The Ministry of National Education (MNE) has undertaken the following activities after the EU integration:

-national conference with all general inspectors of the 42 counties - 2008;

-partnership with the MIA (Ministry of Internal Affairs) in February 2013 regarding the prevention of violence in schools and in the school areas;

-The MATRA project *Preventing Juvenile Delinquency in the Area of Scholar Facilities in Romania', financed by the Netherlands Ministry of Foreign Affairs has been implemented by the Ministry of Education in cooperation with the Ministry of Interior between 2008-2010. The 'Handbook on the toolkit for school-police cooperation' and the 'Guide of promising practices on school safety' are some of the practical results of the 2008-2010 MATRA project. There is a good practice in the Guide with the title:* ***Computer and the Internet in our lives; teachers/students/parents; the Netiquette; how to avoid the online harassment;***

- presentations have taken place in schools with children, teachers, parents regarding Internet safety;

- MNE has participated in the official launch of the project Sigur.Info on the 10th of February 2009 and participated yearly in the contests

- it has actively cooperated with the partners to make presentations in schools, on TV, in newspapers, summer camps, elaborate and distribute materials, organize contests, campaigns, national meetings, press conferences, has authorized the access of the volunteers to schools;

-it has authorized the online guidelines `e-learning` (tests for parents, children, teachers), and adapted the program `Microsoft Partners for Education`; the guidelines and the description of the project sigur.info are on the ministry`s site (www.edu.ro)

At the level of the structures of the **Ministry for Internal Affairs** which have competence in the field of the prevention and fight of illegal acts prevention activities are organized, especially by close cooperation with the institutions which carry out **mass information** activities, so that the vigilance and reaction concerning any type of violence, especially violence against children (for example films in the public transportation means, on occasion of sports events or cultural and artistic events) are enhanced.

At national level there have been and there are campaigns for prevention and education where **meetings with students, teachers and parents are organized**, the topics discussed being in connection with some aspects in the field of the prevention and **fight of violence** among young people, prevention and fight of drug consumption, prevention and fight of school absenteeism; on such occasions **materials for prevention and education are distributed** (information leaflets, flyers, brochures).

As regards **the prevention of trafficking in human beings**, at the level of the **ANITP** there are a number of awareness raising campaigns of which we would like to mention:

- The campaign named ***„Free under the sun! Get informed! Trafficking in human beings is merciless!",*** organized at the seaside in the time period July-August 2010. In the framework of this campaign the ANITP carried out through the Constanţa Regional Centre and in partnership with the World Vision Foundation Romania – Area Office Constanţa activities for the information of tourists on the Romanian sea coast about trafficking in human beings and its implications. The

actions were focused especially on young people in school camps and persons (women, men, children) in all resorts on the Romanian sea coast. For the promotion of the campaign 1.300 leaflets, 50 posters and 50 T-shirts were created. These materials were disseminated alongside with other materials elaborated by the ANITP within previous prevention campaigns and the audio materials created within previous ANITP campaigns were broadcast frequently by radio channels in the district of Constanţa;

- The campaign for the prevention of trafficking in children named „Use the internet carefully …Trafficking in children has hidden faces !!! ” is held in Romania within the project „Raising awareness and responsibility about trafficking in children” JLS/2007/DAP-1/174 30, CE-0227796/00-22, implemented by the ANITP in partnership with Save the Children Italy, financed by a DAPHNE grant. For the promotion of this campaign the following has been created: a video of 30 seconds by the children participating in the work groups, an animated film, 1.200 posters, 300 memory sticks, 600 mouse pads, 2.400 backpacks. The campaign was launched on 18.10.2010 by posting the two videos on social media sites and aims at raising the level of awareness at national level concerning the risks associated with the improper use of IT technologies (internet, mobile phone, video cameras and cameras, etc.); the campaign was planned to cover 6 months. The dissemination of the films was carried out at the beginning by posting them both on the official site of ANITP and on specific sites like: youtube.com, ANITP page on Facebook. A special page was created on Facebook, as well as a blog with the campaign message „Use the internet carefully …Trafficking in children has hidden faces!!! ”
- The campaign „Your boyfriend can be a Loverboy” was aimed at informing the public about the existence of a recruitment method called „loverboy” method and at increasing the self-protection capacity of the public. Within the campaign a film was created, as well as 3.000 posters, one song and one video, whereas a number of 138 prevention activities were organized in universities, high schools and secondary schools to which a number of about 10.500 students and 575 teachers participated as direct beneficiaries. A number of 8 meetings of the anti-trafficking district inter-institutional teams were held with the participation of 124 specialists and representatives of different institutions and structures involved in the fight against trafficking in human beings; 54 media presences were registered, both in written and audio and visual media, as well as on the websites www.antitrafic.ro and www.anitp.mai.gov.ro.
- ANITP has actively supported the initiative of the Association Children’s Hotline to meet the information needs of children, parents and teachers in rural areas in relation with the issue of the trafficking in human beings in general and trafficking in children in particular. The implementation of the campaign „Trafficking in human beings made easy to understand” (April-June 2012) offered the possibility to send anti-trafficking messages to one of the most vulnerable categories of persons. Direct meetings with children allowed their information about the risks and implications of the trafficking in children, as well as about the possibility to request help via the hotline 0800.800.678 managed by the AN.I.T.P. in case they need help.
- The regional information campaign „To me?! It CAN’T happen to me!” has been implemented by the Regional Centre Bucharest and has taken place in Bucharest and its surrounding areas. The aim of the campaign was the prevention of the risks of trafficking in human beings for sexual exploitation by sending out a communicational message adapted to the target group: young women aged between 16 and 20. More than 100 posters containing the anti-trafficking message have been

posted in 26 underground stations in Bucharest. The video created in the framework of the campaign was presented on LCDs in 500 buses in Bucharest.

As regards the audio and visual media:

According to its field of competence as established by the Law concerning the audio and visual media, the National Audiovisual Council (CNA) ensures the respect of the protection of human dignity, the right to own image and protection of children.

As regards the situations which appeared in audio and visual programs in which the rights of abused children were not respected we would like to mention the **sanction applied by the CNA** for the infringement of those articles of the Audiovisual Code mentioned in the first part of our answer, **starting with 2011**, when the Law No. 252/2010 entered into force. Given that, according with art. 93^1[16] of the Audiovisual Law, the radio sender who was applied a sanction or was issued by the Council a demand note to act legally has the obligation to inform the public about the reasons and the object of the sanction applied, **these items of information can also fulfil another role, that is of education of the public about the rights it has according with applicable legislation in the audiovisual field,** but also the role of raising the awareness of the public about the issues sanctioned when they were related to cases of sexual exploitation or sexual abuse on children.

c. Which legislative or other measures have been taken to prevent or prohibit the dissemination of materials advertising the offences established in accordance with this Convention? If so, please provide details (Article 8, para. 2, Explanatory Report, para. 66).

ANSWER:

The main measures in this respect refer to the incrimination of these acts.

For acts of dissemination of advertising materials in relation with the offences provided for in the Convention the provisions of the Criminal Code can also become applicable, namely instigation to commit offences (art. 49 of the new Criminal Code[17]), or the ones in art. 368 – Public instigation, which punishes the act of

[16] ARTICLE 93^1

(1) Any broadcaster to whom the Council applied a sanction or sent a summons to comply with the law abiding by the law shall inform the audience about the reasons and the object of the sanction or of the summons, in keeping with the wording sent by the Council.

(2) In the case of the television program services, the text of the summon or of the sanction shall be broadcast sonorously and visually within the next 24 hours after its communication between 18.00-20.00 at least 3 times, out of which one during the main news transmission.

(3) In the case of the sonorous radio-broadcasting program services, the text of the summons or of the sanction shall be broadcast sonorously and visually within the next 24 hours after its communication between 6.00-14.00 hrs., at least 3 times, out of which one in the main news transmission.

(4) For the television or the sonorous radio-broadcasting program services which during the time laps mentioned in par.(2) and (3) retransmit other program services, the possibility of broadcasting is established by the sanctioning decision or in the summons.

(5) Non compliance with the provisions in paragraphs (1)-(4) shall be sanctioned with a fine from 2,500 – to 50,000 RON.

[17] ARTICLE 49

Penalty applied to participants

The co-author, the instigator and the accomplice to an offence committed with intent shall be penalized with the penalty provisioned by law for the author. In determining the sentence, the

prompting the public, in writing or by any other means, to commit offences with imprisonment from 3 months to 3 years or fine. If the public instigation was followed by the perpetration of the offence to which the instigation has been performed the punishment is the one provided for by the law for the respective offence.

Question 9: Recruitment and screening

a. Which legislative or other measures have been taken to ensure that the conditions for accessing those professions whose exercise implies regular contact with children, ensure that the candidates to these professions have not been convicted of acts of sexual exploitation or sexual abuse of children? (Article 5, para. 3). Please specify to which professions such measures apply. Please also indicate for how long the criminal record of a person who was convicted for such crimes is kept in your country;

ANSWER:

According with art. 97 of Law No. 272/2004 concerning the protection and fostering of children's rights, as subsequently modified and supplemented, in public or private institutions, as well as within residential public or private services which ensure the protection, raising, care or education of children it is forbidden to hire the person against whom a final court decision has been given for intentional perpetration of an offence.

Law No. 272/2004 also contains some other precautionary measures concerning the hiring of professionals who have contact with children, like for example the obligation to submit a neuropsychiatric report upon hiring, the yearly testing of the staff[18].

There are also professions for which the law provides for the obligation of submitting the criminal record[19], this being a pre-requisite for the employment: it

---

contribution of each of them in the committal of the offence shall be taken into consideration, as well the provisions of Article 74.

[18] Article 97 – It is forbidden to employ a person against whom an enforceable court decision has been issued for intentionally committing a crime, in the public or private institutions, as well as in the public or private residential services, which provide the protection, upbringing, care or education of children."

Article 144 - (1) The education, protection and nursing staff within the public and private institutions who come into contact with the child through the nature of their job, must undergo through a neuropsychiatric evaluation at the time when they are employed.
(2) The staff mentioned under paragraph (1) is assessed on a yearly basis from a psychological point of view.
(3) The neuropsychiatric evaluation reports and the psychological assessment reports are kept in the personal file of each staff member, according to the law.

[19] According to Article 9 of Law no. 290/2004 on criminal records, with subsequent amendments and supplements, in respect of natural persons, the criminal record shall contain data regarding:

a) Sentences, safety and correctional measures, imposed according to enforceable court judgments;
b) Wave or postponement of the sentence service, commencement, interruption and termination of the sentence service and of the correctional measures, suspension under supervision of the sentence service, replacement, reschedule and payment of the criminal fine;
c) Amnesty, pardon, statutes of limitations, rehabilitation, political nature of the offence;

applies for judges and prosecutors, police workers and other civil servants and probation officers.

The regulations for the organization of entrance examinations for such professions impose the condition of a good reputation and of a clean criminal record.

The Government's Decision No. 611/2008 for the approval of the rules for the organization and development of the career of civil servants sets out that the file for the registration for the competition has to contain the criminal record (art. 49 para. 1)

As regards the recruitment and employment of teachers, the National Ministry for Education has introduced in the Minister's Order No. 6239/2012 concerning the approval of the Framework methodology regarding the mobility of the teachers in the pre-college education system the rule according to which persons who have been removed from the education system based on a final criminal court decision do not have the right to participate in the competition for a teacher's position (art. 58 para. 3).

b. Does the screening of candidates apply to voluntary activities (Explanatory Report, para. 57)?

ANSWER:

Law No. 195/2001 concerning voluntary service does not expressly provide among documents which are necessary for the performance of voluntary service the criminal record.

According with the information provided by the general direction DGASPC, some of these services also request the criminal record when recruiting volunteers (Arges, Bihor, Bucharest sector 1, 3 and 5, Caras-Severin, Cluj, Covasna, Hunedoara, Iasi, Mehedinti, Neamt, Olt, Suceava, Tulcea and Vrancea).

---

d) Sentences and measures imposed according to enforceable court decisions abroad, as well as measures taken by action of the criminal judicial institutions abroad, if these judgments were recognized by the competent Romanian courts;
e) Enforceable judgments which require corrections in the criminal record;
f) Extradition.

Article 15 of Law no. 290/2004 on criminal records, republished. The natural persons registered in the criminal records or for whom temporary mentions were made shall be removed from the records, if one of the following situations occurs:
"a) the committed acts are no longer provisioned by the law as offences;
b) the court or lawful rehabilitation occurred;
c) amnesty occurred;
d) the persons concerned were sentenced to pay a fine or to serve a custodial sentence of up to 3 years and 20 years have passed since the sentencing was rendered enforceable;
e) the persons concerned deceased;
f) the prosecution was waved or the offences were subject to classification or an enforceable judgment for acquittal or termination of the criminal trial was issued;
g) one year has passed since the service date of the correctional measure;
h) 2 years have passed since the date when a enforceable decision for the postponement of the sentence service was issued and the revocation or the annulment of the postponement of the sentence service was not ordered, according to Article 88 or 89 of the Penal Code;
i) 5 years have passes since the date when one of the administrative penalties provisioned by Article 91 of Law no. 15/1968 on the Penal Code, republished, with subsequent amendments and supplements, was applied."

Question 10: Preventive intervention programmes or measures

a. Which legislative or other measures have been taken to ensure that persons who fear that they may commit any of the offences established in accordance with the Convention, have access to effective intervention programmes or measures designed to evaluate and prevent the risk of offences being committed? Please specify under which conditions, if required (Article 7, Explanatory Report, para. 64);

ANSWER:

There are no services or pro-active programs for persons fearing they might commit one of the offences provided for by the Convention, however they can make use without any restrictions to public and private mental health services, the same like any other citizen.

b. Which legislative or other measures have been taken to ensure that persons subject to criminal proceedings or convicted for any of the offences established in accordance with the Convention, may have access to effective intervention programmes or measures? Please specify under which conditions, if required (Articles 15 to 17). Please indicate in particular:

- **who has access to these programmes and measures (convicts, persons subject to criminal proceedings, recidivists, young offenders, persons who have not committed a crime yet?);**
- **how the appropriate programme or measure is determined for each person;**
- **whether there are specific programmes for young offenders;**
- **whether persons have a right to refuse the proposed programme/measures?**

ANSWER:

In respect of persons convicted for offences provided for in the Convention, the court can order the postponement of the sentence service or the suspension of the sentence service under supervision[20] as ways of enforcement of the penalty which

[20] SECTION 4
Section 4 - Postponement of the sentence service

ARTICLE 83
Requirements for postponing the sentence service
(1) The court may order the postponement of the sentence service, setting a supervision period, if the following requirements are met:

a) the imposed sentence, including the situations concerning concurrency of offences, is a fine or up to 2 years imprisonment;
b) the offender has never been convicted to prison before, except for the cases provisioned by Article 42 a) and b), or when rehabilitation intervened or the rehabilitation time limit was fulfilled.
c)the offender has expressed the consent to perform unremunerated community services;
d) in consideration to the person of the offender, his conduct prior to the perpetration of the offence, the offender's efforts to remove or remedy the consequences of his/her offence, as well as of the offender's possibilities to redress, the court shall consider that the immediate enforcement of a sentence is not necessary, but his/her supervision for a determined period of time is necessary.
(2) The postponement of the sentence service cannot be ordered if the sentence provisioned by the law is 7 years imprisonment or more or if the offender has eluded the prosecution or trial or attempted to hinder the finding of the truth or the identification and application of criminal liability in respect of the author or other participants.
(3) The postponement of the sentence service also entails the postponement of the fine accompanying the custodial sentence according to Article 62.
(…)

ARTICLE 84

Supervision period

(1) The supervision period is 2 years and shall be calculated from the date when decision ordering the postponement of the sentence service was rendered enforceable.

(2) During the supervision period, the person for whom the postponement of the sentence service was ordered must comply with the supervision measures and the duties imposed according to the terms established by the court.

ARTICLE 85

Supervision measures and duties

(1) Throughout the supervision period, the person being postponed the sentence service shall observe the following supervision measures:

a) to appear before he probations services, at the dates set;

b) to receive the visits of the probation counselor appointed for his/her supervision;

c) to notify in advance any change of address and trip exceeding 5 days, as well as the return;

d) to notify the change of the working place;

e) to notify about information and documents allowing the control over his means of subsistence.

(2) The court may impose on the person for whom the postponement of the sentence service was ordered, compliance with one or several duties:

a) to attend a formal or vocational education course;

b) to perform unremunerated work for the community for a period between 30 and 60 days on the terms set by the court, except for the situation when due to the health status, the offender cannot perform this kind of activity. The daily number of working hours shall be established according to the law on the sentence service;

c) to attend one or several social reinsertion programs developed by the probation services or organized in co-operation with other community institutions;

d) to comply with the measures of control, treatment or medical care;

e) not to communicate with the victim or with the victims' family members, with the persons with whom the crime was committed or with other persons established by court or to approach these persons;

f) not to be in certain places or to go to certain sport or cultural events or other public meetings, as established by the court;

g) not to drive vehicles or certain types of vehicles established by court;

h) not to possess, use or carry any weapons;

i) not to leave Romania territory without the court's consent;

j) not to fill in a position, to practice a profession or to develop an activity which has the nature of the one by means of which the offender committed the crime.

(3) In order to set the duties provisioned in paragraph (2) b), the court shall periodically consult the information made available by the probation services in respect of the concrete possibilities of service existent on the level of the probation services and on the level of other community institutions.

(4) When setting the duty provisioned in paragraph 2 e)-g), the court shall concretely individualize the content of these duties, taking into account the circumstances of the case.

(5) The person under supervision must comply entirely with the civil duties imposed according to the decision, the latest 3 months before the termination of the supervision period.

SECTION 5*)

Suspension of the sentence service under supervision

ARTICLE 91

Requirements for the suspension of the sentence service under supervision

(1) The court may order the suspension of the sentence service under supervision, if the following requirements are met:

a) the imposed sentence, including the one imposed for concurrency of offences, is up to 3 years imprisonment;

b) the offender has not prior convictions exceeding one year imprisonment, except for the cases provisioned in article 42 or for whom rehabilitation occurred or the rehabilitation time limit was fulfilled;

c)the offender has expressed the consent to perform unremunerated community services;

d) in consideration to the person of the offender, his conduct prior to the perpetration of the offence, the offender's efforts to remove or remedy the consequences of his/her offence, as well as of the offender's possibilities to redress, the court shall consider that the immediate enforcement of a sentence is not necessary, but his/her supervision for a determined period of time is necessary.

(2) when the imprisonment sentence is accompanied by a fine, imposed in accordance with Article 62, the fine shall be paid, even if the service of the imprisonment sentence was suspended under supervision.

(3) The suspension of the sentence service cannot be ordered if:

a) the only penalty applied is a fine;

b) the service of the sentence was previously postponed, but later on it was revoked;

c)the offender has eluded the prosecution or trial or attempted to hinder the finding of the truth or the identification and application of criminal liability in respect of the author or other participants.

(4) It is mandatory to present the reasons the conviction sentence was based on, as well as the reasons leading to the suspension of the sentence service and to draw attention to the sentenced person on his future conduct and the consequences of his acts if committing other offences in the future and not complying with the supervision measures or with the duties incumbent throughout the supervision period

.

ARTICLE 92

Supervision period

(1) The period of the sentence service suspension under supervision represents the supervision period for the sentenced person and shall range between 2 and 4 years, not less than the duration of the sentence imposed.

(2) The supervision period is 2 years and shall be calculated from the date when decision ordering the suspension of the sentence service was rendered enforceable.

(3) During the supervision period, the sentenced person must comply with the supervision measures and the duties imposed according to the terms established by the court

ARTICLE 93

Supervision measures and duties

(1) Throughout the supervision period, the sentenced person shall comply with the following supervision measures:

a) to appear before he probations services, at the dates set;

b) to receive the visits of the probation counselor appointed for his/her supervision;

c) to notify in advance any change of address and trip exceeding 5 days;

d) to notify the change of the working place;

e) to notify about information and documents allowing the control over his means of subsistence.

(2) The court may impose the sentenced person to comply with one or several duties:

a) to attend a formal or vocational education course;

b) to attend one or several social reinsertion programs developed by the probation services or organized in co-operation with other community institutions;

c) to comply with the measures of control, treatment or medical care;

d) not to leave Romania territory without the court's consent;

(3) During the supervision period, the sentenced person shall perform unremunerated community work for 60 to 120 days, according to the terms set by the court, except for the situation when due to the health status; the offender cannot perform this kind of activity. The daily number of working hours shall be established according to the law on the sentence service.

(4) In order to set the duties provisioned in paragraph (3), the court shall periodically consult the information made available by the probation services in respect of the concrete possibilities of service existent on the level of the probation services and on the level of other community institutions.

(5) The person under supervision must comply entirely with the civil duties imposed according to the sentencing decision, the latest 3 months before the termination of the supervision period.

can also include among other things the convicted person being imposed an obligation like for example participation to one or more programs for social reintegration carried out by the probation office or organized jointly with community institutions, or the convicted person to be subject to measures of control, treatment or medical care;

Such obligations can also be imposed by the court against the person who has been released on parole after having served a fraction of the penalty[21].

---

[21] SECTION 6
Parole
ARTICLE 99
Requirements for release on parole in cases of life imprisonment:

(1) In the case of life imprisonment, parole may be granted if the following requirements are met:

a) The sentenced person served in 20 years in custody;

b) The sentenced person had a good conduct throughout the entire sentence service;

c)The sentenced person has complied entirely with the civil duties set according to the sentencing decision, except for the case when it was proven that the sentenced person has not had any possibility to comply;

d) The court is convinced that the sentenced person has redressed and may be reintegrated in society.

(2) It is mandatory to present the reasons leading to the granting of parole and to draw attention to the sentenced person on his future conduct and the consequences of his acts if committing other offences in the future and not complying with the supervision measures or with the duties incumbent throughout the probation.

(3) The sentenced person shall be on probation for 10 years, calculated from the date when parole was granted.

ARTICLE 100
Requirements for release on parole in case of imprisonment:

(1) In the case of imprisonment, parole may be granted if the following requirements are met:

a) The sentenced person served at least two thirds of the sentence, if the imprisonment sentence does not exceed 10 years, or at least thro quarters of the imprisonment sentence, but up to 20 years, if the imprisonment sentence exceeds 10 years;

b) The sentenced person is serving the custodial sentence in open or semi-open conditions;

c)The sentenced person has complied entirely with the civil duties set according to the sentencing decision, except for the case when it was proven that the sentenced person has not had any possibility to comply;

d) The court is convinced that the sentenced person has redressed and may be reintegrated in society.

(2) In case of the sentenced person who reached the age of 60 years old, parole may be granted after the service of a half of the sentence period, if the imprisonment sentence does not exceed 10 years or of at least two thirds of the sentence period if the imprisonment sentence exceeds 10, provided that the requirements contained in paragraph (1) b)-d) are met.

(3) In the calculation of the sentence periods provisioned in paragraph (1), the part of the sentence which may be considered, according to the law, as served based on the work performed, shall be taken into account. In this case, the release on parole cannot be granted before the service in fact of at least half of the imprisonment sentence period, when the sentence does not exceed 10 years and of at least two thirds, when the sentence exceeds 10 years.

(4) In the calculation of the sentence periods provisioned in paragraph (2), the part of the sentence which may be considered, according to the law, as served based on the work performed, shall be taken into account. In this case, the release on parole cannot be granted before the service in fact of at least one third of the imprisonment sentence period, when the sentence does not exceed 10 years and of at least a half, when the sentence exceeds 10 years.

(5) It is mandatory to present the reasons leading to the granting of parole and to draw attention to the sentenced person on his future conduct and the consequences of his acts if

Against the person who is prosecuted for having committed such offences the obligation of the person to be subject to measures of control, medical care or treatment, especially for detox purposes, can be ordered on occasion of the issuing of the measure of judicial control[22].

---

committing other offences in the future and not complying with the supervision measures or with the duties incumbent throughout the probation.

(6) The time between the date of release on parole and the date when the sentence is considered to be served represents the probation period for the sentenced person.

ARTICLE 101

Probation measures and duties:

(1) If the rest of the sentence remaining to be served on the release date exceeds 2 years or more, the sentenced person must comply with the following probation measures:

a) to appear before he probations services, at the dates set;

b) to receive the visits of the person appointed for his/her supervision;

c) to notify in advance any change of address and trip exceeding 5 days;

d) to notify the change of the working place;

e) to notify about information and documents allowing the control over his means of subsistence.

(2) In the cases provisioned in paragraph (1), the court may impose the sentenced person to comply with one or several duties:

a) to attend a formal or vocational education course;

b) to attend one or several social reinsertion programs developed by the probation services or organized in co-operation with other community institutions;

c) not to leave the Romanian territory without the court's consent;

d) not to be in certain places or to go to certain sport or cultural events or other public meetings, as established by the court;

e) not to communicate with the victim or with the victims' family members, with the persons with whom the crime was committed or with other persons established by court or to approach these persons;

f) not to drive vehicles or certain types of vehicles established by court;

g) not to possess, use or carry any weapons.

(3) The measures provisioned in paragraph (2) c)-g) cannot be ordered to the extent that these duties were not comprised by the complementary penalty of prohibition on the exercise of certain rights.

(4) When ordering the duty provisioned by paragraph (2 d)-f), the court shall individualize concretely the content of this duty, taking into account the circumstances of the case.

(5) The probation measures and duties provisioned in paragraph 2 a) and b) shall be executed from the date of the release for a period equal with a third of the probation period, but not exceeding 2 years, and the duties provisioned in paragraph (2) c) – g) shall be fulfilled throughout the probation period.

(6)

[22] SECTION 3 Judicial control

ARTICLE 211

General requirements

(1) During prosecution, the prosecutor may order measure of judicial control against the defendant, if this precautionary measure is necessary to achieve the objective laid down in Article 202 paragraph (1).

(2) The pre-trial judge, within the pre-trial procedure or the court of law, during trial, may order the measure of judicial control against the defendant, if the requirements laid down in paragraph (1) are met.

ARTICLE 212

Judicial control imposed by the prosecutor

(1) The prosecutor shall order the subpoena of the defendant not held custody or the appearance of the defendant held in custody.

(2) In his/her presence, the defendant shall be informed at once, in the language he/she understands, in respect of the alleged offence and the reasons for judicial measure.

Programs carried out by probation offices:

- The category of persons who have access to programs includes persons against whom the court has ordered the postponement of the enforcement of the penalty, convicted persons (young people and adults) for whom the court has ordered the Suspension of the sentence service under supervision penalty or who have been released on parole after having served a fraction of the penalty, as well as persons

---

(3) The measure of judicial control may be taken only after hearing the defendant, in the presence of public or chosen defender. The provisions of Article 209 paragraph (6) - (9) shall apply accordingly.

(4) The prosecutor shall order the judicial control by reasoned ordinance, communicated to the defendant.

.

ARTICLE 215

Contents of the judicial control

(1) While under judicial control, the defendant must comply with the following obligations:

a) To appear before the prosecution services, the pre-trial judge or before the court of law, anytime summoned;

b) To inform at once the judicial authorities who ordered the measure or before whom the case is presented, in respect of the change of address;

c)To appear before the police authority appointed with his/her supervision by the judicial authority ordering the measure, according to the supervision schedule made by the police authority or anytime he/she is summoned.

(2) The judicial authority ordering the measure may order the defendant that, during the judicial control, to comply with one or several duties, as follows:

a) Not to go beyond a certain territorial limit, set by the judicial authority, except upon the prior approval of the judicial authority;

b) Not to go in certain places, set by the judicial authority or to go only in the places set by the judicial authority;

c)To wear a tracking device at all times;

d) Not to return to the family home, not to approach the injured person or his/her family members, other participants in the committal of the offence, witnesses or experts or other persons as decided by the judicial authority and not to communicate with these persons, neither directly not indirectly, whatsoever.

e) Not to practice the profession, occupation or the activity performed while he/she committed the offence;

f) To communicated periodically relevant information concerning his/her means of subsistence;

g) To comply with certain control measures, care and medical treatment, especially for the purpose of detoxification;

h) Not to attend sports or cultural events or other public meetings;

i) Not to drive certain vehicles established by the judicial authority;

j) Not to hold, use and wear any weapons;

k) Not to issue cheques.

(3) The document ordering the judicial control shall provide expressly the duties the defendant must comply with throughout the period of judicial control and shall mention that if violating in bad faith the incumbent duties, the measure of judicial control may be replaced with the measure of house arrest or the measure of provisional arrest.

(4) The supervision of the compliance by the defendant with the duties incumbent upon him/her during the judicial control shall be conducted by the institution, authority or department appointed by the judicial authority who ordered the measure, according to the law.

(…)

(7) If, during the judiciary control measure, the defendant violates in bad faith the obligations incumbent upon him or there are reasonable suspicions that he/she committed a new offence intentionally, for which the criminal prosecution was initiated against him, the rights and freedoms judge, the pre-trial judge or the court of law, upon the prosecutor's request or ex officio, may order the replacement of this measure with house arrest or provisional arrest, in accordance with the law.

(…)

under criminal prosecution and against whom one of the listed precautionary measures has been ordered.

- The way in which the intervention program is established: art. 44, para. 2 of the Regulation provides that „Assistance and counselling shall be performed based on a plan for assistance and counselling adapted to the individual needs of the person. The period of time and the extent to which the needs identified can be covered only by the intervention of the probation office or in cooperation with non-governmental bodies, public and/or private institutions or with natural or legal persons shall be estimated."

- There are programs with a general character dedicated to children and young people who are in the attention of probation offices, however, there are no programs for those offenders who committed sexual offences. Persons who are under the surveillance of the probation services and who committed offences like the ones provided for in the Lanzarote Convention and who need to be included in specialized intervention programs can be referred to specialists from within non-governmental institutions or organizations which are active in the field.

- If the court orders the above mentioned persons to enrol into a program, the participation to this program is mandatory, whereas not respecting this obligation shall trigger the revocation of the measure (revocation of the suspension of the surveillance measure, parole, postponement of the enforcement of the penalty etc.).

If the convicted person who is in the attention of the probation service requests assistance and counselling, this activity can be ended in the following situations: a) upon request of the person assisted and counselled; b) as a result of the lack of cooperation or improper behaviour of the person assisted and counselled; c) upon expiration of the duration of assistance and counselling (art. 48 of the Regulation for the implementation of the provisions of Government's Ordinance No. 92/2000 concerning the organization and functioning of the probation services).

Question 11: Participation of the private sector, the media and civil society

What steps have been taken to encourage:

a. the private sector (in particular the information and communication technology sector, the tourism and travel industry, the banking and finance sectors) to participate in the elaboration and implementation of policies, programmes or other initiatives to prevent sexual exploitation and sexual abuse of children? Please indicate which private sectors are concerned and explain how participation takes place. Please also provide information concerning any relevant code of conduct or enterprise charter aimed at protecting children from sexual exploitation and sexual abuse (Article 9, para. 2, Explanatory Report, paras. 68-73);

ANSWER:

The participation of the private sector, in particular, the business environment, is stipulated in Government Decision no. 49/2011, annex 2, Guidelines for multi-disciplinary and inter-institutional intervention concerning children who are exploited or in the jeopardy of labour exploitation, children who are victims of human trafficking, as well as migrant Romanian children victims of other forms of violence in the territory of other states, the chapter referring to the Community consultative structures in Section 2^1.

At the same time, an example of best practice is respect of the involvement of the private sector consists in the Project Sigur.info (*Safe.info*), in which the following

partners are involved: UPC, Orange, Vodafone, Cosmote, Kaspersky Lab, ECDL Romania, Euroaptitudini, BitDefender, Microsoft and Petrom.

In 2005 the Code of Conduct for combat of trafficking and sexual exploitation of children in tourism was adopted by Save the Children Romania, Romanian Hotel Industry Federation, National Association of Travel Agency, Institute for Research and Prevention of Criminality, National Authority for Tourism and DPC-MMFPSPV, OSCE, Institut für Integrativen Tourismus und Entwicklung RESPECT, ECPAT, Federal Department of Foreign Affairs and Freedom from Fear.

The civil society participates both at the central, and at the local levels.

At the national level, this activity is coordinated by means of DPC-MMFPSPV (Child Protection Department of the Ministry of Labor, Family, Social Protection and Elderly). Furthermore, in the context of activity monitoring, mention should be made that the following diligences have been taken so far:

The National Directory Committee for the Prevention and Control of Labor Exploitation of Children (NDC), set up by Government Decision no. 617/2004, adopted the decision of extending its powers to cover all forms of violence against children and family violence in 2009.

By Government Decision no. 1156/2012 approving the National Strategy for the prevention and control of the phenomenon of family violence for the period comprised between 2013 and 2017 and the Operational Plan for the implementation thereof, the extended NDC was acknowledged.

A draft Government Decision for the organization and operation of the extended NDC was prepared and approved by the current NDC.

In December 2013, the first meeting of the extended NDC was held.

The extended NDC comprises members from the competent ministries, including institutions subordinated thereto (MMFPSPV, Ministry of Health, Ministry of National Education, Ministry of Internal Affairs and Ministry of Justice), the civil society (associations of county councils, DGASPC, NGO, universities) and international organisations (UNICEF).

At the local level, the Local Intersectorial Team for the Prevention and Control of Violence Against Children and Family Violence (LIT), provisioned by Government Decision no. 49/2011, annex 1, through the extension of the powers of LIT for the prevention and control of the labour exploitation against children, ensures the coordination of actions in this sector, including the prevention and fight against the sexual exploitation and abuse against children. Currently, extended LIT are operational in 19 counties and 2 districts of Bucharest Municipality. Mention should be made that sexual exploitation is one of the worst forms of child labour, which explains the relevance of classic LIT, namely, they are operational in 25 counties and 3 districts of Bucharest.

Minimum composition of LIT for the prevention and control of the labour exploitation of children: DGASPC, territorial employment inspectorate, police inspectorate, school inspectorate, public health directorate and NGO. The minimum composition of the extended LIT shall have, in addition to item a), the gendarmerie inspectorate.

Moreover, for LIT, Government Decision no. 49/20011, annex 1, also recommends the involvement by the representatives of city halls, trade unions, owners' associations, churches, probation services, forensics medicine entities,

emergency reception centres and regional centres of the National Agency against Trafficking in Human Beings within the Ministry of Internal Affairs.

Other structures in charge with the prevention and control of the labour exploitation of children and child trafficking:

In consideration of the obligation of the local public administration authorities to guarantee and promote the observance of the child rights in the administrative and territorial units under their jurisdiction, Law no. 272/2004 stipulates the obligation to involve the local community in the process of identifying the needs of the community and to settle the social concerns referring to children at local level. For this purpose, the set up of the **consultative community structure** (CCS) is stipulated (Article 103 of Law no. 272/2004, with subsequent amendments).

The members of CCS shall be citizens of the community – official and unofficial leaders – wishing to become involved as voluntaries in the intervention process in view of settling the concerns of the community: local counsellors, priest (irrespective of religion) and/or religion teacher, proximity police officer, family doctor and/or paediatrician, school counsellor, school principal and/or head teachers, president of an owners' association, representative of any other (religious, youth, women, minority, etc.) association in the community, former beneficiaries of social services, local mass-media representative, business operators/business men, leaders of community ethnic groups.

CCS recommends SPAS in the locality to take measures in order to settle certain cases by the provision of services, as well as by actions to prevent the labour exploitation of children, sexual exploitation and children trafficking, such as:

- informing the members of the community in relation to this concern (during "parents' school" or support groups/ families);
- identification and proposing actual solutions for children in jeopardy of labour exploitation, sexual exploitation and children trafficking (day centres, counselling and support centers);
- facilitating the access of vulnerable families to the existing support services;
- notifying DGASPC in relation to cases of children victims.

b. the media to provide appropriate information concerning all aspects of sexual exploitation and sexual abuse of children (Article 9, para. 3, Explanatory Report, para. 74);

ANSWER*:*

The cooperation of the judicial authorities with the media is performed with the aim of providing information in order to inform the public about the offences which aim at the sexual abuse and about cases of sexual abuse, as soon as possible, that is immediately after they have found out about such acts (by press releases), but ensuring the respect of the protection of personal data according with Law No. 677/2001 concerning the protection of personal data and free circulation of these data;

In this context, however, we would like to mention that the editorial independence of the providers of audiovisual media services is guaranteed according with the provisions of art. 6, para. (1)-(3)[23] of the Law concerning the audiovisual media.

[23] ARTICLE 6
(1) Censorship of any kind upon audio-visual communication is forbidden.

In section 10 of the Audiovisual Code, the Council defined non-commercial messages which can be broadcast outside the time which is counted as advertising.

If there are social campaigns performed by associations or legally established foundations in the field of the prevention of sexual exploitation or sexual abuse on children, they can be broadcast in accordance with applicable legal provisions.

In addition, please see the information provided within the answer at question 8, regarding the awareness rising campaigns promoted by means of media.

c. the financing, including, where appropriate by the creation of funds, of the projects and programmes carried out by civil society aimed at preventing and protecting children from sexual exploitation and sexual abuse (Article 9, para. 4, Explanatory Report, para. 75). May the proceeds of crime be used to finance the above mentioned projects and programmes? Please provide details (Article 27, para. 5, Explanatory Report, para. 193).

Such programs/projects are financed from budgetary funds, by the institutions and ministries involved in the activities of protection of crime victims, and not directly from the proceeds of crimes.

The proceeds of crimes, however, go to the national budget, so they are used only in an indirect mode for the scope mentioned above.

The Ministry of Public Finances manages the „Swiss-Romanian Program for the Reduction of Social and Economic Disparities within the Extended European Union" which makes available a thematic fund for the civil society where, based on open calls, projects can be submitted.

The program mentioned is operational based on the „Framework Agreement between the Romanian Government and the Swiss Federal Council concerning the implementation of the Swiss-Romanian Program for the Reduction of Social and Economic Disparities within the Extended European Union" signed in Berne on the 7. September 2010 and approved by the Government's Decision No. 1065/2010.

Within this program, the Thematic Fund for Reform concerning the participation of the civil society has as its objective the promotion of the civil society as an actor within the reforms which are focused on environmental issues, provision of social services, as well as for the development of the organizational capacity.

The first call for grants for NGOs was launched in 2012, whereas the next one is scheduled to be launched in the last quarter of 2014 or at the beginning of 2015.

Detailed information on the Swiss-Romanian Cooperation Program is available at www.swiss-contribution.ro.

We would also like to mention at this point the relevant provisions of the domestic legislation concerning the conditions for granting the statute of public utility to a non-governmental organization.

The associations and foundations operating in the field of child protection can be granted public utility status, with the condition of fulfilling certain conditions, provided by the Government Ordinance no. 26/2000 on associations and foundations.

---

(2) Editorial independence of audiovisual media services providers is acknowledged and guaranteed by this law.

Any kind of interference of public authorities or any Romanian or foreign natural or legal persons in the content, shape or illustration methods of elements comprised in the audiovisual media services is forbidden.

According to art. 38 para. (1) of the Government Ordinance no. 26/2000 on associations and foundations , association, foundation or federation can be granted the statute of public utility by the government, if the following conditions are met:

- its work is conducted in the public interest or in the interest of communities, as appropriate;
- it has been functioning for at least three years, having achieved the targets established and it can prove a continuous activity by significant actions ;
- it submits a progress report showing prior significant activity, by carrying out specific programs or projects, together with the annual financial statements and revenue and expenditure budgets for the last three years preceding the date of application;
- it holds a patrimony, logistics, staff members and personnel corresponding to its purpose ;
- it proves the existence of cooperation agreements and partnerships with public institutions or associations or foundations in the country and abroad ;
- it makes the prove of obtaining significant results according to its purpose or it submits letters of recommendation from the competent authority in the country or abroad, which recommends further work .

The public utility statute gives the association or foundation the right to be granted free use of public property, the right to mention its public utility statute in any document issued.

The association or foundation will also have a series of obligations, among which being the obligation to maintain at least the level of activity and performance that have led to the recognition, the obligation to notify the competent administrative authority of any changes to the constitutive act and statute, and to also communicate the annual activity reports and financial statements.

Question 12: Effectiveness of preventive measures and programmes

a. Please specify whether an assessment of the effectiveness and impact of the preventive measures and programmes described in replies to questions 4, 10 and 11 is regularly carried out;

ANSWER:

There are no special provisions concerning the regular assessment of the measures and programs of prevention in the field covered by the Convention, but they are checked periodically like any other measure/program of prevention by persons who have management duties within these measures/programs.

b. Please provide examples of the good practices in preventing sexual exploitation and sexual abuse of children.

ANSWER:

Most of DGASPCs mention as good practices the following: information in schools, education for parents and information of professionals through ICT. Other examples:

- “Mobile school”, unique in Romania, organized by Save the Children, Iasi branch, providing basic education for children direct into their community through activities that help to the prevention of any form of violence against children.

- Harghita: Facebook page (www.facebook.com/eroszakviolenta) for the prevention and combat of domestic violence, where are presented information, methods and practical guides.

- In 2011 the Institute for Crime Investigation and Prevention (ICPC) within the General Inspectorate of the Romanian Police carried out within the Project RO0041 **„Strengthening the capacity of the Romanian law enforcement agencies to prevent and investigate internet child pornography cases",** initiated by the Romanian Police and the Norwegian Police and financed by the economic mechanism of the European area, the information and prevention campaign **WHO DO YOU ACCEPT?**

Prior to the public launching of the campaign, in 2010, the I.C.P.C. carried out a **survey in 50 schools all over Romania**, on which occasion the **target group** was identified – students in secondary school (aged 11-14) and **its main vulnerabilities** - the long time spent at the computer, the easiness of communicating and posting different photos on online media accounts, lack of protection of personal data and the willingness to meet in real life with persons only met in the online environment, without informing anyone close about such dates.

The aim of the campaign was the **information of secondary school students aged between 11 and 15 and raising the awareness of the public** about concrete ways of **avoiding child victimization via the internet.** The activities were also addressed to parents and teachers and aimed at making them familiar with the online realities and with ways of protecting children.

The campaign was carried out at national level and had two components: a media related one which took the shape of the presentation of short films on TV, radio and TV screens, of online information (on social networks included) and one component of preventive intervention carried out by police workers within crime prevention units in all districts and Bucharest in 50 schools, reaching 600 students enrolled in secondary education.

Results: gathering in schools: **864 actions, direct beneficiaries - 32.038** students in secondary school.

At the end of 2011 a **research based on questionnaires applied to 900 students** belonging to the target group was performed for a qualitative assessment of the campaign. Thus the size of the individual unit established in 2010 was maintained, whereas the dynamics of certain behavioural indicators was observed. In this way some remarkable positive results were achieved which translated into changes of attitude and behaviour concerning the online environment, like for example:

- If in 2010**, 12,7%** of the children had offered on the internet, without any reluctance, information about themselves and their family, in 2011 the percentage is of only **5,6%**;
- If in 2010, **36,4%** of the children considered that the internet is a safe playground, in 2011 only **25,1%** of them continue to believe so;
- If in 2010, **more than 50%** of the children expected that persons with whom they interact on the internet to give their real data, currently the percentage is **41,8%;**
- The percentage of the children who would be afraid to meet alone with a person they know from the internet increased from **62,9%** to **84,3%**, which is a good result given the low age of the respondent children (11-14 years).

The positive dynamics of such kinds of behaviour can also be a result of the activities carried out within the campaign „**WHO DO YOU ACCEPT?".**

PROTECTION AND PROMOTION OF THE RIGHTS OF CHILDREN VICTIMS OF SEXUAL EXPLOITATION AND SEXUAL ABUSE

Question 13: Reporting suspicion of sexual exploitation or sexual abuse

a. Are professionals working in contact with children bound by confidentiality rules? Do these rules constitute an obstacle for reporting to the services responsible for child protection any situation where they have reasonable ground for believing that a child is a victim of sexual exploitation or sexual abuse? Please indicate the criteria or guidelines which allow for the waiving of confidentiality rules (Article 12, para. 1, Explanatory report, para. 89);

ANSWER:

Persons who work with children are subject to some rules of confidentiality which are specific to their activity (e.g. doctors, teachers, social workers) but these rules are not an obstacle for the possibility to activate child protection services in case there are doubts concerning sexual exploitation or abuse (for example such a person is not liable to be sanctioned by the criminal law - art. 227[24] of the new Criminal Code – because he/she discloses such "legal" data in a justified way).

The law also provides for the obligation of public or private institutions which, given the character of their profession, have contact with children and doubts concerning a possible case of abuse, negligence, exploitation and any form of violence on the child or ill-treatment applied to the child, to immediately inform the general directions for social assistance and child protection.

Moreover, any person who, given the character of its profession or employment, works directly with children and has doubts concerning a possible case of abuse, negligence, exploitation or any form of violence on the child has the obligation to immediately inform the social assistance service or the general direction for social assistance and child protection on whose area of territorial competence the respective case was identified[25].

---

[24] ARTICLE 227
Disclosure of professional information
(1) Unrightfully disclosure of data or information concerning a person's private life, of a nature to produce damages to such person by the one who was informed to this aimed, in the virtue of the profession or position held and who has the obligation to keep such information confidential shall be punished with 3 months to 3 years imprisonment or a fine.
(2) The penal action shall start upon the prior complaint of the injured person

[25] **Law no. 272/2004 on the protection and promotion of the rights of the child:**
ARTICLE 85
(1) The child has the right to be protected against any forms of violence, neglect, abuse or maltreatment.
(2) Any natural or legal person, as well as the child, can notify the authorities empowered by law to take appropriate measures, in order to protect the child against any forms of violence, including sexual violence, harm or physical or mental abuse, maltreatment or exploitation, abandonment or neglect.
(3) The staff of the public or private institutions who come into contact with the child through the nature of their profession and have suspicions concerning a potential case of child abuse, neglect or maltreatment, must urgently notify the general department for social security and child protection.

ARTICLE 91

Law No. 272/2004 also provides expressly for the obligation of the public social assistance service to immediately inform the general direction of social assistance and child protection when it ascertains that the physical, mental, spiritual, moral or social development of the child is jeopardized[26].

Moreover, based on the provisions of art. 48 para. 4 of Law No. 272/2004, „teachers have the obligation to refer to the district centers for resources and educational assistance / the Bucharest Centre for Resources and Educational Assistance the cases of abuse, negligence, exploitation and any other form of violence on children and to inform the public social assistance service or, as case may be, the general direction of social assistance and child protection about these cases."

The Government's Decision No. 49/2011, Annex 1, contains as a working principle the following: "Respect of the confidentiality and of the professional deontological norms without prejudice to the activity of reporting cases of violence or to the activity of investigation of these cases."

As regards the probation services, according with the provisions of art. 66 para. (1) of Law. 123/2006 concerning the statute of the probation staff, the probation staff has the obligation to respect the confidentiality of the data retained in relation to the performance of their professional duties. However there are also exceptions from the confidentiality of data:

- **an exception** from the provisions of para. (1) is allowed for **data provided to judicial bodies** within the criminal trial" – art. 66 para. (2) of Law No. 123/2006;

- Probation officers undertake to maintain the confidentiality of documents which they have access to, according with the applicable legal provisions, for professional purposes. **Making these documents and other information acquired in the exercise of their professional duties available to judicial bodies, in**

---

(1) Any person who, through the nature of his or her profession, works directly with a child and has suspicions concerning the existence of a case of child abuse or neglect, must notify the public social security service or the general department for social security and child protection in whose territorial range was identified the respective case.
(2) For the notification of the cases of child abuse or neglect, at the level of each general department for social security and child protection, a "child telephone line" will be established, and the number should be widely publicized

(…)

ARTICLE 96

In case the child abuse or neglect were committed by persons who, based on a legal working contract or another type of contract, were providing the protection, upbringing, care and education of the child, the employers of these persons must notify immediately the criminal investigation authorities and must separate the respective persons from the children who are in their care.

[26] ARTICLE 36

(1) If there are sound reasons to suspect that the child's life and security are endangered in the family, the public social security service or, if the case, the representatives of the general department for social security and child protection at the level of each sector have the right to visit the children at their residence and to gather information on how the children are being cared for, on the children's health and physical development, education and professional training, and may grant, where needed, the necessary advice.
(2) If, following the visits stipulated under paragraph (1) it is noticed that the child's physical, mental, spiritual, moral or social development is endangered, the public social security service must immediately notify the general department for social security and child protection, in view of undertaking the measures stipulated by the law.
(3) The general department for social security and child protection must refer the case to the court, in case it considers that the conditions required by the law regarding the partial or complete termination of the parental rights of one or both of the parents are met.

accordance with the legal provisions, shall not be an infringement of confidentiality, as probation services have the obligation to cooperate with judicial bodies upon their written request"- art. 7 lit. d) of the Deontological code of probation staff.

As regards the education system, the confidentiality rules do not affect the cooperation of institutions of education and practices of psycho-pedagogical assistance with the general directions of social assistance and child protection, with the district police inspectorate – prevention department, as well as with other legal persons involved in the field of education, which is explicitly mentioned in art. 5 of the Framework Regulation concerning the organization and functioning of district centers / the Bucharest center and of practices of psycho-pedagogical assistance approved by virtue of the Minister's Order No. 5555/2011 for the approval of the Regulation concerning the organization and functioning of district centers / Bucharest centre for resources and educational assistance.

b. Are there any rules encouraging any person who knows about or suspects, in good faith, sexual exploitation and sexual abuse of children to report the facts to the competent authorities? If so, please specify under which conditions and to which authorities (Article 12, para. 2, Explanatory Report, para. 91). Please provide examples of good practice.

ANSWER:

As a general rule provided for in the **Code of criminal procedure**, any person who has knowledge about an offence having been committed can inform the law enforcement agencies (law enforcement agencies are the prosecutor, the criminal investigation structures of the judicial police, special criminal investigation bodies) by filling a criminal complaint. Judicial authorities can also become active ex officio when they find out in any way about an offence having been committed[27].

[27] ARTICLE 288
Notification types
(1) The prosecution services are notified by complaint or denunciation, according to the documents drawn by other investigation authorities provisioned by the law or shall be notified ex officio.
(2) *When, according to the law, the commencement of the penal action is made only upon the prior complaint of the injured party, upon the notification made by the person provisioned by the law or upon the authorization of the institution provisioned by the law, the penal action cannot be started in their absence.*
(3) In respect of the offences committed by militaries, the notification of the commanding officer is required only in what concerns the offences provisioned in Article 413-417 of the Penal Code.
(…)
ARTICLE 290 Denunciation
(1) Denunciation is the information made by a natural or legal entity concerning the commission of an offence.
(2) Denunciation can only be made in person, as provisions of Article 289 (2), (4) - (6) and (8) - (10) shall apply accordingly.
ARTICLE 291
Notifications made by persons in leading positions and by other persons
(1) Any person holding a leading position within a public administration authority or other public authorities, public institutions or other legal entities of public law, as well as any person having control duties, who during the exercise of such duties, found out the commission of an offence for which the penal action starts ex officio are compelled to notify the prosecution services at once and to take measures to prevent the consequences of the offence, the corpus delicti and any other means of evidence from disappearance.

Regarding non-judicial institutions: The General Direction for Child Protection is subordinated to the Ministry of Labor, Family and Social Protection and has as its responsibilities, among other things, the coordination and methodological guidance of activities for the support of the families and of the victims of domestic violence, as well as of the services dedicated to these categories of persons; by the current hotlines (see para. (2) of art. 91 of Law No. 272/2004 in the foot note to the answer pertaining to the previous letter), as well as by the decentralized services it ensures the reception and analysis of any reports which refer to cases of abuse of any kind committed on children, followed by the information of the competent authorities[28].

According with art. 92 and art. 93 of the same law, the General Direction for Social Assistance and is obliged to:

a) check and solve all reports concerning possible cases of abuse, negligence, exploitation and any form of violence on the child;

b) ensure the performance of the services provided for in art. 107, specialized for the needs of the children who are victims of abuse or negligence and of their families.

In order to check the reports concerning cases of abuse, negligence, exploitation and any form of violence on the child, the representatives of the general direction for social assistance and child protection have right of access according to applicable legislation to the headquarters of legal persons, as well as to the domicile of natural persons who care for or ensure the protection of a child. Police authorities have the obligation to support the representatives of the general direction for social assistance and child protection when they perform these checks.

In case the act of abuse, negligence, exploitation or any form of violence on the child was committed by persons, who, based on an employment relationship or other kind of a relationship, ensured the protection, upbringing, care or education of the child, the employers have the obligation to immediately report to criminal investigation bodies and to have the respective person removed from the children (art. 96).

Furthermore, according with art. 87 of Law No. 272/2004, in cases in which children do not come to school and instead work illegally, schools are obliged to report immediately to the public service for social assistance. In such cases, the public service for social assistance together with district school inspectorates and with all other public institutions in charge are obliged to take measures for the school reintegration of the child.

The conditions for such reports and the competent authorities are set out in the Government's Decision No. 49/2011, Annex 1:

---

(2) Any person holding a public office who was appointed by the public authorities or is submitted to the control or supervision of the public authorities in respect of compliance with that public service, who during the exercise of the duties, found out the commission of an offence for which the penal action starts ex officio are compelled to notify the prosecution services at once and to take measures to prevent the consequences of the offence, the corpus delicti and any other means of evidence from disappearance.

ARTICLE 292

Ex officio notification

The prosecution services shall be notified ex officio if finding out that an offence was committed, in any other way than those provisioned in Articles 289-291 and shall sign a record statement to this aim.

Who can report? The child victim or any other person who gets in contact with the child, including professionals, priests, the media. The institutions have to have an internal procedure for reporting which shall be based on the following principles:

- Reporting to competent authorities cannot be conditioned by undergoing the usual internal/hierarchical procedure;
- The internal procedure may not delay without cause or in excess the reporting to the competent authorities, may not make difficult or hinder the collection of evidence;
- The internal procedure may not exclude or forbid in any way the reporting to the competent authorities;
- The internal procedure has to meet the working principles set out in the present framework methodology and in the UN Convention on children's rights;
- In emergency situations, dangerous situations, the reporting to the competent authorities shall be done prior to any internal procedures (…)"

How to report? Directly, via the telephone, in writing and self-reporting. It is recommended to immediately report all emergency situations via the children's hotline within the DGASPC. Sexual abuse and intolerable labour (sexual exploitation included) do belong to emergency situations.

The authorities who can report according to the legal provisions are as follows: SPAS, DGASPC, police and prosecution offices. The reporting to the DGASPC is mandatory and the other authorities, in their turn, have to refer the case to it in order to ensure the assistance and protection of the child.

Question 14: Helplines

Which legislative or other measures have been taken to encourage and support the setting up of information services, such as telephone or internet helplines, to provide advice to callers, even confidentially or with due regard for their anonymity? (Article 13, Explanatory Report, para. 92).

ANSWER:

- According to art. 91 of Law No. 272/2004, the general directions for social assistance and child protection have the obligation to manage a hotline for reporting cases of abuse on the child.

In the fulfilling of this obligation, most of the DGASPC have a short number (for example 983) free of charge, whereas some of them also have a mobile intervention team; this number is posted on the internet website of the respective general direction and can be dialled 24 hours a day in emergency cases.

Examples:

http://www.protectiacopilului6.ro/directia-protectia-copilului_doc_11_serviciul-asistenta-in-situatii-de-abuz-neglijare-trafic-si-exploatare-a-copilului-s-a-s-a-n-t-e-c_pg_0.htm

http://www.dgaspc-arad.ro/

http://www.dgaspcbacau.ro/site/telefonul-copilului-ttt-12.html

http://www.protectiasocialaalba.ro/

- According to art. 5 of Law No. 211/2004 concerning victim protection, the Ministry of Justice and the Ministry of Administration and Internal Affairs, with the support of the Ministry of Communication and Information Technology, have the obligation to

ensure the operation of a hotline for the information of victims of crimes. The access to the hotline in para. (1) is free of charge and requires the dialling of a unique telephone number
(http://www.just.ro/MinisterulJusti%C8%9Biei/Informa%C8%9Biipublice/Informa%C5%A3iiutile/tabid/782/Default.aspx).

- At the level of the ANITP there is the hotline 0800800678 (http://anitp.mai.gov.ro/en/index.php?pagina=contact).

- According with Decision No. 321/15.04.2008 of the National Authority for Regulation in Communications and Information Technology (concerning the allocation and use of national short numbers for services harmonized at European level) – there has been established a hotline with the unique number 116 111 (children's hotline).

Starting the 1st of October 2008, 116 111 has become functional at the national level. Romania was the third country in Europe which provided children with this facility, following the EC Decision.

The child assistance hotline 116.1111 is managed by the association Telefonul Copilului (Children's Hotline Association) which is a full member of the Child Helpline International, cooperating with media partners, organizations, companies, the on-line environment (http://www.telefonulcopilului.ro/home).

Ministry of Education, the Romanian Police, Romanian Office for Adoptions, the Ministry of Labor, Family, Social Protection and Elderly are partners of this children helpline project.

- The hotline for missing children 116.000 is managed by the non-governmental organization FOCUS (Romanian center for missing children and sexually abused children - http://www.copiidisparuti.ro/en/, http://www.copiidisparuti.ro/ro/); FOCUS also has as partners the DPC-MMFPSPV, the local police inspectorates, the General Inspectorate of Police, the Special Telecommunications Service and the DGASPCs.

- The hotline www.safernet.ro is operational for reporting cases of internet violence and is part of the program Sigur.info.

Sigur.info project is implemented by a consortium made of Save the Children Romania Organization, Romanian Center for Missing and Exploited Children (FOCUS) and Positive Media, in cooperation with relevant public institutions (DCP-MLFSPE, General Inspectorate of Romanian Police, National Authority for Administration and Ruling in Communication and National Association of Internet Service Providers from Romania). „Sigur.info" is financed by the European Commission.

The SAFERNET.RO Hotline is a civil contact point, which receives and processes reports related to illegal or harmful materials for children on the internet, particularly child sexual abuse materials.

The hotline is operational since 2010. Operational 24/7, the Romanian hotline can be accessed at www.safernet.ro, providing several means for the public to report any illegal material regarding children from the internet: an online form on the website, by email/phone/fax/direct mail or via the Safernet.ro Mobile Web App.

For the last three years, the Hotline team has constantly developed public awareness campaigns targeting not only children but also parents, teachers, authorities and other stakeholders. During these campaigns, many informative sessions and age-appropriate materials have been disseminated.

Sigur.info project also includes an advice line (http://helpline.sigur.info/).

Question 15: Assistance to victims

a. Please indicate which types of assistance described in Article 14 are provided to victims of sexual exploitation and sexual abuse of children. (Explanatory Report paras. 93-100) Please specify:

- **how the assistance is adapted to the victims' age and maturity;**
- **how due account is taken of the child's views, needs and concerns;**
- **if the assistance (in particular emergency psychological care) is also provided to the victims' close relatives and persons responsible for their care.**

ANSWER:

Law No. 211/2004 concerning some measures for ensuring the protection of victims of crime establishes the following types of assistance:

- Information of the victims by the judicial authorities (it is not subject of the present question, it shall be detailed in the next questions)

- Right to psychological assistance, granted by probation services.

The victims of certain categories of offences, among them: domestic violence, intentional offences which resulted in the victim's bodily harm, rape, sexual assault, sexual intercourse with a child and sexual corruption of children, ill-treatment applied to children, trafficking in children, as well as the attempts to all these offences, have the right to psychological assistance.

Psychological assistance is granted in case of child victims for a period of up to 6 months.

With a view to granting some forms of assistance adapted to children who are victims of these types of offences, the probation services at local level have concluded protocols of cooperation with the general directions for social assistance and child protection, with the pubic service for social assistance within municipalities, with the anti-trafficking centers, with mental health laboratories, as well as with different non-governmental organizations which are active in this field.

The assistance provided by probation services is not for close relatives of the victim or for the persons who are in charge with the victim's care.

The application for free psychological assistance is to be submitted to the probation service in whose area of jurisdiction the victim resides.

The Law also sets out that non-governmental organizations can provide, independently or in cooperation with public authorities, services for the psychological counselling of the victims of crime and for ensuring other forms of assistance of the victims of crime. To this end non-governmental organizations can benefit, according with the applicable legislation, from subventions from the state budget.

- Right to free legal assistance:

The victims of certain offences, among them rape, sexual assault, sexual intercourse with a child, as well as the spouse, children and the persons who were looked after by the persons killed as a result of the offence of murder have upon request the right to free legal assistance.

The free legal assistance of the victims of other types of offences is also possible and can be ordered by the court according with the conditions enlarged upon in the answer to question 21c).

- Right to financial compensation from the state.

Victims of trafficking in children also have the right to the special measures of protection and assistance provided for in **Law No. 678/2001[29] concerning the**

[29] CHAPTER 5

Protection and assistance of the victims of trafficking in persons

ARTICLE 26

(1) The victims of the offences of trafficking in persons shall be granted special physical, legal and social assistance.

(2) The private life and identity of the victims of trafficking in persons shall be protected.

(3) The victims of the offences provided by this law shall be entitled to their physical, psychological and social rehabilitation

(4) The minors who are victims of trafficking in persons shall be granted special protection and assistance, depending on their age.

(5) The women who are victims of the offences provide by this law, as well as those subjected to a high level of risk of becoming victims of these offences shall be granted a special protection and social assistance.

ARTICLE 27*)

(1) The Ministry of the Interior shall ensure the physical protection of victims of the trafficking in persons, according to Article 113 of the Code of Penal Procedures.

(2) The National Agency against Trafficking in Persons, in co-operation with the concerned institutions, as well as with nongovernmental organizations, international organizations and representatives of the civil society committed to protect and assist the victims of trafficking in person, shall ensure for them the psychological support and necessary assistance for social integration.

(3) The National Agency against Trafficking in Persons shall monitor the assistance granted to the victims of trafficking in persons and shall facilitate their participation to prosecution and trial, by carrying on activities aimed to facilitated the act of justice.

ARTICLE 27^1

The medical care for victims of the trafficking in persons shall be ensured according to the regulations on social health insurance.

ARTICLE 27^2

(1) In order to improve the access of the victims of the trafficking in persons to the assistance and protection services, the institutions and nongovernmental organizations with responsibilities in this matter shall cooperate for the application of the National mechanism for identification and referral of the victims of the trafficking in persons.

(…)

ARTICLE 28

(1) The Romanian citizens who are on the territory of other countries and who are victims of the trafficking in persons shall be granted, upon request, assistance from the diplomatic missions and consular offices of Romania in these countries.

(2) In order to repatriate the Romanian citizens, victims of the trafficking in persons, the Ministry of Foreign Affairs shall ensure their transportation.

ARTICLE 29

The Ministry of Foreign Affairs, through the diplomatic missions and consular offices of Romania, shall release, if necessary, with a view to repatriation, the identity documents of the Romanian citizens who were victims of the trafficking in persons, within a reasonable time, without unjustified delay.

(…)

ARTICLE 31

The Ministry of the Interior shall ensure, through its specialized structures, to all Romanian cross-border units, specialized personnel trained to identify and take over the victims, with a view to directing them to specialized institutions.

ARTICLE 32

(1) The victims of the trafficking in persons may be accommodated, upon request, on a temporary basis, in centers of assistance and protection for victims of the trafficking in persons, hereinafter called centers, or in protected homes for victims of the trafficking in persons, established pursuant to this law, hereinafter called protected homes.

(2) The centers are operating under the subordination of the county councils of Arad, Botosani, Giurgiu, Iasi, Ilfov, Mehedinţi, Satu Mare and Timis.

(3) The protected home is the social dwelling, with no legal status, developed to ensure the victims of the trafficking in persons, family type shelter in a protected system and assistance for the social reintegration of the victims.

(4) The protected homes are organized and operate under the subordination of the directorates general for social assistance and child protection.

(5) The period of accommodation in the centers or protected homes shall be established by decision of the county council and it cannot exceed 90 days.

(6) The period of accommodation in the centers or protected homes may be extended, by decision of the county council, upon the request of the judicial bodies, up to 6 months or, as applicable, until the end of the penal process.

(7) The centers and protected homes shall be arranged and endowed so as to offer decent conditions of accommodation and personal hygiene, food, psychological counseling and medical care.

(8) Assistance services shall be established for the adult victims of the trafficking in persons within the general directorates for social assistance and child protection.

(9) The funds for the current expenses and capital for the centers provisions in paragraph (2), as well as for the protected homes provisioned in paragraph (4) shall be collected from the local budgets of the counties where these are operational.

(10) The costs related to the accommodation, assistance and protection of the victims of the trafficking in persons, as well as their transportation between the administrative local units where they were identified and the ones in which the centre or protected home is located and in which they are to be accommodates/assisted shall be covered from the local budgets of the counties where the centers or protected homes are operational.

(11) According to the evolution of the phenomenon of trafficking in persons in Romania, the General Council of Bucharest Municipality or the county councils, other than the ones provisioned in paragraph (2) may establish centers pursuant to paragraphs (7), (9) and (10).

ARTICLE 33

(1) The victims of the trafficking in persons, temporarily accommodated, shall be provided with information and counseling to benefit by the facilities provided by the law for the persons marginalized by the society, by the social workers within the local council apparatus, in the area where the information centers are operational.

(2) The payments of the contributions to the social insurance systems for the victims of the trafficking in persons shall be made by the local public administrative authorities from the local budgets, out of the sums received to this aim from the state budget.

(3) The sums necessary for the payment of the contributions to the social insurance systems for the victims of the trafficking in persons by the local public administrative authorities shall be allotted annually and entirely according to the laws of the state budget from certain incomes to the state budget by a specific inclusion in the budget of the Ministry of Labor, Family and Social Welfare.

(4) The procedure on the transfer to the local budget of the sums provisioned in paragraph (3), as well as the payment of the contributions to the social insurance systems for the victims of the trafficking in persons to the National Health Insurance Fund, shall be sanctioned by government decision.

ARTICLE 34

(1) The regulation of organization and operation, as well as the organizational structure of the centers and protected homes shall be approved by the county council, or if may be the case, by the General Council of the Bucharest Municipality, with the advisory opinion of the National Agency against Trafficking in Persons.

(…)

ARTICLE 35

(1) The county employment agencies of the counties shall organize, according to the law, short-term special programs for the professional training of the accommodated victims.

(2) As well, the agencies mentioned in paragraph (1) shall ensure, with priority, counseling and labor mediation services for the victims of the trafficking in persons for the purpose of finding employment.

(3) Persons presenting a high risk of being subject to trafficking and victims of the trafficking in persons, with right to work in Romania, shall benefit free of charge and with priority of the services provided by the county employments agencies, namely those of the Bucharest municipality, according to the legal regulations on unemployment insurance and incentives concerning employment.

ARTICLE 36

The victims of the trafficking in persons who are Romanian citizens may be granted social homes, with priority, by the local councils of the city of residence.

ARTICLE 37

Romania shall facilitate for the foreign citizens, victims of the trafficking in persons, the return to their home country without any unjustified delays and shall ensure safe transport to the Romanian state border, unless otherwise provided in bilateral agreements.

ARTICLE 38*)

(1) The aliens who are victims of the trafficking in persons may be accommodated in specially arranged centers according to the Government Emergency Ordinance No. 194/2002 on the status of aliens in Romania, republished, as subsequently amended and supplemented, without the need of taking them into public custody. To this end, the administration of such centers shall arrange special spaces separately from those aimed for the accommodation of the aliens taken into public custody.

(2) The aliens who are victims of the trafficking in persons and who apply for a form of protection in Romania may be accommodated in specially arranged spaces, according to the Government Ordinance No. 122/2006 on asylum in Romania, subsequently amended and supplemented.

(3) The accommodation of the persons provided in paragraph (1) shall be approved by the director general of the Romanian Office for Immigrations, upon the written request of the competent authorities.

ARTICLE 38^1

The provisions referring to the victims of the trafficking in persons, Romanian citizens, shall also be applied to the victims of the trafficking in persons, citizens of a Member State of the European Union or of the European Economic Area.

ARTICLE 39

If the aliens, victims of the trafficking in persons do not have any identity document or the ID was lost, stolen or destroyed, the Ministry of Administration and Interior may request to the embassies accredited in Romania the issuance of a new passport of travel document, accordingly, for the victims, except for the applicants for asylum or persons under protection in Romania.

ARTICLE 39^1

(1) The aliens about which there are serious indications that they are victims of the trafficking in persons shall benefit by a recovery and reflection period of up to 90 days, to recover, to be released from the influence of the offenders and to make a decision knowingly regarding the co-operation with the competent authorities, time interval when the Romanian Office for Immigrations shall grant, upon the request of the prosecutor or of the court, the permission to stay on the Romanian territory. During the recovery and reflection period the aliens shall enjoy the rights provided in Article 38.

(2) During or upon the termination of the reflection period, the aliens who were victims of trafficking in persons may be granted, upon request, a temporary stay permit, under the terms of Government Emergency Ordinance No. 194/2002, republished, as subsequently amended and supplemented.

(3) The reflection period ends in any of the following cases:

a) There a finding according to which the victims of the trafficking in persons are re-establishing contact, on their own volition, with the offenders;

b) There is a danger for the public order and national security;

c) The status of victim was invoked without any justification.

(…)

ARTICLE 39^2

(1) The Romanian citizens about which there are serious indications that they are victims of the trafficking in persons shall benefit by a recovery and reflection period of up to 90 days, to recover, to be released from the influence of the offenders and to make a decision knowingly regarding the co-operation with the competent authorities.

(2) During the recovery and reflection period, the Romanian citizens shall benefit of psychological counseling, medical care and social assistance, medicines and food, as well as accommodation, upon request, in the centers or protected homes and they are informed in respect of the applicable judicial and administrative procedures.

(3) The reflection period ends in any of the following cases:

a) There a finding according to which the victims of the trafficking in persons are re-establishing contact, on their own volition, with the offenders;

b) There is a danger for the public order and national security;

c) The status of victim was invoked without any justification

(…)

ARTICLE 41

prevention and fight of trafficking in human beings, among which we would like to mention:

- right to physical, psychological and social recovery, special protection and assistance, depending on their age,
- right to physical protection ensured by the Ministry of Internal Affairs, assistance granted by the diplomatic missions and consular offices of Romania in case of citizens who are on the territory of other states,
- temporary accommodation upon request in centers of assistance and protection of the victims of trafficking in human beings, free of charge organization by the district agencies for employment of special short term programs for the professional training of the victims in these centers, information and counselling in order to benefit from the facilities granted by law to social disadvantaged people.
- protection of private life and identity.
- possibility to be granted with priority a social housing.

Victims of trafficking in human beings can be included, according with the legal provisions applicable, in the Program for the witness protection if they provide to the criminal investigation authorities or to the court data and information which are paramount for the identification and prosecution of the offenders.

Law No. 217/2003 concerning the prevention and fight of domestic violence establishes special measures for protection of the victims of domestic violence.

According to art. 6 of the law, the victim has the right

a) to respect of its personality, dignity and private life;

b) to information about the exercise of its rights;

c) to special protection, adapted to the situation and its needs;

d) to services of counselling, rehabilitation, social reintegration, as well as to free medical care, according to the provisions of the present law;

e) to free counselling and legal assistance, according with applicable law.

The victim can be placed in emergency centres or centres for the recovery of the victims of domestic violence. These facilities offer to victims of domestic violence social services free of charge.

The foreign citizens who are minors and accompany the victims of the trafficking in persons who are themselves victims, the provisions referring to the aliens' regime in Romania shall apply accordingly.

ARTICLE 42

The associations and foundations who make the proof of carrying on programs of social work services for the victims of the trafficking in persons, such as: accommodation, mental, psychological and legal counseling, medical care, shall benefit by subsidies from the state budget or, as applicable, from the local budgets, under the law.

ARTICLE 43

The victims of the offences provided in this law shall be entitled to receive information with regard to the applicable judicial and administrative procedures, in the language they understand.

ARTICLE 44

(1) The persons provided in Article 43 shall be entitled to receive mandatory legal assistance to be able to exercise their rights within the criminal proceedings provided by the law, in all stages of the criminal trial, and to support their applications and civil claims against the persons who committed the offences provided by this law in which they are involved.

(…)

The emergency centres[30] ensure free of charge, for a certain period of time, family assistance both to the victim and to the children who are looked after by the victim, protection against the offender, medical care and support, food, accommodation, psychological counselling and legal assistance, according with the instructions for their organization and functioning.

The recovery centers for the victims of domestic violence[31] ensure the accommodation, support, legal assistance and psychological assistance, support for adapting to an active life, professional integration of victims of domestic violence, as well as their social rehabilitation and reintegration.

Furthermore, in order to ensure the respect of the right to be protected against any type of abuse or negligence, Law No. 272/2004 provides for some services specialized for the needs of abused children, like follows: day services, family type services and residential type services[32].

---

[30] ARTICLE 17

(1) The emergency centers, further referred to as shelters, are social assistance units, with or without legal status, of residential type, which provide protection, accommodation, care and counseling to the victims of domestic violence.

(2) Public shelters have to provide free of charge, for a determined period, family assistance to the victim as well as to the minors in the victim's care, protection against the aggressor, medical care, food, accommodation, psychological assistance and juridical counseling, according to the organization and operation instructions drawn up by the authority.

(3) The reception of the victims in the shelter takes place only in emergency cases or upon written approval of the director of the general directorate for social assistance and child protection, when the isolation of the victim from the aggressor is imposed as a protection measure. The access in the shelter's building, where the victims are received, is forbidden to the persons who committed the act of aggression.

(4) The location of the shelters is secret for the public.

(5) The isolation of the victims from their aggressors can be done with their consent or, depending on the case, of the legal representative.

(6) All shelters shall conclude a cooperation agreement with a hospital or another health unit able to provide medical and psychiatric care. The agreement is concluded by the local councils, and namely by the Bucharest district councils or, as the case may be, by the county councils, as well as by the leading bodies of the accredited providers of social services.

[31] ARTICLE 18

(1) The recovery centers for the victims of domestic violence are social assistance units or residential type, with or without legal status, ensuring accommodation, care, legal and psychological counseling, support in order to adapt to an active life, professional insertion of the victims of domestic violence, as well as their rehabilitation and social reinsertion.

(2) The Recovery centers for the victims of domestic violence shall conclude cooperation agreements with the county employment authorities and those assigned to the Bucharest municipality sector in order to grant their support for the professional integration, re-adaptation and requalification of the assisted persons.

(3) Provisions of Article 17 (5) and (6) shall apply accordingly.

[32] ARTICLE 107

(1) In order to prevent the child's separation from his or her parents, as well as in order to provide special protection for the child who has been separated, either temporarily or definitively, from his or her parents, the following types of services are organized and made operational:

a) day-care services;

b) family-type services;

c) residential services

(2) The framework-regulation concerning the organization and operation of the services stipulated under paragraph (1) is approved through a Government decision.

ARTICLE 108

(1) The day-care services are those services which provide the maintenance, re-establishment and development of the capacities of the child and of his or her parents, in order to overcome situations which may determine the child's separation from his or her family.

(2) Access to these services is made based on the service plan or, if the case, on the individualized protection plan, in accordance with the present law.

ARTICLE 109

The family-type services are those services which, at the domicile of a natural person or a family, provide the upbringing and care of the child who has been separated, either temporarily or definitively, from his or her parents, as a result of enforcing the placement measure, in accordance with the present law.

ARTICLE 109^1

(1) Children may be placed in the care of families and persons who reached the age of 18 years old, have fill exercise capacity, have their residence in Romania and present the moral guarantees and the material means needed to raise and care for the child who is separated, temporary or definitively, from his or her parents.

(2) In order to decide the placement measure, the general directorate for social welfare and child protection shall take the necessary steps for the identification of the extended family members next to whom the child enjoyed his or her family life, in order to consult them and to involve them in the establishment/revision of the objectives of the protection personalized plan.

(3) The activity of the person certified as maternal assistant, according to the law, shall be carried on pursuant to a contract of a special nature, related to child protection, and signed with the directorate or a private accredited institution having the following characteristics:

a) The activity to raise, educate and care for the children in placement, which is carried on at the residential premises;

b) The work schedule is imposed by the children's needs;

c) The spare time planning is made according to the schedule of the family and the children in placement;

d) The legal vacation ensures the continuity of the activity, except for the cases in which, during this vacation period, the separation from the child in placement is authorized by the directorate.

(4) The individual work contract is signed on the date when the director is issuing the emergency placement order or when the commission for child protection/court issued the decision on the placement.

ARTICLE 110

(1) The residential services are those services which ensure the protection, upbringing and care of the child who has been separated, either temporarily or definitively, from his or her parents as a result of enforcing the placement measure, in accordance with the present law.

(2) Residential services category includes all services which provide accommodation for more than 24 hours.

(3) The maternal centers are also considered residential services.

(4) The residential services which belong to the public administration authorities are organized only within the structure of the general department for social security and child protection, as functional parts of these departments, with no legal status.

(5) The residential services are organized based on the family model and may have specialized characteristics, according to the needs of the placed children.

ARTICLE 111

(1) In order to ensure the prevention of the child's separation from his or her family, the local councils of the cities, towns, communes and Bucharest sectors, must organize, either autonomously or in association, day-care services, according to the needs identified within the respective community.

(2) In case the local council does not identify enough financial and human resources to organize the services stipulated under paragraph (1), upon the local council's request, the county council will provide the necessary funding for establishing these services. The local council will provide funding up to 50% of the operational expenses of these services, the quota and the total amount of these expenses are established on a yearly basis, through a decision of the county council.

ARTICLE 112

In order to ensure the special protection of the child who is deprived, either temporarily or definitively, of the protection of his or her parents, the county council and the local council of the Bucharest sectors respectively, must organize, either autonomously or in association, family-type and residential services, according to the needs identified at the level of their administrative and territorial

The assistance procedure for children subject to violence is described in detail in the Government's Decision No. 49/2011, Annex 1, in chapter IV concerning the case management in such situations[33]. During this process the needs and opinions of the

---

unit. According to the evaluated needs of the placed children, the county council may also organize and develop day-care services.

[33] **IV. Case management in situations of violence against children and domestic violence**

The method of case management in situations of violence against children shall be applied according to the Order of the State Secretary of the National Authority for the Protection of Children and Adoption no. 288/2006, supplemented with the specific provisions mentioned in this chapter.

Case management is a process pertaining to the following main stages, as detailed below in what concerns the situations of violence against children and domestic violence:

1. Identification, notification, initial assessment and undertaking of the cases related to children who are victims of violence, or accordingly, adults and/or children who are victims of domestic violence.
2. The detailed, comprehensive and multidimensional assessment of the situations involving children who are victims of violence, or accordingly, adults and/or children who are victims of domestic violence, as well as of their family and of the alleged perpetrator/aggressor;
3. Planning specialized support services, as well as other necessary interventions for the rehabilitation of the children who are victims of violence, or accordingly, adults and/or children who are victims of domestic violence, including services and interventions aimed for the family and the alleged perpetrator/aggressor;
4. Providing services and interventions: assisting the children who are victims of violence, or accordingly, adults and/or children who are victims of domestic violence, as well as the family in order to obtain and use the necessary services and to initiate, if may be the case, certain legal procedures;
5. Monitoring and periodical re-assessment of the registered progress, the specialized services and interventions;
6. The end stage or the final stage of the process or providing specialized services and interventions, monitoring the follow up and the closing of the case.

These steps are interrelated in some cases overlap and are not necessarily conducted in the order presented above. It is also important that professionals should encourage and support the involvement and participation of children and families in all stages of this process, whenever possible, taking into account the maturity of the child and using appropriate ways. The same is true for the adult victim of domestic violence, according to its discerning ability.

The steps listed above are customized for the multidisciplinary team of the intervention department, in situations of abuse, neglect, trafficking, migration and repatriation within DGASPC, provisioned by the Government Decision no. 1434/2004 on the duties and framework regulations concerning the organization and operation of the General Directorate of Social Welfare and Child Protection, republished, with subsequent amendments and supplements . These steps must be complied with in any specialized service for child protection against violence against children. It is recommended that the structure department intervention in situations of abuse, neglect, trafficking, migration and repatriation, hereinafter referred to as the specialized department to include: the child helpline mobile team intervention in cases of emergency, the DGASPC representatives in the local sector team to prevent and fight child labor, street social service for street children and the domestic violence department. Moreover, it is recommended that the child helpline to expand their activity to emergencies related to domestic violence, and to be called the child and family helpline, and to include in the mobile intervention team, specialists in preventing and combating domestic violence. The local inter-sector team (EIL) for preventing and fighting child labor exploitation may also have duties in the area of violence against children and domestic violence. EIL does not overlap and inter-disciplinary and inter-institutional team for the assessment and / or intervention in cases of violence against children and domestic violence. EIL has a consultative role for case managers regarding the particularities of the case and cooperation between institutions involved in the case management as

child are considered, depending on the age and level of maturity of the child, and the services are granted to the child, the parents / legal representative and to persons who are important for the child. The services and interventions cover all sectors in

---

well as for the policy makers in the development and review of strategies, establishment of new services, and development of prevention activities by issuance of recommendations.

The EIL structure is established according to the decision of the county/local council. In what concerns the sectors of the Bucharest Municipality, EIL is coordinated by DGASPC, according to the provisions of the Government Decision no. 867/2009 on the prohibition of the dangerous child labor, and its members are representatives of the following institutions:

1. DGASPC;
2. The County Police Inspectorate/General Police Directorate of the Bucharest Municipality and sector police units;
3. The County Gendarmerie Inspectorate/ General Gendarmerie Directorate of the Bucharest Municipality;
4. County directorate for public health/Public Health Directorate of the Bucharest Municipality;
5. County school inspectorate/General School Inspectorate of the Bucharest Municipality;
6. local labor inspectorate;
7. nongovernmental organizations.

It is also recommended the involvement of the representatives of the city halls, syndicates, business environment, church, probation services, forensic units, emergency units and regional centers of the Ministry of the Administration and Interior – the National Agency against the Trafficking in Persons. The EIL member institutions shall conclude partnership agreement for a minimum period of 3 years.

EIL has the following duties:

a) upon the request of the case manager, to provide expertise through its members (specialized information, case advice, references to other specialist, facilitating the involvement of the institution in a particular case);
b) upon the request of the case manager, to facilitate the cooperation between the institutions participating to the case management;
c) to analyze on an annual basis, the statistics registered by DGASPC regarding: child abuse and neglect; exploited children and facing risks of being exploited through labor, children victims of the trafficking in persons, children victims of other forms of violence on the territory of other states and domestic violence;
d) to make recommendations on the improvement of the activity in the area of preventing and fighting the violence against children and domestic violence (action plans, proposals on the review of the existent strategies and plans, establishment of new services, conducting activities of prevention, dissemination of good practices, public information, professional trainings) which are submitted to the policy makers on county level within the biannual reporting;
e) to draw up biannual reports on the activity in the area of preventing and fighting the violence against children and domestic violence, on the basis of the analysis of the statistics, the observed good practices and other relevant information;
f) to identify examples of good practices in this field, for dissemination to professionals;
g) to attend prevention activities taking place in schools and communities, as well as to inform the public, including by mass-medial means;
h) to inform the colleagues within its own institution and the local structures in respect of this framework methodology and other regulations in this matters;
i) to participate to training programs for professionals in this field;
j) to make the annual report on the activity in the field of preventing and fighting violence against children and domestic violence, which shall be submitted to the General Directorate of Social Welfare and Child Protection within the Ministry of Labor, Family and Welfare (DGPC - MMFPS). The annual report includes recommendations on the improvement of the legislation, the monitoring mechanisms and the identified good practices.

The EIL duties are listed in the job description of every member.
In order to achieve those mentioned above, work meeting are organized on a monthly basis, according to the internal procedures of every team, approved by each institution.

which the child has a need, namely the medical, rehabilitation, social, protection, educational sector, etc.

b. Please specify if and to what extent internal law provides for the possibility of removing (Article 14, para. 3, Explanatory Report, para. 99):

- **the alleged perpetrator, when the parent or persons caring for the child are involved in his or her sexual exploitation or sexual abuse;**
- **the victim from his or her family environment when parents or persons caring for the child are involved in his or her sexual exploitation or sexual abuse.**

ANSWER:

Removal of the alleged perpetrator, member of the family, is possible through the protection order, as a new provision of Law no. 217/2003 (art. 23) recently introduced by Law no. 25/2012:

"Art. 23 - (1) The victim of domestic violence, whose life, physical or psychological integrity or liberty is put into danger by one of the family members, may request the court to issue a protection order for temporary one or more following measures – obligations or prohibitions – in order to remove the danger:

a) temporary evacuation of the aggressor from the family home, regardless if he/she is the owner of the property;

b) reintegration of the victim and, where appropriate, of children in the family residence;

c) limitation of the use of the aggressor over only the common part of the residence where it can be shared so that the aggressor does not come into contact with the victim;

d) Order the aggressor to keep a minimum determined distance to the victim, to his/her children or other relatives or to the residence, place of work, or school unit of the protected person;

e) prohibition for the aggressor to enter certain localities or determined areas that the protected person attends or visits periodically;

f) prohibit any contact, including telephone, mail or in any other way, with the victim;

g) obligating the aggressor to give the police the held weapons;

h) custody of children and establish their residence.

(2) By the same decision, the court may order the aggressor to pay rent and/ or maintenance of temporary accommodation where the victim, children or other family members live or will live because of inability to remain in the family home.

(3) If necessary, the court may order the aggressor to be obliged to follow psychological counselling, psychotherapy or recommend measures of control, using some form of treatment or care, especially for detoxification."

Removal of the child from the family environment:

For the protection of the abused or neglected child who, out of any reasons, in order to ensure the protection of his interests, cannot be left with his parents, Law No. 272/2004 provides for the measure of placing the child in care homes or of placing the child urgently in care homes, the legal provisions concerning these measures being detailed in the answer to question no. 9a of the thematic questionnaire.

c. If internal law does provide for this:

- **are the conditions and duration of such removal to be determined in accordance with the best interests of the child?**
- **are social programmes and multidisciplinary structures in place to provide the necessary support for victims, their close relatives and for any person responsible for their care? (Article 11, Explanatory Report, paras. 87-88).**

ANSWER:

Ensuring the respect of the child's best interest:

The child's best interest is taken into consideration in any field in relation to any person with whom the child interacts and any decision which concerns the child, not only child victims of sexual abuse and exploitation, according with Law No. 272/2004, as well as by virtue of other legal acts. For details see the answer to question no. 4 b) in the present questionnaire.

Multidisciplinary programs and structures:

The information concerning the intervention and services specialized for children who are victims of violence and the EILs are mentioned under point 3a and 6. For further details about the ways in which support is granted to child victims see the answer to question no. 15 of the present questionnaire.

d. Which legislative or other measures have been taken to ensure that victims of an offence established in accordance with the Convention in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their state of residence? (Article 38, para. 2, Explanatory Report, paras. 258-259).

ANSWER:

According with art. 289 of the new Code of criminal procedure, in case the complaint is filed by a person who lives in Romania as a Romanian citizen, foreign citizen or stateless person and who reports about an offence having been committed on the territory of another member state of the European Union, the judicial body is obliged to receive the complaint and to refer it to the competent authority in the country in which the offence was committed.

PROSECUTION OF PERPETRATORS OF SEXUAL EXPLOITATION AND SEXUAL ABUSE OF CHILDREN

Question 16: Criminal law offences

a. Please indicate whether the intentional conducts in the box below are considered criminal offences in internal law;

ANSWER:

In internal law the conducts described in this question are considered criminal offences, including complicity and instigation to committing these acts[34]. For the text

[34] The New Penal Code– Law no. 286/2009
GENERAL PART
ARTICLE 47
The instigator

of the pieces of legislation which incriminate these conducts see the foot notes in the answer to question no. 3a)

b. Wherever the intentional conduct which is criminalised differs from the Lanzarote Convention benchmark, please justify;

ANSWER:

There are some differences between the acts incriminated by the convention and the Romanian criminal provisions, as follows:

Having recourse to child prostitution is incriminated only if committed within minors trafficking, which means that, in order to achieve constitutive content of the offense, the minor must also be a victim of trafficking in children (see the offenses of using the services of a exploited person - art. 216 of the new Penal Code, in the answer to question no. 3a);

Possessing child pornography: the Criminal Code only incriminates the possession oh child pornography in the scope of distributing or exposing it (see the content of the child pornography crime – art. 374 of the new Criminal Code, within the answer to question 3a).

Procurement of child pornography for oneself or for another: the law only criminalizes the purchase of child pornography, which involves buying and not simply procuring in any way (see the content of the child pornography crime – art. 374 of the new Criminal Code, within the answer to question 3a);

Knowingly attending pornographic performances involving the participation of children - is punished by the new Criminal Code only if the conditions of complicity or instigation to an offense under the Convention.

For the detailed content of the legal texts criminalizing acts of sexual abuse of children, see the answer to question 3a).

We must mention that Romania is currently in the process of implementing the Directive 2011/93 of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004 / 68/JAI and transposition will achieve full alignment with the standards and Conventions incriminations.

The instigator is the person who deliberately determines another person to commit an act provided by the criminal law.

ARTICLE 48
The accomplice
(1) The accomplice is the person who deliberately facilitates or assists in any manner the perpetration of action provided by the criminal law.
(2) As well, an accomplice is the person who promises, prior to or during the perpetration of the action, not to reveal the assets resulted from the perpetration of that criminal action or to favor the offender, even if after the perpetration of the crime he does not fulfill the promise.

ARTICLE 49
Penalty applied to participants
The co-author, the instigator and the accomplice to an offence committed with intent shall be penalized with the penalty provisioned by law for the author. In determining the sentence, the contribution of each of them in the committal of the offence shall be taken into consideration, as well the provisions of Article 74.

c. Please highlight whether there are any other offences not included in the box below incriminating sexual exploitation and sexual abuse of children in your country? Please provide their definitions and specify in which act these are included;

ANSWER:

Yes, internal law incriminates distinctly trafficking in minors, as well as the use of the services of a person who is subject to trafficking[35].

Furthermore, the offence of ill-treatment applied to a child can, depending on the concrete way of perpetration, also be sanctioned as sexual abuse on children.

d. Please also specify whether the age of a child plays a role in determining the gravity of the offence.

ANSWER:

The age of a child plays an important role in determining the gravity of the offence in the following situations:

- In case of the offences of sexual intercourse with a child and sexual corruption of children – the penalty is different depending on the following:
  - The child has not reached 13 years of age;

---

[35] ARTICLE 197
Maltreatments inflicted to the minor
The parents or any other person in whose care the minor is, grievously jeopardizing, by measures or treatments of any kind, the physical, intellectual or moral development of the minor, shall be punished with 3 to 7 years imprisonment and prohibition on the exercise of certain rights.
(…)
ARTICLE 210
Trafficking in persons
(1) Recruiting, transporting, sheltering or receiving a person for the purpose of his/her exploitation, committed by:
a) Coercion, abduction, mislead or abuse of authority;
b) Taking advantage of his/her inability to protect oneself or to express his/her will or by the obvious vulnerability of such person;
c) Offering, giving, accepting or receiving money or other benefits in exchange of the consent of the person with authority on such person,
shall be punished with 3 to 10 years and prohibition on the exercise of certain rights.
(2) The offence of trafficking of persons committed by a public servant in the exercise of his/her duties shall be punished with 5 to 12 years imprisonment.
(3) The consent of the person subject to the trafficking of persons does not represent justifiable cause.
ARTICLE 211
Trafficking in minors
(1) Recruiting, transporting, sheltering or receiving a minor, for the purpose of his/her exploitation shall be punished with 3 to 10 years and prohibition on the exercise of certain rights.
(2) If this act was committed according to Article 210 (1) or by a public servant during the exercise of his/her duties, the punishment is 5 to 12 years imprisonment and prohibition on the exercise of certain rights.
(3) The consent of the person subject to the trafficking of persons does not represent justifiable cause.
(…)
ARTICLE 216
Using the services of an exploited person
The act of using the services provisioned in Article 182, provided by a person who is a victim of the trafficking in persons or of the trafficking in minors, shall be punished with 6 months to 3 years imprisonment or a fine, if the act does not represent a more serious offence.

- The child is aged between 13 and 15 years;
- The child is aged between 15 and 18 years.

The offence of recruiting children for sexual purposes has as its passive subject the child who has not yet reached the age of 13.

Sexual Abuse (*Article 18*)
1. Engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities;
2. Engaging in sexual activities with a child where
- use is made of coercion, force or threats;
- abuse is made of a recognised position of trust, authority or influence over the child, including within the family;
- abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.

Child Prostitution (*Article 19*)
1. Recruiting a child into prostitution or causing a child to participate in prostitution;
2. Coercing a child into prostitution or profiting from or otherwise exploiting a child for such purposes;
3. Having recourse to child prostitution.

Child Pornography (*Article 20*)
1. Producing child pornography;
2. Offering or making available child pornography;
3. Distributing or transmitting child pornography;
4. Procuring child pornography for oneself or for another person;
5. Possessing child pornography;
6. Knowingly obtaining access, through information and communication technologies, to child pornography.

Participation of a Child in Pornographic Performances (*Article 21*)
1. Recruiting a child into participating in pornographic performances or causing a child to participate in such performances
2. Coercing a child into participating in pornographic performances or profiting from or otherwise exploiting a child for such purposes
3. Knowingly attending pornographic performances involving the participation of children.

Corruption of Children (*Article 22*)
The intentional causing, for sexual purposes, of a child who has not reached the internal legal age for sexual activities, to witness sexual abuse or sexual activities, even without having to participate.

Solicitation of Children for Sexual Purposes ("grooming") (*Article 23*)
The intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age for sexual activities as established by internal law, for the purpose of committing sexual abuse or producing child pornography, where this proposal has been followed by material acts leading to such a meeting.

Aiding or abetting and attempt (*Article 24*)
1. Intentionally aiding or abetting the commission of any of the above offences.
2. The attempt to commit any of the above offences.

Question 17: Corporate liability

Does your system provide that a legal person may be held liable for an offence established in accordance with Article 26? Please specify under which conditions.

ANSWER:

According with internal law, the legal person can be held liable[36]. According with art. 135 of the new Criminal code concerning the conditions of the liability of legal

[36] TITLE VI Criminal liability of the legal entity
CHAPTER I General provisions
ARTICLE 135

Requirements for the criminal liability of the legal entity

(1) The legal entity, except for the state and public authorities, shall be subject to criminal liability in respect of the offences committed for the achievement of their scope of activity or in the interest or the name of the legal entity.

(2) The public institutions shall not be subject to criminal liability for the offences committed during the exercise of an activity which cannot be subject to the private area.

(3) The criminal liability of the legal entity does not exclude the criminal liability of the individual who contributed to the commission of the same act.

ARTICLE 136

Sentenced applicable to the legal entity

(1) The sentences applicable to the legal entity are main and complementary

(2) The main sentence is the fine.

(3) The complementary sentences are:

a) dissolution of the legal entity;

b) suspension of the activity or of one of the activities conducted by the legal entity for 3 months to 3 years;

c) closing certain operating units for 3 months to 3 years;

d) prohibition of the participation to public procurement procedures for one to 3 years;

e) placement under judicial supervision;

f) display or publication of the sentencing judgment.

ARTICLE 137

Establishing the fine applied to the legal entity

(1) The fine represents the amount of money which the legal entity is sentenced to pay to the state

(2) The value of the fine shall be paid using the system of day-fine. The amount corresponding to one day-fine of 100 to 5000 RON shall be multiplied with the number of the days-fine, of 30 days to 600 days.

(3) The court shall establish the number of the days-fine, taking into account the general criteria for the individualization of the sentence. The amount corresponding to a day-fine shall be established taking into account the turnover, in what concerns the legal entity with lucrative scope, and the value of the assets in what concerns other legal entities, as well as the other obligations of the legal entity.

(4) The special limits of the days-fine are ranging from:

a) 60 to 180 days-fine, when the law provides for committed offence only the penalty of fine;

b) 120 to 240 days-fine, when the law provides the imprisonment sentence of up to 5 years, solely or alternatively with the penalty of fine;

c) 180 to 300 days-fine, when the law provides the imprisonment sentence of up to 10 years;

d) 240 to 420 days-fine, when the law provides the imprisonment sentence of up to 20 years;

e) 360 to 510 days-fine, when the law provides an imprisonment sentence exceeding 20 years or life imprisonment.

(5) When by the committed offence, the legal person aimed to obtain a material benefit, the special limits of the days-fine provisioned by the law for the committed offence may be increased by a third, without exceeding the general maximum of the fine. The value of the material benefit, pursued or obtained, shall be taken into account when establishing the fine.

CHAPTER II The regime of the complementary sentences applied to the legal entity

ARTICLE 138

Application and enforcement of complementary sentences in the case of the legal entity

(1) The application of one or several complementary sentences shall be ordered when the court notes that, in consideration to the seriousness and nature of the offence, as well the circumstances of the case, these sentences are required.

(2) The application of one or several complementary sentences is mandatory when the law provides as such.

(3) The complementary sentences provisioned in Article 136 (3) b)-f) may be applied jointly.

(4) The service of the complementary sentences begins after the sentencing judgment was rendered enforceable.

ARTICLE 139

Dissolution of the legal entity

(1) The complementary sentence of dissolution in respect of the legal entity shall be applied when:

a) The legal entity was incorporated for the purpose of committing offences;

b) Its scope of activity was detoured for the purpose of committing offences, and the sentence provisioned by the law for the committed offence exceeds 3 years imprisonment.

(2) If not executing, in bad faith, one of the complementary sentences provisioned in Article 136 (3) b)-e), the court shall order the dissolution of the legal entity.

(3) ***Repealed.

ARTICLE 140

Suspension of the activity conducted by the legal entity

(1) The complementary sentence pertaining to the suspension of the activity conducted by the legal entity stands in the prohibition to conduct one or several activities of the legal entity used in the committal of the offence.

(2) If not executing, in bad faith, one of the complementary sentences provisioned in Article 136 (3) f), the court shall order the suspension of the activity or of one of the activities of the legal entity until the service of the complementary sentence, without exceeding 3 months.

(3) If, until the time limit provisioned in paragraph (2), the complementary sentence was not served, the court shall order the dissolution of the legal entity.

ARTICLE 141

Not applying dissolution or suspension of the activity conducted by the legal entity

(1) The complementary sentences provisioned in Article 136 a) and b) cannot be applied to public institutions, political parties, syndicates, business groups and religious organizations or organizations of the national minorities, incorporated according to the law.

(2) Provisions of paragraph (1) shall also apply to the legal entities conducting their activities in the media.

ARTICLE 142

Closing the operational units of the legal entity

(1) The complementary sentence of closing the operational units of the legal entity consists in the closing of one or several operational units, property of the legal entity, with lucrative purpose, used to carry on activities with the purpose of committing offences.

(2) Provisions of paragraph (1) shall not apply to the legal entities conducting their activities in the media.

ARTICLE 143

Prohibition of participation to public procurement procedures

The complementary sentence of prohibition of participation to public procurement procedures represent the probation of participating directly or indirectly to the procedures concerning the assignment of the public procurement contract, provisioned by the law.

ARTICLE 144

Placement under judicial supervision

(1) The complementary sentence of placement under judicial supervision involves the conduction under the supervision of a judicial proxy of the activity used for the commission of the crime, for a period of one to 3 years.

(2) The judicial proxy has the obligation to notify the court when observing that the legal entity did not take the necessary measures to prevent the commission of new offences. If the court notes that the claim is well-founded, the court shall order the replacement of this sentence with the one provisioned by Article 140.

(3) The placement under judicial supervision shall not be applied to the legal entities listed in Article 141.

ARTICLE 145

Display or publication of the sentencing judgment

(1) The display or publication of the enforceable sentencing judgment shall be made on the expense of the sentenced legal entity.

(2) By display or publication of the sentencing judgment, the identity of other persons cannot be disclosed.

(3) The display of the sentencing judgment shall be made in excerpt, in the form and place set by the court, for one to 3 months.

(4) The publication of the sentencing judgment shall be made in excerpt, in the form and place set by the court, using the written or audio-visual media or other audio-visual means of communication, set by the court.

persons, the legal person, except the state and public authorities, is held liable for the offences committed in the fulfilment of its business area or in the interest or on behalf of the legal person.

Public institutions are not held liable for offences committed in performing an activity which cannot be object of the private field. The criminal liability of a legal person does not exclude the criminal liability of the natural person who contributed to the perpetration of the respective offence.

Question 18: Sanctions and measures

a. Please indicate which sanctions internal law provides for the criminal offences established in accordance with the Convention with regard to both natural and legal persons. Please specify whether the sanctions are criminal, civil and/or administrative sanctions (Article 27, Explanatory Report, paras. 182-193);

ANSWER:

For the offences in the Convention the penalties provided for natural persons are imprisonment, in certain cases (like for example in the case of recruitment of children for sexual purposes) this penalty having as an alternative the fine.

If the victim decides to become a civil party within the criminal trial or initiates separately a case before the civil court, the victim will also have the possibility to obtain compensation for the material or moral damages suffered.

As regards the amount of the sanctions established for natural persons – see foot note pertaining to the answer to the question no. 16, lit. a) which comprises the texts from the new Criminal code.

As regards the sanctions established for legal persons see foot note pertaining to the answer to the question no. 17.

At the level of courts of law, the following data relating the court practice have been communicated:

- among the offences noted by the courts of law in relation to sexual abuse committed against children, there are: the offence of rape, in aggravated form, the offence of sexual act with a minor, sexual perversion in aggravated form[37], sexual

(5) If the publication is made using written or audio-visual media, the court shall set the number of appearances, which cannot exceed 10, and if the publication is made using other audio-visual means, the publication period cannot exceed 3 months.

[37] The offence of sexual perversion, included in the old Penal Code, is reflected in the offences of sexual corruption of minors, sexual assault, sexual act with a minor in the new Penal Code:

ARTICLE 201

Sexual perversion

(1) Acts of sexual perversion committed in public or which caused a public scandal shall be punished with 1 to 5 years imprisonment.

(2) Acts of sexual perversion with a person who has not turned 15 shall be punished with 3 to 10 years imprisonment and the prohibition of certain rights.

(3) The same sentence shall be imposed against sexual perversion acts with a person aged between 15 - 18, if the offence is committed by the custodian or guardian or by a caretaker, attending physician, teacher or educator, using his capacity, or if the perpetrator abused the victim's trust or his authority or influence over the victim.

(3^1) If the sexual perversion acts with a person who has not turned 18 were determined by the offering or giving of money or other benefits by the perpetrator, in a direct or indirect manner, to the victim, the sentence shall be 3 to 12 years imprisonment and the prohibition of certain rights.

corruption, the offence of procurement, the offence of trafficking in minors for exploitation purposes, forcing them to practice prostitution, the offence of child pornography through IT systems, collusion in order to commit offences;

- the defendants were sentenced to prison, ordinarily to be served in custody. At the same time, the courts imposed, in these cases, accessory and complementary sentences, both in accordance with the Penal Code, and in consideration of the European Convention of Human Rights.

- in most cases, the defendants in these files were subject to provisional measures, and where the measures ordered consisted in the prohibition to leave the country or to leave the town, they were also compelled not to go near, respectively to directly or indirectly communicate with the prejudiced parties (victims of the offences);

b. Which legislative or other measures have been taken to provide for the possibility of taking into account final sentences passed by another Party in relation to the offences established in accordance with the Convention? Please provide details and describe any good practice resulting from the taking of these measures (Article 29, Explanatory Report, paras. 203-208).

ANSWER:

Court decisions given in foreign countries are taken into consideration according with the provisions of Law no. 302/2004 concerning judicial cooperation in criminal matters and, to the extent in which a judgment given in another state is recognized by the Romanian judicial authorities, it will be taken into consideration when determining the state of relapse[38].

(3^2) Where the offences provisioned for in paragraphs 2, 3 and 3^1 were committed in view of producing pornographic materials, the sentence shall be 5 to 15 years imprisonment and the prohibition of certain rights, and where coercion was used in order to achieve this purpose, the sentence shall be 5 to 18 years imprisonment and the prohibition of certain rights.

(4) Sexual perversion acts committed with a person who could not defend themselves or express their will or by coercion shall be punished with 3 to 10 years imprisonment and the prohibition of certain rights.

(5) Where the offence provisioned for in paragraphs 1 - 4 results in the severe harm to the bodily integrity or health, the sentence shall be 5 to 18 years imprisonment and the prohibition of certain rights, and where the consequence is the victim's death or suicide, the sentence shall be 15 to 25 years imprisonment and the prohibition of certain rights.

[38] ARTICLE 136

Requirements for the recognition and enforcement of foreign court judgments

(1) A foreign court judgment can be recognized in Romania is it of nature to produce legal effects according to the Romanian law and the following requirements are met:

a) The judgment is final end enforceable;

b) The acts which entailed the sentence would have represented an offence, if committed on Romanian territory. If the sentence was applied for several offences, the verification of this requirements is made for each offence;

c)The sentenced person agreed with the service of the sentence in Romania, except if the sentenced person, after the service of the sentence, would be expelled to Romania. If applicable, in consideration of the age or physical or mental state of the sentenced person, his consent may be expressed by his/her representative;

d) None of the reasons for non-recognition or non-execution provisioned in paragraph (2) is applicable. If one of the reasons for non-recognition or non-execution provisioned in paragraph (2) is applicable, the court may order the recognition only if the court is convinced that the service of the sentence in Romania would contribute significantly to the social reintegration of the sentenced person.

e) The service in Romania of life imprisonment or imprisonment of custodial sentence is of nature to facilitate the sentenced person's reintegration in society.

(2) The foreign court judgment shall not be recognized and enforced when:

a) The recognition and enforcement on Romanian territory of the foreign court judgments would be contrary to the fundamental principles of law and order of the Romanian State;

b) The judgment refers to a political offence or an offence connected to a political offence or a military offence, which is not governed by the common law;

c)The sentence applied was based on grounds of race, religion, gender, nationality, language, political or ideological opinions or adherence to a social group;

d) The person was sentenced in Romania by an enforceable decision for the same criminal acts. If the foreign judgment was also rendered for other criminal acts, the court may order the partial recognition of the judgment, if the other requirements are met;

e) The person was sentenced in another State for the same criminal acts, and the foreign judgment rendered in that State was previously recognized in Romania;

f) The sentenced person benefits in Romania of criminal jurisdiction immunity;

g) The sentence was imposed to a person who is not subject to criminal liability according to the Romanian law;

h) The sentence consists in a measure representing psychiatric or medical treatment which cannot be administered in Romania or, if applicable, a medical or therapeutic treatment which cannot be supervised in Romania, according to the national legal system or the health system;

i) The sentenced person left Romania, setting his/her residence in another State, and his/her connections with the Romanian State are not significant;

j) The sentence person committed a more serious offence, of a nature to alarm the society or had close relations with the members of organized crime, leading to doubts in respect of his reintegration in the society in Romania;

k)There are objective reasons to believe that the judgment was rendered in violation of the fundamental rights and freedoms, and especially that the sentence was imposed in order to punish the sentence person on grounds of gender, race, religion, ethnic origin, nationality, language, political beliefs or sexual orientation, and the person concerned did not have any possibility to appeal against these circumstances before the European Court of Human Rights or before any other international court.

(3) Depending on the case, taking into consideration the specific circumstances of the case, the court may dismiss the recognition and enforcement of the foreign judgment if:

a) The person is under investigation in Romania for the commission of the same criminal acts for which was sentenced abroad. If the judgment was also rendered for other criminal acts, the court may order the partial recognition of the judgment if the other requirements are met.

b) The issuing State dismissed the request made pursuant to Article 134 (1).

(4) If the sentenced person is under investigation in Romania concerning the offence for which was sentenced abroad. Instead of dismissing the recognition, the court may order either the recognition of the foreign judgment or the suspension of the case until rendering a decision in the trial on the dockets of the Romanian judicial authorities.

(5) The foreign judgment shall not be recognized or, if recognized, shall not be enforced, when according to the Romanian penal law, amnesty, pardon or the decriminalization of the act occurred, as well as any other cases provisioned by the law.

ARTICLE 140^1

The recognition of the foreign court judgment in order to produce other legal effects than those pertaining to the custodial sentence service, as well as of other judicial documents issued by the foreign authorities

(1) The recognition, on the main channels, of the foreign court judgments, in order to produce legal effects than those pertaining to the custodial sentence service, shall be made upon the notification of the interested persons or of the prosecutor, in line with the requirements of the treaty signed by Romania and the issuing state, by the court from the person's area of residence.
(2) The recognition, on the main channels, of the foreign court judgments, in order to produce legal effects than those pertaining to the custodial sentence service, shall be made pertaining

Question 19: Jurisdiction

With regard to the offences referred to in question 16, please indicate which jurisdiction rules apply. Please specify under which conditions, if required (Article 25, Explanatory Report, paras. 165-176).

ANSWER:

The rules of jurisdiction which apply to the offences mentioned in question no. 16 are the general rules of jurisdiction in criminal matters[39].

---

to a pending trial, by the prosecution during prosecution state or by the court who is examining the case on its docket for resolution.

(3) In the situations provisioned in paragraphs (1) and (2), the lack of a treaty does nor prevents the recognition of the foreign judgment, if it proves necessary to solve a criminal case or may contribute to the improvement of the defendant's situation or of the sentenced person or to his/her reintegration. Provisions of Article 131 (1), Articles 132, 135 and Article 136 (2) shall apply accordingly.

(4) The judicial documents issued by a competent foreign judicial authority may be recognized by the prosecutor who conducts or supervised the prosecution or by the court of law, if it proves necessary to solve a criminal case or may contribute to the improvement of the investigated person's situation or of the sentenced person or to his/her reintegration. The foreign judicial document cannot be conferred, as effect of recognition, a probative force greater than the one it has in the issuing state.

[39] **The New Code of Penal Procedures**

ARTICLE 35

Jurisdiction of the local court

(1) The local court shall try in first instance all offences, save for those assigned by law to the jurisdiction of other courts.

(2) The local court shall also settle other cases stipulated by law.

ARTICLE 36

Jurisdiction of the tribunal

(1) The tribunal shall try in first instance:

a) the offences provisioned for in the Penal Code under Articles 188 - 191, Articles 209 - 211, Articles 254, 263, 282, Articles 289 - 294, Articles 303, 304, 306, 307, 309, 345, 346, 354 and Articles 360 - 367;

b) the offences committed with oblique intent having resulted in the death of a person;

c) the offences in relation to which criminal prosecution was conducted by the National Directorate for Investigating Organized Crime and Terrorism or the National Anti-Corruption Directorate, unless assigned by law under the jurisdiction of other higher courts;

c^1) the offences of money laundering and the offences of tax evasion provisioned for under Article 9 of Law no. 241/2005 for the prevention and control of tax evasion, with subsequent amendments and supplements;

d) other offences assigned by law under its jurisdiction.

(2) The tribunal shall settle conflicts of jurisdiction occurred between the local courts under its jurisdiction, as well as the challenges submitted against the judgments rendered by the local courts in the cases contemplated by law.

(3) The tribunal shall also settle other cases especially stipulated by law.

(…)

ARTICLE 38

Jurisdiction of the court of appeals

(1) The court of appeal shall try in first instance:

a) the offences provisioned for in the Penal Code under Articles 394 - 397, 399 - 412 and 438 - 445;

b) the offences concerning the national security of Romania, as stipulated in special laws;

c) the offences committed by judges from local courts, tribunals and by prosecutors from the prosecutor's offices attached to such courts;

d) the offences committed by attorneys, public notaries, enforcement officers, by financial controllers of the Court of Accounts, as well as by foreign public auditors;

The offence of the trafficking in children is brought to trial in first instance before the district court and the other offences provided for in the Convention are brought to trial in first instance before local courts which are courts of first instance within ordinary law.

The criminal prosecution is carried out by the prosecution offices attached to the courts which have jurisdiction for the case in first instance, except the offences of trafficking in children and any other offences committed within an organized crime group as they are in the field of competence of the Direction for the Investigation of Organized Crime and Terrorism[40].

---

e) the offences committed by the heads of religious cults organised in observance of the law and by the other members of the high clergy, having at least the rank of bishop or equivalent thereto;

f) the offences committed by the assistant magistrates with the High Court of Cassation and Justice, by judges from the courts of appeals and the Military Court of Appeals, as well as by prosecutors from the prosecutor's offices attached to such courts;

g) the offences committed by members of the Court of Accounts, the President of the Legislative Council, the Ombudsman, deputies of the Ombudsman and quaestors;

h) requests to change venue, in the cases stipulated by law.

(2) The court of appeals shall try appeals against penal judgments rendered in first instance by local courts and tribunals.

(3) The court of appeals shall settle conflicts of jurisdiction occurred between the courts under its jurisdiction, other than as specified in Article 36 paragraph (2), as well as challenges submitted against judgments rendered by tribunals in the cases stipulated by law.

(4) The court of appeals shall also settle other cases especially provided by law.

ARTICLE 40

(…)

Jurisdiction of the High Court of Cassation and Justice

(1) The High Court of Cassation and Justice shall try in first instance the offences of high treason, the offences committed by senators, deputies and Romanian members of the European Parliament, members of the Government, judges with the Constitutional Court, members of the Superior Council of Magistracy, judges with the High Court of Cassation and Justice and by prosecutors with the Prosecutor's Office attached to the High Court of Cassation and Justice.

(2) The High Court of Cassation and Justice shall try appeals against penal judgments rendered in first instance by courts of appeals, military courts of appeals and the Penal Division of the High Court of Cassation and Justice.

(3) The High Court of Cassation and Justice shall try the second appeals for quashing against final penal judgments, as well as second appeals for the interest of the law.

(4) The High Court of Cassation and Justice shall settle the conflicts of jurisdiction in the cases where it is the common higher court of the conflicting courts, the cases where the course of justice is discontinued, requests to change venue in the cases stipulated by law, as well as challenges submitted against judgments rendered by courts of appeals in the cases stipulated by law.

(5) The High Court of Cassation and Justice shall also settle other cases provided by law.

[40] LAW no. 508 of 17 November 2004
on the establishment, organization and operation of the Directorate for the Investigation Organized Crime and Terrorism, within the Public Ministry

"ARTICLE 12

(1) The following offences of the Criminal Code, republished, amended and supplemented, and of special laws, irrespective of person's status, excepting the offences which fall under the competence of the National Anti-Corruption Directorate, fall under the competence of the Directorate for the Investigation of Organized Crime and Terrorism:

a) offences provisioned by Article 367 of the Penal Code, as well as the offences committed for the purpose of which the organized crime group was established;

b) b) offences against national security provisioned in Article 394 – 410 and Article 412 of the Penal Code, as well as the offences against national security provisioned by Law no. 51/1991 on national safety in Romania;

Question 20: Aggravating Circumstances

Please indicate which of the circumstances referred to in Article 28, in so far as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration in your legal system as aggravating circumstances in the determination of the sanctions in relation to the offences established in accordance with this Convention (Explanatory Report, paras. 194-202).

ANSWER:

The aggravating circumstances provided for in article 28 of the Convention can be taken into consideration for aggravating the penalty as follows:

a) the offence caused a serious damage to the victim's physical or mental health;

In this case the offence will be one of a series of multiple offences against the physical or health integrity, namely: hitting or other forms of violence, bodily harm, bodily harm by negligence, ill-treatment applied to minors (this can also become incident in case of only mental harm of the victim, in contrast to the previously mentioned offences which only regulate physical harm)[41].

---

c) offences provisioned by Law no. 535/2004 on the prevention and fight against terrorism and the offences provisioned by Law no. 111/1996 on the safe development, regulation, authorization and control of nuclear activities, republished, with subsequent amendments and supplements;
d) offences of fraud committed using computerized systems and electronic means of payment, forgery of bonds or other payment instruments, computer fraud, as well as offences against the security and integrity of computerized systems and data, provisioned in Article 249 - 252, Article 311 (2), Article 325 and Article 360 - 366 of the Penal Code;
e) Offences provisioned by Law no. 143/2000 on preventing and fighting against illicit trafficking and consumption of drugs, with subsequent amendments and supplements and those provisioned by the Emergency Government Ordinance no. 121/2006 on the legal regime of drug precursors, sanctioned with amendments by Law no. 186/2007;
f) Offences concerning the trafficking and exploitation of vulnerable persons, provisioned in Article 209- 211 of the Penal Code;
g) Offences provisioned by Law no. 297/2004 on capital market, with subsequent amendments and supplements;
h) Contraband offences provisioned by Law no. 86/2006 on the Romanian Customs Code, with subsequent amendments and supplements;
i) Offences provisioned by Law no. 86/2006 on the Romanian Customs Code, with subsequent amendments and supplements, other the ones provisioned in paragraph h), if connected or undivided from other offence under the competence of the Directorate for the Investigation of Organized Crime and Terrorism;
j) Offences provisioned by Law no. 656/2002 on preventing and punishing money laundering, as well as for the establishment of certain measures on preventing and fighting against the funding of terrorism, republished, if the assets, money and values subject to money laundry are obtained from crimes, under the competence of the Directorate for the Investigation of Organized Crime and Terrorism."
k)

[41] CHAPTER II Offences against corporal integrity or to health
ART. 193
Hitting or other forms of violence
(1) Hitting or any other act of violence causing physical suffering shall be punished by imprisonment from 3 months to 2 years or by fine.
(2) Hitting or acts of violence that caused injuries or by which a person's health is affected, needing medical care of up to 90 days shall be punished by imprisonment from 6 months to 5 years or by fine.
(3) Criminal action is initiated upon prior complaint of the injured person.
ART. 194

Concurrence of offences shall be sanctioned with the application of the heaviest penalty from the penalties established by the court for the offences committed, to which one third of the total of the other penalties established is added[42].

Bodily harm

(1) The acts provided for in art. 193, which caused any of the following consequences:

a) an infirmity;

b) injuries or damage to a persons health, needing medical care of more than 90 days;

c) a serious and permanent aesthetic damage;

d) abortion;

e) jeopardizing the person's life,

shall be punished by imprisonment from 2 to 7 years.

(2) When the act has been committed in order to cause one of the consequences in para.(1) letter a), letter b) and letter c), the penalty shall be imprisonment from 3 to 10 years.

(3) Attempt to the act in para. (2) is punishable.

(…)

ART. 196

Bodily harm by negligence

(1) Acts provided for in art. 193 para. (2) committed by negligence by an inebriated person or a person who is under the influence of drugs or in performing an activity which in itself is an offence shall be punished by imprisonment from 3 months to one year or by fine.

(2) The acts provided for in art. 194 para. (1) committed by negligence shall be punished with imprisonment from 6 months to 2 years or by fine.

(3) When commission of the act in para.(2) is the result of non-abidance by legal provisions or precaution measures for the exercise of a profession or trade, or for the accomplishment of a certain activity, the penalty shall be imprisonment from 6 months to 3 years or a fine.

(4) Should the consequences provided for in para. (1) - (3) affect two or more persons, the special limits of the penalty shall be increased by one third.

(5) Should the non-abidance by legal provisions or precaution measures or the performance of the activity which has led to the perpetration of the offences provided for in para. (1) and para. (3) be in itself an offence, the rules concerning the concurrence of offences shall be applicable.

(6) Criminal action is initiated upon prior complaint by the person injured.

ART. 197

Ill-treatment applied to minors

The act of seriously jeopardising, either by measures or treatments of any kind, a minor's physical, intellectual or moral development, committed by the parents or by any person entrusted with the minor for raising and education, shall be punished by imprisonment from 3 to 7 years and the prohibition of certain rights.

(…)

CHAPTER III

Offences against a family member

ART. 199

Domestic violence

(1) Should the acts provided for in art. 188, art. 189 and art. 193 - 195 be committed against a family member, the special maximum of the legal penalty shall be increased by one fourth.

(2) In case of the offences provided for in art. 193 and art. 196 committed against a family member, criminal action can be also initiated ex officio. Reconciliation of parties removes criminal liability.

[42] ART. 38

Concurrence of offences

(1) There is real concurrence of offences when two or more offences have been committed by the same person, by distinct actions or inactions, before being finally convicted for any one of them. There is real concurrence even if one of the offences was committed in order to perpetrate or conceal another offence.

It should also be mentioned that when the acts listed above are committed against a family member, the penalty is heavier and the criminal action is initiated ex officio for all offences.

b) The offence was preceded or accompanied by acts of torture or serious violence;

One of the general aggravating circumstances provided for in the general part of the new Criminal Code is the commission of the offence by acts of cruelty or by making the victim subject to degrading treatment[43]

c) The offence was committed against an extremely vulnerable victim;

One of the general aggravating circumstances provided for in the general part of the new Criminal Code is the commission of the offence taking advantage of the

---

(2) There is formal concurrence of offences when an action or inaction, committed by the same person, because of the circumstances under which it took place and because of the consequences it produced, contains the elements of several offences.

ART. 39

Main penalty for concurrence of offences

(1) In case of concurrence of offences, the penalty for each offence is established separately, and from among these the penalty shall be applied in one of the following:

a) when a penalty of life imprisonment and one or more penalties of imprisonment or fine have been established, the penalty of life imprisonment shall be applied;

b) when only penalties of imprisonment have been established, the heaviest penalty shall be applied, to which one third of the total amount of the other penalties established can be added;

c) when only fines have been established, the heaviest penalty shall be applied, to which one third of the total amount of the other penalties established can be added;

d) when a penalty of imprisonment and a penalty of fine have been established, the penalty of imprisonment shall be applied, to which the fine shall be added wholly;

e) when several penalties of imprisonment and several penalties of fine have been established, the penalty of imprisonment shall be applied, according to letter b), to which the fine shall be added wholly according to letter c).

(2) When several penalties of imprisonment have been established, and when adding to the heaviest penalty the one third of the total amount of the other imprisonment penalties, the general maximum of imprisonment would be exceeded by 10 or more years and when for one of the concurrent offences the legal penalty is 20 or more years of imprisonment, the penalty of life imprisonment can be applied.

[43] ART. 77

Aggravating circumstances

The following situations shall be aggravating circumstances:

a) commission of the act by three or more persons together;

b) commission of the offence by acts of cruelty or by making the victim subject to degrading treatment;

c) commission of the offence by methods or means which are likely to jeopardize other persons or property;

d) commission of the offence by an adult perpetrator, if it was committed together with a minor;

e) commission of the offence taking advantage of the state of manifest vulnerability of the victim as a result of its age, state of health, infirmity or other causes;

f) commission of the offence while in a state of voluntarily induced alcohol or drug intoxication, when induced with a view to committing the offence;

g) commission of the offence by a person who took advantage of the situation caused by calamity, siege or state of emergency;

h) commission of the offence for reasons related to race, nationality, ethnicity, language, religion, gender, sexual orientation, opinion or political orientation, wealth, social origin, age, disability, chronic non-contagious disease or HIV/AIDS infection or to other similar circumstances, considered by the offender causes for the inferiority of a person in relation to other persons.

state of manifest vulnerability of the injured party as a result of its age, state of health, infirmity or other causes.

d) The offence was committed by a family member, by a person who lived with the child or by a person who abused his/her authority;

The offences of rape and sexual assault contain as aggravated variants (sanctioned with imprisonment from 5 to 12 years and from 3 to 10 years, respectively) the cases in which they are committed against a victim who is in a relationship of care, protection, upbringing, guardianship or treatment with the offender or the victim is a relative in direct line, brother or sister.

The offences of sexual intercourse with a minor and sexual corruption of minors are sanctioned in a more severe manner (imprisonment from 3 to 10 years and from 2 to 7 years) when the minor is a relative in direct line, brother or sister with the offender or the minor is in a relationship of care, protection, upbringing, guardianship or treatment with the offender.

e) The offence was committed by more persons who acted together;

One of the general aggravating circumstances provided for in the general part of the new Criminal Code is the commission of the offence by three or more persons together.

f) The offence was committed within an organized crime group;

In this case the rules of the concurrence of offences between the offence provided for in the Convention and the offence of establishment of an organized crime group, which is distinctly incriminated by the Romanian lawmaker, will be applicable.

g) The offender has been convicted before for offences of the same kind.

In this case the rules of relapse will be applicable which is sanctioned the same way as the concurrence of offences which was explained further above, the ultimate consequence being also in this case the application of a heavier penalty[44].

[44] ART. 41
Relapse
(1) There is relapse when, after a sentence to imprisonment that exceeds one year has remained final and until the rehabilitation or reaching the term for rehabilitation, the convict commits a new offence with intent or with *preter intentionem* and the penalty provided in the law for the second offence is imprisonment of over one year.
(2) There is relapse also when one of the penalties in para.(1) is life imprisonment.
(3) In order to establish the relapse, one may take into account also the decision of conviction handed down abroad, for an act provided also in Romanian criminal law, if the decision of conviction has been recognized according to the law.
ART. 42
Convictions that do not entail relapse
When establishing relapse, one shall not take into account the decisions of conviction regarding:
a) acts no longer provided as offences by the criminal law;
b) offences amnestied;
c) offences committed by negligence.
ART. 43
Penalty by relapse
(1) If prior to serving the previous sentence or prior to the moment when the previous sentence is considered served a new offence is committed by relapse, the penalty established for this shall be added to the previous sentence not served or to the rest which was not served.
(2) If prior to serving the previous sentence or prior to the moment when the previous sentence is considered served more concurrent offences are committed, of which at least one by relapse, the penalties established shall be merged according to the provisions relating to concurrence of offences

Question 21: Measures of protection for the child victim

a. Please describe the measures taken to inform child victims of their rights, the services at their disposal, the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role as well as the outcome of their cases (Article 31, para. 1, letter (a) and para. 2). Please also indicate what is done to provide all relevant information in a manner adapted to the child's age and maturity and in a language that he/she may understand;

ANSWER:

In order to ensure the protection of crime victims, Law No. 211/2004 concerning some measures for ensuring the protection of crime victims, as subsequently amended and supplemented, establishes a number of measures for the information of crime victims concerning their rights, as well as for psychological counselling, free legal assistance and financial compensation by the state for victims of some crimes.

According with art. 4 of the legal act mentioned[45], judicial bodies have the obligation to inform the victims of crimes about: services and organizations which

---

and the penalty resulted shall be added to the previous sentence not served or to the rest which was not served.

(3) If by adding the penalties according to para. (1) and para. (2) the general maximum of the penalty of imprisonment is exceeded by more than 10 years and for at least one of the offences committed the legal penalty is 20 or more years of imprisonment, life imprisonment can be applied instead of the penalties of imprisonment.

(4) If the previous penalty or the penalty established for the offence committed by relapse is life imprisonment, the life imprisonment shall be served.

(5) If after serving the previous sentence or prior to the moment when the previous sentence is considered served a new offence is committed by relapse, the special limits of the legal penalty for the new offence shall be increased by half.

(6) If, after the decision of conviction for the new offence remains final, and before the penalty is served or deemed as served, it is discovered that the convict is in relapse, the court shall apply para. (1) - (5).

(7) Paragraph (6) shall apply also if the sentence to the penalty of life imprisonment was commuted with or replaced by the penalty of imprisonment.

[45] Article 4
(1) The judiciary services shall have the obligation to notify the victims of offences in relation to:
a) the services and organizations providing psychological counselling or any other forms of assistance to the victim, depending on the latter's needs;
b) the prosecution services where they can submit a complaint;
c) the right to legal assistance and the institution where they may refer in order to exercise such right;
d) the conditions and procedure for the provision of legal assistance free of charge;
e) the procedural rights of the damages person and of the civil party;
f) the conditions and procedure to benefit from the provisions of Article 113 of the Code of Penal Procedures, as well as the provisions of Law no. 682/2002 on witness protection, with subsequent amendments;
g) the conditions and procedure for the provision of financial indemnification by the State;
h) their right to information, where the defendant is deprived of freedom, or sentenced to a custodial sentence, in relation to the latter's release in any manner whatsoever, in accordance with the Code of Penal Procedures.
(2) The information referred to in paragraph (1) shall be made known to the victim by the first prosecution service which the victim notifies.
(3) The victim shall be advised on the information stipulated in paragraph (1) in a language which he understands. The victim shall be handed over, under signature, a form comprising the information stipulated in paragraph (1). If the victim cannot or refuses to sign, a protocol shall be concluded in this regard.

provide psychological counselling or any other forms of assistance to victims, depending on their needs, the law enforcement agency where they can file a complaint, the right to legal assistance and the institution where they can exercise this right, conditions and the procedure for granting free legal assistance, procedural rights of the injured person and of the civil party, conditions and the procedure to benefit from the provisions of art. 113 of the Code of criminal procedure, as well as the provisions of Law No. 682/2002 concerning witness protection, as subsequently amended and supplemented, conditions and the procedure for granting financial compensation by the state, the right to be informed, in case the defendant will be deprived of liberty or convicted to imprisonment, about his release in any way, according with the Code of criminal procedure.

This kind of information is made available to the victim by the first judicial body seized by the victim, in a language which the victim understands.

The victim is given a standard form containing this kind of information and has to sign for having received it. If the victim cannot or refuses to sign, a protocol shall be drafted for this purpose.

If the victim is a Romanian citizen who belongs to an ethnic minority, the victim can be given the information in para. (1) in the victim's mother tongue.

The right to information of the victims (injured persons) is also established in the new Code of criminal procedure[46]. According with art. 81 of the new Code of criminal

---

(4) If the victim is a Romanian citizen pertaining to a national minority, the victim may be advised on the information stipulated in paragraph (1) in their mother tongue.

(5) The fulfilment of the obligations stipulated in paragraphs (1) - (3) shall be recorded in a protocol, to be registered with the institution under whose authority the judiciary services operate.

[46] The New Code of Penal Procedures – Law no. 135/2010

ARTICLE 12

Official language and the right to an interpreter

(1) The official language of the penal proceedings shall be Romanian.

(2) Romanian citizens pertaining to national minorities shall be entitled to talk in their mother tongue before the courts of law; however, the procedural acts shall be drawn up in Romanian.

(3) In relation to the parties and procedural subjects who do not speak and do not understand Romanian or cannot talk an interpreter shall be provided free of charge, in order to allow them to acknowledge the documents in the file, to talk, but also to submit concluding arguments before the court. Where legal assistance is mandatory, the suspect or the defendant shall be provided free of charge with the possibility to communicate, through an interpreter, with their attorney, in order to prepare the hearing, submitting means of challenge or any other request relevant for the settlement of the case.

(4) Certified interpreters, in accordance with the law, shall be used during court proceedings. Translators certified in accordance with the law shall also be included in the category of interpreters.

ARTICLE 81

(1) Rights of the damaged person

In the penal proceedings, the damaged person shall have the following rights:

a) the right to be informed in relation to their rights;

b) the right to propose evidence to be taken by the judiciary services, to raise objections and to submit final pleadings;

c) the right to submit any other requests relevant for the settlement of the penal side of the case;

d) the right to be informed, within a reasonable period of time, in relation to the status of criminal prosecution, upon their express request, conditional upon the provision of an address in the territory of Romania, an e-mail address or electronic messaging address, where such information may be communicated to them;

e) the right to review the file, in accordance with the law;

f) the right to be heard;

g) the right to ask questions to the defendant, witnesses and experts;

procedure, the injured person has a number of procedural rights, among them the right to be informed about his rights, the right to be informed within a reasonable time frame about the status of the criminal prosecution, upon his explicit request, indicating an address in Romania, an e-mail address or an electronic message address to which this information to be sent, the right to look at the file, according with applicable legal provisions. This information is provided in the language which the victim understands. The injured person has the right to an interpreter free of charge if he does not understand, cannot articulate himself properly or cannot communicate in Romanian;

At the beginning of the first hearing, the injured person is informed about the following rights and obligations:

- the right to be assisted by a defender and in cases in which the legal assistance is mandatory to have a defender appointed ex officio;
- the right to make use of a mediator in case in which this is permitted by law;
- the right to propose the consideration of evidence, to invoke exceptions and pose conclusions, according with applicable legal provisions;
- the right to be informed about the course of the procedure, the right to file a complaint meant to initiate the criminal investigation, as well as the right to become a civil party;
- the obligation to react to the call of the judicial bodies;
- the obligation to communicate any change of address.

---

g^1) the right to benefit, free of charge, from an interpreter when they do not understand, do not talk well or cannot communicate in Romanian;

h) the right to be assisted by an attorney or represented;

i) the right to address a mediator, in the cases allowed by law;

j) other rights stipulated by law.

(2) The person having incurred a physical, material or moral prejudice as a result of a criminal act for which penal action is initiated ex officio and who does not wish to take part in the penal trial shall have to notify in this regard the judiciary authority, who, if it deems necessary, may hear such person as witness.

ARTICLE 94 Consultation of the file

(1) The attorney of the parties and of the main procedural subjects shall have the right to request to review the file throughout the criminal trial. This right can neither be exercised, nor restricted in an abusive manner.

(2) Consultation of the file implies the right to review its documents, the right to write down data or information from the file, as well as to obtain photocopies, at the client's expense.

(3) During criminal prosecution, the prosecutor shall determine the date and duration of consultation, within a reasonable time. This right may be delegated to the prosecution services.

(4) During criminal prosecution, the prosecutor may restrict, based on reasons, the consultation of the file, if this could prejudice the appropriate performance of criminal prosecution. After the penal action has been set in motion, any restriction may be ordered for no more than 10 days.

(5) During criminal prosecution, the attorney shall have the obligation to keep confidential or secret the data and documents of which he/she became aware further to the consultation of the file.

(6) In all cases, the attorney's right to consult the statements of the party or of the main procedural subject whom he/she assists or represents cannot be restricted.

(7) In view of preparing the defence, the attorney of the defendant shall have the right to be informed in relation to the entire material in the criminal prosecution file in the procedures conducted before the rights and freedoms judge in relation to measures depriving of or restricting rights, which the attorney attends.

(8) The provisions of this article shall be appropriately applied in relation to the right of the parties and of the main procedural subjects to consult the file.

- the fact that, in case the defendant is going to be deprived of his liberty or convicted to imprisonment, the injured person can be informed about the defendant's release in any way (art. 111 of the new Code of criminal procedure).

Furthermore, the injured person is communicated the ordinance for classification or the ordinance by which the criminal prosecution was suspended (when the injured person seized the criminal investigation bodies or when the prosecutor finds the injured person to be interested) the court decision and the summoning of the injured person to the court is mandatory[47].

[47] The New Code of Penal Procedures:
SECTION 3 Dismissal and waiver of criminal prosecution
ARTICLE 314
The solutions not to initiate prosecution or proceedings before the court
(1) After reviewing the request to initiate proceedings, when it is ascertained that the necessary evidence was gathered in accordance with the provisions of Article 285, the prosecutor, upon the proposal of the prosecution services or *ex officio*, shall settle the case by ordinance, ruling as follows:
a) to dismiss the case, when the penal action is not initiated or, as the case may be, continued, because there is one of the cases stipulated in Article 16 paragraph (1);
b) to waive criminal prosecution, when there is no public interest in prosecuting the defendant.
(2) The prosecutor shall prepare only one ordinance even if the proceedings in the file refer to several offences or several suspects or defendants and even if different decisions are rendered in relation thereto, in accordance with paragraph (1).
(…)
ARTICLE 316
Notification on the dismissal of the case
(1) The dismissal notification shall be served in copy **to the person having submitted the request initiating proceedings**, the suspect, the defendant or, as the case may be, **to other stakeholders**. If the ordinance does not contain the *de facto* and *de jure* reasons, a copy of the report prepared by the prosecution services shall also be delivered.
(…)
ARTICLE 318
Waiver of criminal prosecution
(…)
(7) The ordinance ruling to waive the criminal prosecution shall be served in copy to the person having submitted the request to initiate proceedings, the suspect, the defendant or, as the case may be, to other stakeholders.
(…)
ARTICLE 353
Subpoena to appear before the court
(1) Judgment may only take place if the damaged person and the parties are duly summoned and the procedure has been duly fulfilled. The defendant, the civil party, the civilly responsible party and, as the case may be, the legal representatives thereof shall be summoned *ex officio* by the court. The court may order that other procedural subjects be summoned when their attendance is necessary in settling the case. Appearance by the damaged person or the party before the court, either personally or by means of their representative or chosen attorney or attorney appointed *ex officio*, if the latter contacted the represented person, shall cover any illegality occurred during the summoning procedure.
(…)
(3) For the first court hearing session, the damaged person shall be summoned specifying that it may become a civil party no later than the commencement of court investigation.
(4) Failure to appear by the damaged person or the summoned parties does not preclude the case from being tried. Where the court deems that it is necessary for any of the missing parties to attend, it may take measures for it to be present, and the trial shall be adjourned accordingly.
(…)
(8) Upon the request of the persons who take note of the court session date, the court shall hand down subpoenas, to serve as justification at their work places, in view of appearing before the court on the new court session date.
(…)
ARTICLE 407

b. Please also indicate which measures have been taken to enable the child victim to be heard, to supply evidence and to choose the means of having his/her views, needs and concerns presented, directly or through an intermediary, and considered (Article 31, para. 1, letter (c));

ANSWER:

The person who was damaged as a result of an offence having been committed can take part into the criminal trial as an injured person and as a civil party, according to the conditions described further below. The injured person is considered to be „procedural subject" and the civil party is a party within the criminal trial[48].

The injured person has within the criminal trial the following procedural rights[49]: the right to be informed about his rights, the right to propose the

---

Service of judgment

(1) After rendition, a copy of the judgment minutes shall be served to the prosecutor, the parties, the damaged parties and, if the defendant is under arrest, the administration of the detention entity, in view of allowing the exercise of the means of challenge. If the defendant does not speak Romanian, a copy of the judgment minutes shall be delivered in a language they understand. After the judgment has been drawn up, it shall be communicated to the above in full.

(2) If the court ordered to defer the enforcement of the sentence or to suspend the service of the sentence on probation, the judgment shall be delivered to the probation services and, as the case may be, to the body or authority competent to supervise compliance with the obligations ordered by the court.

[48] General provisions

ARTICLE 29

Participants to the penal trial

The participants to the penal trial shall be: judiciary services, attorney, parties, main procedural subjects, as well as other procedural subjects.

ARTICLE 32

Parties

(1) The parties shall be the procedural subjects who exercise or against whom a court action is exercised.

(2) The parties in the penal trial shall be the defendant, the civil party and the civilly responsible party.

ARTICLE 33

Main procedural subjects

(1) The main procedural subjects shall be the suspect and the damaged person.

(2) The main procedural subjects shall have the same rights and obligations as the parties, save for the ones granted by law exclusively to the latter.

[49] ARTICLE 81 of the New Penal Code – please see its wording in the footnotes of letter a)

ARTICLE 93

Legal assistance provided to the damaged person, the civil party and the civilly responsible party

(1) During criminal prosecution, the attorney of the damaged person, of the civil party or of the civilly responsible party shall have the right to be informed in accordance with the conditions of Article 92 paragraph (2), to assist to the performance of any criminal prosecution proceeding in accordance with the conditions of Article 92, the right to consult the documents of the file and to submit requests and memoranda. The provisions of Article 89 paragraph (1) shall apply accordingly.

(2) The attorney of the damaged person, of the civil party or of the civilly responsible party shall have the right stipulated in Article 92 paragraph (8).

(3) During the trial, the attorney of the damaged person, of the civil party or of the civilly responsible party shall exercise the rights of the assisted person, save for those which the latter exercises in person, and the right to consult the documents in the file.

(4) Legal assistance is mandatory when the damaged person or the civil party is a person without legal standing or having restricted legal standing.

(5) When the judiciary authority deems that, for certain reasons, the damaged person, the civil party or the civilly responsible party could not defend themselves, it shall take measure to have an attorney appointed *ex officio*.

(…)

ARTICLE 94

Consulting the file

(1) The attorney of the parties and of the main procedural subjects shall have the right to request to consult the file throughout the penal trial. This right can neither be exercised or restricted in an abusive manner.

(2) Consultation of the file implies the right to review its documents, the right to write down data or information from the file, as well as to obtain photocopies, at the client's expense.

(3) During criminal prosecution, the prosecutor shall determine the date and duration of consultation, within a reasonable time. This right may be delegated to the prosecution services.

(4) During criminal prosecution, the prosecutor may restrict, based on reasons, the consultation of the file, if this could prejudice the appropriate performance of criminal prosecution. After the penal action has been set in motion, any restriction may be ordered for no more than 10 days.

(5) During criminal prosecution, the attorney shall have the obligation to keep confidential or secret the data and documents of which he/she became aware further to the consultation of the file.

ARTICLE 95

The right to submit complaints

(1) The attorney shall have the right to submit complaints, in accordance with Articles 336 - 339.

(2) In the cases contemplated in Article 89 paragraph (2), Article 92 paragraph (2) and Article 94, the superior prosecutor shall have the obligation to settle the complaint and communicate the solution, as well as its reasoning, within no more than 48 hours.

ARTICLE 96

Representation

During the penal trial, the suspect, the defendant, the other parties, as well as the damaged person may be represented, save where their attendance is mandatory or deemed to be necessary by the prosecutor, judge or court of law, as the case may be.

(6) In all the cases, the attorney's right to consult the statements of the party or of the main procedural subject whom he/she assists or represents cannot be restricted.

(7) In view of preparing the defence, the attorney of the defendant shall have the right to be informed in relation to the entire material in the criminal prosecution file in the procedures conducted before the rights and freedoms judge in relation to measures depriving of or restricting rights, which the attorney attends.

(8) The provisions of this article shall be appropriately applied in relation to the right of the parties and of the main procedural subjects to consult the file.

TITLE IV Evidence, means of evidence and evidentiary procedures

CHAPTER I General rules

ARTICLE 97 Evidence and means of evidence

(1) Evidence shall be any *de facto* element serving to ascertain the existence or inexistence of an offence, to identify the person who committed it and to become aware of the circumstances necessary for the fair settlement of the case and which contributes to finding the truth in the penal trial.

(2) Evidence shall be procured in the penal trial through the following means:

a) statements of the suspect or defendant;

b) statements of the damaged person;

c) statements of the civil party or of the civilly responsible party;

d) witness testimonies;

e) writs, expert appraisal or findings reports, minutes, photographs, material means of evidence;

f) any other means of evidence that is not prohibited by law.

(3) The evidentiary procedure shall be the legal manner of obtaining the means of evidence.

(…)

ARTICLE 100

Taking evidence

(…)

(2) During the trial, the court shall take evidence upon the request of the prosecutor, of the damaged person or of the parties and, secondarily, *ex officio*, when it is deemed necessary for it to reach a conclusion.

(…)

ARTICLE 336

The right to submit a complaint

(1) Anyone may submit a complaint against the criminal prosecution measures and proceedings, if they caused prejudice to their lawful interests.

(2) The complaint shall be addressed to the prosecutor supervising the activity of the criminal investigation services and it shall be delivered either directly to it, or to the criminal investigation services.

(3) The complaint being submitted shall not suspend the enforcement of the measure or of the proceeding forming the object of the complaint.

ARTICLE 337

Obligation to forward the complaint

When the complaint was submitted to the criminal investigation services, the latter shall have the obligation to forward it, together with its clarifications, whenever they are necessary, within no more than 48 hours after its receipt, to the prosecutor.

ARTICLE 338

Settlement period

The prosecutor shall have the obligation to settle the complaint within no more than 20 days after receipt and immediately deliver to the person having submitted the complaint a copy of the ordinance.

ARTICLE 339

Complaint against the prosecutor's actions

(1) The complaint against the measures taken or actions performed by the prosecutor or performed in reliance upon the instructions thereof shall be settled by the prime-prosecutor of the prosecutor's office or, as the case may be, by the general prosecutor of the prosecutor's office attached to the court of appeals or by the head prosecutor of the prosecutor's office department.

(2) If the measures and actions pertain to the prime-prosecutor, the general prosecutor of the prosecutor's office attached to the court of appeals, of the head prosecutor of the prosecutor's office department or they have been adopted or performed in reliance upon orders instructed by them, the complaint shall be settled by the superior prosecutor.

(3) The provisions of paragraphs (1) and (2) shall apply accordingly when the hierarchy of functions in a structure of the prosecutor's office is set by special laws.

(4) In relation to solutions to dismiss or waive criminal prosecution, the complaint shall be submitted within 20 days after the delivery of the copy of the document whereby the solution was ordered.

(5) Ordinances settling complaints against solutions, actions or measures cannot be challenged by means of complaints to the superior prosecutor and they shall be delivered to the person having submitted the complaint and to the other stakeholders.

(6) The provisions of Article 336 - 338 shall apply accordingly, unless otherwise provided by law.

ARTICLE 340

Complaint against the solution not to initiate criminal prosecution or court proceedings

(1) The person whose complaint against the solution to dismiss the case or waive criminal prosecution, ruled by ordinance or indictment, was dismissed in accordance with Article 339 can submit a complaint, within 20 days after delivery, to the pre-trial judge with the court that would have competence to judge the case in first instance, in accordance with the law.

(2) If the complaint was not settled until the expiry of the period stipulated in Article 338, the right to submit a complaint may be exercised at any time after the expiry of the 20-day period when the complaint had to be settled, but no later than 20 days after the date when the settlement method was communicated.

ARTICLE 341

Settlement of the complaint by the pre-trial judge

(1) After the registration of the complaint with the competent court, it shall be delivered on the same day to the pre-trial judge. The complaint misforwarded shall be delivered to the competent judiciary authorities by administrative means.

(2) The pre-trial judge shall determine the settlement period, to be communicated, together with a copy of the complaint, to the prosecutor and to the parties, who may submit written notes in respect of

the admissibility or well-grounded nature of the complaint. The applicant shall be communicated the settlement period. The person having had, in the case, the capacity of defendant, may also submit requests or raise objections in relation to the legality of taking evidence or conducting the criminal prosecution.

(3) The prosecutor, within no more than 3 days after having received the communication stipulated in paragraph (2), shall deliver the case file to the pre-trial judge.

(4) Where the complaint was submitted to the prosecutor, the latter shall forward it, together with the case file, to the competent court.

(5) The pre-trial judge shall rule on the complaint by means of a reasoned closure, issued behind closed doors, without attendance by the applicant, prosecutor or respondents.

(6) In the cases where the initiation of the penal action was not ordered, the pre-trial judge may order one of the following solutions:

a) to dismiss the complaint, as submitted too late or inadmissible or ungrounded, as the case may be;

b) to admit the complaint, quash the challenged solution and refer the case to the prosecutor, by means of reasoned decision, in order for the latter to initiate or continue criminal prosecution or, as the case may be, to set in motion the penal action and continue the criminal prosecution;

c) to admit the complaint and change the *de jure* ground of the challenged quashing solution, unless it creates a less favourable situation for the person having submitted the complaint.

(7) In the cases where the initiation of the penal action was ordered, the pre-trial judge shall:

1. dismiss the complaint as submitted too late or inadmissible;

2. check the legality of evidence taken and performance of the criminal prosecution, exclude evidence illegally taken or, as the case may be, sanctions, in accordance with Articles 280 - 282 the prosecution proceedings performed in breach of the law, and:

a) dismisses the complaint as ungrounded;

b) admits the complaint, quashes the challenged decision and refers the case to the prosecutor, by means of reasoned decision, in order for the latter to continue criminal prosecution;

c) admits the complaint, quashes the challenged decision and orders that court proceedings be initiated in relation to the acts and persons for which, during criminal prosecution, the criminal action was set in motion, when the legally taken evidence is sufficient, and refer the case for random assignment;

d) admits the complaint and changes the *de jure* ground of the challenged quashing solution, unless it creates a less favourable situation for the person having submitted the complaint.

(8) The closure whereby one of the solutions referred to in paragraph (6) and in paragraph (7) items 1, 2 letters a), b) and d) was ruled shall be final.

(9) In the case referred to in paragraph (7) item 2 letter c), within 3 days after the communication of the closure, the prosecutor and the defendant may submit, based on reasons, a challenge against the settlement manner of the objections referring to the legality of evidence taking and the performance of criminal prosecution. Challenge without reasons shall be inadmissible.

(10) The challenge shall be submitted to the judge having settled the complaint and referred for settlement to the pre-trial judge of the superior court or, when the court to which the complaint is submitted is the High Court of Cassation and Justice, the competent panel in accordance with the law, to rule by reasoned closure, without attendance by the prosecutor and the defendant, and it may issue one of the following solutions:

a) to dismiss the challenge as submitted too late, inadmissible or, as the case may be, ungrounded and to uphold the order to initiate court proceedings;

b) to admit the challenge, quash the closure and re-judge the complaint, in accordance with paragraph (7) item 2, where the objections regarding the legality of evidence taking or the performance of criminal prosecution were misjudged.

(11) The items of evidence that were excluded cannot be taken into consideration in judging the case on the merits.

ARTICLE 356

Providing defence

(1) The damaged person, the defendant, the other parties and their attorneys shall have the right to become informed of the documents in the file throughout the trial.

(2) When the damaged person or one of the parties are in custody, the president of the panel of judges shall take measures for them to be able to exercise the right provisioned for in paragraph (1) and to contact their attorney.

consideration of evidence by the judicial authorities, to invoke exceptions and pose conclusions, to file any other requests which have to do with clearing the criminal aspects of the case, the right to be informed within reasonable time about the course of the criminal procedure, upon his explicit request (indicating an address in Romania, an e-mail address or an electronic message address to which this information to be sent), the right to look at the file, according to applicable legal provisions, the right to be heard, the right to ask the defendant, the witnesses and experts questions, the right to an interpreter free of charge if he does not understand, cannot articulate himself properly or cannot communicate in Romanian, the right to be assisted or represented by a defender, the right to make use of a mediator in cases in which this is permitted by law, the right to make use of means of redress.

The testimonies of the injured person are **means of evidence** within the criminal trial, alongside the testimonies of the suspect or defendant, of the witnesses, civil party or of the person liable in civil law (art. 97 new Code of criminal procedure).

The person who has suffered a physical, material or moral damage as a result of an offence for which the criminal investigation is initiated ex officio and who does not want to participate in the criminal trial has to inform the judicial body about this which, if necessary, will hear the injured person as a witness.

In order to recover the damage suffered or to compensate the moral damage or any other type of damage suffered as a result of the offence, the victim can

---

(3) During trial, the damaged person and the parties shall have the right to only one continuance in order to hire an attorney and prepare their defence.

(4) If the damaged person or one of the parties no longer benefits from legal assistance provided by their chosen counsel, the court may grant continuance in order for them to hire another attorney and prepare their defence.

(5) In the cases stipulated in paragraphs (1) - (4), granting the facilities necessary for the preparation of actual defence shall comply with the observance of a reasonable time of the penal trial.

ARTICLE 374

Notification of the accusation, clarifications and requests

(…)

(3) The president shall inform the civil party, the civilly responsible party and the damaged party in relation to the evidence taken during criminal prosecution that was excluded and that will not be taken into account in settling the case and inform the damaged person that they may become a civil party no later than the commencement of court investigation.

(…)

(5) The president shall ask the prosecutor, the parties and the damaged person whether they propose any other evidence to be taken.

(…)

ARTICLE 390

Written concluding arguments

(…)

(2) The prosecutor, the damaged person and the parties may submit written concluding arguments, even if not requested by the court.

ARTICLE 409

Persons who may submit appeals

(1) The following may submit appeals:

(…)

c) the civil party, as concerns the penal side or the civil side, and the civilly responsible party, as regards the civil side, and in relation to the penal side, insofar as the solution for this side influenced the civil side;

d) the damaged person, as concerns the penal side;

(…)

become a civil party[50] within the criminal trial and file civil claims (compensation, reinstatement in the previous state, etc.).

In respect of judiciary practice, the courts informed that the child victims have been heard in all cases, both during criminal prosecution, and during court investigation, occasion on which they could express their opinions, needs, and occupation.

The victims were assessed by experts, by care of the General Directorate for Social Assistance and Child Protection, from the criminal prosecution stage;

c. What kind of support services are provided to child victims and their families so that their rights and interests are duly presented and taken into account? (Article 31, para. 1, letter (d));

ANSWER:

The legal assistance and representation are the main means available for the rights and interests of the injured person to be presented and considered appropriately.

According with art. 93 para. (4) of the new Code of criminal procedure, legal assistance is mandatory if the injured person or the civil party is a person without capacity of exercise or with restricted capacity of exercise (as shown in question no. 1, the child who has not reached the age of 18 is considered to not have capacity of exercise and thus belongs to the category of victims for which legal assistance is mandatory within the criminal trial. For details and exceptions see answer to question no. 1).

In cases in which the legal assistance is mandatory it is also free of charge if the person entitled to it does not hire a defender and an ex officio defender is to be appointed.

Also in other cases in which the judicial authority considers that out of certain reasons the injured person could not defend itself, it will order measures for the appointment of an ex officio defender (art. 93 para. (5) of the new Code of criminal procedure).

The rights of the defender have been detailed under the previous letters.

Some of the DGASPC were of the opinion that the legal practitioners within these institutions ensure the information of child victims, usually before the criminal prosecution is initiated (counties Arges, Bihor, Bucharest sectors 4 and 6, Caras-Severin, Dolj, Galati, Gorj, Harghita, Hunedoara, Mehedinti, Olt, Sibiu, Suceava, Timis, Tulcea, Valcea and Vrancea).

[50] CHAPTER V Civil parties and their rights
ARTICLE 84
Civil party
(1) The damaged person exercising the civil action during the penal trial shall be a party in the penal trial and shall be referred to as civil party.
(2) The capacity of civil party may also be held by the successors of the prejudiced person, if they exercise a civil action during the penal trial.
ARTICLE 85
Rights of the civil party
(1) During the penal trial, the civil party shall have the rights stipulated in Article 81.
(2) The capacity of civil party of the person who incurred a prejudice as a result of the offence shall not preclude that person's right to participate, as damaged person, in the same case.
(3) The provisions of Article 80 shall apply accordingly where there is a very large number of civil parties.

Measures provided for in Law No. 211/2004 concerning some measures for ensuring the protection of victims of crime:

- provisions concerning the right of certain categories of victims of crime to psychological counselling free of charge[51]. (see also the answer to question no.15 a))

[51] ARTICLE 8

(1) Psychological assistance shall be provided free of charge, upon demand, to the victims of the attempts of the offence of manslaughter and murder in the first degree, as provisioned for in Articles 188 and 189 of the Penal Code, to the victims of the offence of family violence, as provisioned for in Article 199 of the Penal Code, of the intentional offences which resulted in the bodily harm of the victim, the offences of rape, sexual assault, sexual act with a minor and sexual corruption of minor children, as provisioned for in Articles 218 - 221 of the Penal Code, of the offence of bad treatment of minor children, as provisioned for in Article 197 of the Penal Code, as well as to the victims of the offences of trafficking in and exploitation of vulnerable persons and attempts thereof."

ARTICLE 9

Free of charge psychological counselling shall be provided for a period of no more than 3 months, and in the case of victims who have not turned 18, for a period of no more than 6 months.

(…)

ARTICLE 11

The services of victim protection and social reintegration of offenders may also provide other forms of assistance to the victims of offences.

(…)

CHAPTER 4

Legal assistance provided free of charge to the victims of certain offences

ARTICLE 14

(1) Legal assistance shall be provided free of charge, upon demand, to the following categories of victims:

a) persons who were subject to attempts of the following offences: manslaughter, murder in the first degree and aggravated murder, as provisioned for in Articles 174 - 176 of the Penal Code, an offence resulting in severe bodily harm, as provisioned for in Article 182 of the Penal Code, an intentional offence which resulted in the severe bodily harm of the victim, an offence of rape, sexual act with a minor and sexual perversion, as provisioned for in Articles 197, 198 and Article 201 paragraphs 2 - 5 of the Penal Code;

b) the spouse, children and dependents of the persons who dies as a result of the offences of manslaughter, murder in the first degree and aggravated murder, as provisioned for in Articles 174 - 176 of the Penal Code, as well as of the intentional offences which led to the person's death.

(2) Legal assistance shall be provided free of charge to the victims provisioned for in paragraph (1) if the offence was committed in the territory of Romania or, if the offence was committed outside the territory of Romania, if the victim is a Romanian citizen or foreign citizen legally residing in Romania and the penal trial is conducted in Romania.

ARTICLE 15

Legal assistance shall be provided free of charge, upon demand, to the victims of other offences than those provisioned for in Article 14 paragraph (1), in observance of the conditions stipulated in Article 14 paragraph (2), where the monthly revenue per family member of the victim is no more than the minimum gross basic salary per economy calculated for the year when the victim submitted the application for free of charge legal assistance.

ARTICLE 16

(1) Legal assistance shall only be provided free of charge if the victim notified the prosecution services or the court of law within 60 days after the date when the offence was committed.

(2) In the case of the victims provisioned for in Article 14 paragraph (1) letter b), the 60-day period shall be calculated from the date when the victim became aware that the offence was committed.

(3) If it was impossible for the victim, from a physical or mental perspective, to notify the prosecution services, the 60-day period shall be calculated starting with the date when such impossibility ceased.

(4) The victims who have not turned 18 and those placed under interdiction shall not have the obligation to notify the prosecution services or the court of law in relation to the offence being committed. The legal representative of the minor or of the person placed under interdiction may notify the prosecution services in relation to the offence that was committed.

ARTICLE 17

- concerning the right of certain categories of victims of crime to free legal assistance[52].

---

(1) The application for free of charge legal assistance shall be submitted to the tribunal having jurisdiction over the victim's domicile and it shall be settled by two judges of the Commission for granting financial indemnification to the victims of certain offences, by closure, within 15 days after the date of its submission.

(2) The application for free of charge legal assistance shall contain:

a) the victim's name, first name, citizenship, date and place of birth, domicile or residence;

b) the date, place and circumstances under which the offence was committed;

c) if the case may be, the date and name of the prosecution services or court of law where the notification was submitted, in accordance with Article 16;

d) the capacity of spouse, child or dependant of the deceased person, in the of the victims provisioned for in Article 14 paragraph (1) letter b);

e) if the case may be, the victim's monthly revenue per family member;

f) the name, first name and form of the attorney profession of the chosen counsel or the specification that the victim has not chosen an attorney.

(3) The application for free of charge legal assistance shall have attached, in copy, the supporting documents for the data filled in the application and any other documents held by the victim, useful in settling the application.

(4) The application for free of charge legal assistance shall be settled by closure, behind closed doors, and the victim shall be summoned in this regard.

(5) Where the victim has not chosen an attorney, the closure admitting free of charge legal assistance shall also contain the appointment of an attorney *ex officio* in accordance with Law no. 51/1995 for the organization and operation of the attorney profession, republished, with subsequent amendments and supplements, and the By-Laws of the attorney profession.

(6) The closure whereby the application for free of charge legal assistance was settled shall be communicated to the victim.

(7) The closure whereby the application for free of charge legal assistance was dismissed shall be subject to re-examination by the tribunal where the Commission for granting financial indemnification to the victims of certain offences is operating, upon the victim's demand, within 15 days after communication. Re-examination shall be settled by a panel consisting of two judges.

ARTICLE 18

(1) Legal assistance shall be provided free of charge to each victim throughout the trial, up to the limit of an amount equivalent to two minimum gross basic salaries per economy, calculated for the year when the victim submitted the application for free of charge legal assistance.

(2) The funds necessary to provide free of charge legal assistance shall be made available from the State budget, through the budget of the Ministry of Justice.

ARTICLE 19

The provisions of Articles 14 - 18 shall also apply accordingly for the provision of the money necessary to enforce the court decision whereby civil indemnification was granted to the victim of the offence.

ARTICLE 20

(1) The application for free of charge legal assistance and the application for the provision of the amount necessary to enforce the court decision whereby civil indemnification was granted to the victim of the offence may be submitted by the legal representative of the minor child or of the person subject to interdiction.

(2) The application for free of charge legal assistance and the application for the provision of the amount necessary to enforce the court decision whereby civil indemnification was granted to the victim of the offence may also be submitted by non-governmental organisations active in the field of victim protection, provided that they are signed by the victim, and contain the data referred to in Article 17 paragraph (2) and they enclose the documents provisioned for in Article 17 paragraph (3).

(3) The application for free of charge legal assistance and the application for the provision of the amount necessary to enforce the court decision whereby civil indemnification was granted to the victim of the offence shall be exempted from stamp duty.

[52] **CAP. 4**

Free of charge legal assistance to the victims of certain offences

ARTICLE 14

Furthermore, victims of trafficking in human beings benefit from a special provision concerning the right to free legal assistance and other protection measures (for details also see the answer to question no. 15 a)).

As regards the victims of trafficking in human beings The Program for the coordination of victims within the criminal trial has been elaborated under the supervision of ANITP, a program which reunites the measures, activities and specific actions adopted and carried out by the state institutions aiming at the facilitation of participation of victims of trafficking in human beings in the criminal trial, in order to offer them some emotional support.

d. Please describe the measures taken to protect the privacy, the identity and the image of child victims (Article 31, para. 1, letter (e));

---

(1) Legal assistance shall be provided free of charge, upon demand, to the following categories of victims:

a) persons who were subject to attempts of the following offences: manslaughter, murder in the first degree and aggravated murder, as provisioned for in Articles 174 - 176 of the Penal Code, an offence resulting in severe bodily harm, as provisioned for in Article 182 of the Penal Code, an intentional offence which resulted in the severe bodily harm of the victim, an offence of rape, sexual act with a minor and sexual perversion, as provisioned for in Articles 197, 198 and Article 201 paragraphs 2 - 5 of the Penal Code;

b) the spouse, children and dependents of the persons who dies as a result of the offences of manslaughter, murder in the first degree and aggravated murder, as provisioned for in Articles 174 - 176 of the Penal Code, as well as of the intentional offences which led to the person's death.

(2) Legal assistance shall be provided free of charge to the victims provisioned for in paragraph (1) if the offence was committed in the territory of Romania or, if the offence was committed outside the territory of Romania, if the victim is a Romanian citizen or foreign citizen legally residing in Romania and the penal trial is conducted in Romania.

ARTICLE 15

Legal assistance shall be provided free of charge, upon demand, to the victims of other offences than the ones provisioned for in Article 14 paragraph (1), in observance of the conditions set forth in Article 14 paragraph (2), where the monthly revenue per family member of the victim is no more than the minimum gross basic salary per economy calculated for the year when the victim submitted the application for free of charge legal assistance.

(…)

ARTICLE 18

(1) Legal assistance shall be provided free of charge to each victim throughout the trial, up to the limit of an amount equivalent to two minimum gross basic salaries per economy, calculated for the year when the victim submitted the application for free of charge legal assistance.

(2) The funds necessary to provide free of charge legal assistance shall be made available from the State budget, through the budget of the Ministry of Justice.

(…)

ARTICLE 20

(1) The application for free of charge legal assistance and the application for the provision of the amount necessary to enforce the court decision whereby civil indemnification was granted to the victim of the offence may be submitted by the legal representative of the minor or of the person placed under interdiction.

(2) The application for free of charge legal assistance and the application for the provision of the amount necessary to enforce the court decision whereby civil indemnification was granted to the victim of the offence may also be submitted by non-governmental organisations active in the field of victim protection, provided that they are signed by the victim, and contain the data referred to in Article 17 paragraph (2) and they enclose the documents provisioned for in Article 17 paragraph (3).

(3) The application for free of charge legal assistance and the application for the provision of the amount necessary to enforce the court decision whereby civil indemnification was granted to the victim of the offence shall be exempted from stamp duty.

ANSWER:

The Code of criminal procedure enshrines as a principle of the criminal trial the respect of the human dignity and private life. Any person who is subject to criminal investigation or trialed has to be treated with respect to human dignity. The respect of private life, inviolability of domicile and secrecy of correspondence are guaranteed. The limitation of the exercise of these rights is only permitted according with applicable legislation and if it is necessary in a democratic society. (art. 11)

The criminal prosecution stage is not public (art. 285 para. (2) new Code of criminal procedure), so that the criminal prosecution bodies take measures for the protection of private life, victim's identity and image and keep the confidentiality of personal data which they process.

During the criminal prosecution, the defender has the obligation to keep the confidentiality or secrecy of the data and documents he got access to while looking at the file (art. 94 para. (5)).

Persons who are called to technically assist within the enforcement of surveillance measures have the obligation to keep the secrecy of the operation performed, in all other cases they may be held criminally liable (art. 142 para. (3)).

As regards the trial[53] (which is a public stage as a general rule), it is provided that if the public trial could affect the moral, dignity or private life of a person or the

[53] ARTICLE 352 of the New Code of Penal Procedures:
Publicity of the court session

(1) The court session shall be public, save where otherwise provided by law. The session taking place behind closed doors shall not be public.

(2) The court session may not be attended by minors under the age of 18, save where they have the capacity of parties or witnesses, as well as armed persons, save for the personnel in charge with security and order.

(3) If the proceedings held in public session could prejudice State interests, moral, the dignity or privacy of a person, the interests of minor children or justice, the court, upon the demand of the prosecutor, of the parties or *ex officio*, may declare that the session is not public for all its course or only for a part of the proceedings.

(4) The court may also declare the session not public upon the demand of a witness, if their public hearing would prejudice the safety or dignity or privacy thereof or their family members, or upon the demand of the prosecutor, of the damaged person or the parties, where a public hearing would jeopardise the confidentiality of certain information.

(5) The session shall be declared not public in public session, after hearing the attending parties, the damaged person and the prosecutor. The order of the court shall be enforceable.

(6) While the session is not public, only the parties, the damaged person, their representatives, attorneys and other persons whose attendance is authorised by the court shall be admitted to the court room.

(7) The parties, the damaged person, their representatives, attorneys and experts appointed in the case shall be entitled to take note of the documents and content of the file.

(8) The presiding judge shall have the duty to inform the persons attending the session held behind closed doors on the obligation to keep the information received during the trial confidential.

(9) Throughout the proceedings, the court may prohibit the publication and dissemination, by written or audiovisual means, texts, drawings, photographs or images able to disclose the identity of the damaged person, of the civil party, of the civilly responsible party or of the witnesses, in observance of the conditions provisioned for in paragraphs (3) or (4).

(10) Public interest information in the file shall be communicated in observance of the legal provisions.

(11) Where classified information is essential for the settlement of the case, the court shall request, as a matter of emergency, if appropriate, full declassification, partial declassification or the transfer into another classification degree of or that access be allowed to the information classified for the defendant's attorney.

interests of children, the court can, upon request of the prosecutor, parties or ex officio, declare the hearing not-public for its entire duration or just for a certain part of the trial.

The court can also declare the hearing not public upon request of a witness, if through the hearing of that witness within a public hearing the safety or diginity or private life of the witness or of his family would be affected, or upon request of the prosecutor, injured person or parties in case a public hearing could jeopardize the confidentiality of some information.

The president of the panel has the obligation to inform the parties who are involved in the non-public hearing about the obligation to keep the confidentiality of the information they get during the trial.

During the trial, the court can forbid the publication and dissemination, by any written or audiovisual means, of texts, photographs or images which can reveal the identity of the victim, civil party, person liable in civil law or of the witnesses, if the hearing was declared non-public.

Law No. 678/2001 concerning the prevention and fight of trafficking in human beings also provides for such provisions meant to ensure the protection of private life and of the dignity of victims of trafficking in human beings. According with art. 24, court hearings in cases concerning the offence of trafficking in children and child pornography are not public. The parties, their representatives, defenders, the representatives of the National Agency against Trafficking in Human Beings, as well as other persons whose presence is deemed necessary by the court can assist in the hearings.

- According with art. 59 of Law No. 254/2013 concerning the enforcement of penalties and measures involving deprivation of liberty ordered by judicial bodies during the criminal trial, convicted persons can communicate with the media only if there are no grounded reasons to forbid this, with a view to protecting the victim.

- The unauthorized release of information concerning the private life of persons, as well as the unauthorized release of confidential information from criminal cases are considered offences and sanctioned by the new Criminal code[54].

---

(12) If the issuing authority does not allow access for the defendant's attorney to classified information, such information may not serve in rendering a sentencing decision, a decision to waive the enforcement of the sentence or to defer the enforcement of the sentence.

[54] ARTICLE 227

Disclosure of professional information

(3) Unrightfully disclosure of data or information concerning a person's private life, of a nature to produce damages to such person by the one who was informed to this aimed, in the virtue of the profession or position held and who has the obligation to keep such information confidential shall be punished with 3 months to 3 years imprisonment or a fine.

(4) The penal action shall start upon the prior complaint of the injured person.

(…)

ARTICLE 277

Compromise of the interest of justice

(1) The unlawful disclosure of confidential information referring to the date, time, venue, manner or methods whereby evidence is to be taken, by a magistrate or another public officer who became aware of the above by virtue of their office, where this could hinder or preclude criminal prosecution, shall be punished with 3 months to 2 years imprisonment or fine.

(2) The unlawful disclosure of means of evidence or official documents in a penal case, prior to the rendition of a decision not to initiate court proceedings or the final settlement of the case, by a public officer who became aware of the above by virtue of their office, shall be punished with one month to one year imprisonment or fine.

The identity and private life of child victims of sexual abuse are also protected by virtue of the applicable provisions in the audiovisual field. According with the Code for the regulation of the audiovisual content, as approved by the decision of the National Council of the Audiovisual No. 220/2011, the release of any information which could lead to the identification of the child under the age of 14 who has been a victim of sexual abuse or accused of having committed some offences or has been a witness is, however, forbidden. (ART. 4 para. (1))

The child aged between 14 and 16 years who has been a victim of an offence or sexual abuse can be presented in the news programs, talk-shows or audiovisual reports only if all the following conditions are fulfilled:

a) the victim's written consent;

b) the prior consent of the parents or of the legal representative, in written form;

c) the assistance during the broadcasting or recording by one parent or by the legal representative, or by the defender, as case may be, during the criminal investigation or detainment. The child cannot be assisted by the parent who is the alleged offender.

In case of the child aged between 16 and 18 who is a victim or witness to more offences being committed or who has been sexually abused, the following is necessary:

a) his explicit agreement;

b) elimination of any elements which can lead to the identification of the child, upon his request, his parents' request or upon the request of his legal representative. (art. 6 of the Code for the regulation of the audiovisual content)

If the minor under the age of 14 was submitted by parents or legal guardians of physical or mental abuse, the broadcast of images or statements is possible only with the consent of the minor, and with the written consent of the parent who is not the alleged author of the abuse or, where appropriate, the authority responsible for the protection of minors.

It is also prohibited to broadcast programs with the primary purpose of the exploitation of the child's physical appearance or his/her exposure to age-inappropriate situations.

e. Please describe the measures taken to provide the safety of the child victims and witnesses and their families from intimidation, retaliation and repeat victimisation (Article 31, para. 1, letter (f));

ANSWER:

The Code of Criminal Procedure provides for two categories of such protection measures[55]: measures related to persons who are granted the quality of threatened

(3) The unlawful disclosure of information in a penal case, by a witness, expert or interpreter, when such interdiction is imposed by the penal procedural law, shall be punished with one month to one year imprisonment or fine.

(4) The acts of disclosing or divulging overtly illegal actions or activities committed by authorities in a penal case shall not constitute offences.

[55] SECTION 5
Witness protection

& 1. Protection of threatened witnesses

ART. 125

Threatened witness

If there is some reasonable suspicion that the life, physical integrity, liberty, property or professional activity of the witness or of a family member of the witness could be jeopardized as a result of the information the witness provides to the judicial authorities or of his/her depositions, the competent judicial authority shall grant him/her the quality of threatened witness and shall order one or more of the protection measures provided for in art. 126 or 127, as case may be.

ART. 126

Protection measures ordered during the criminal prosecution

(1) During criminal prosecution, at the same time with granting the quality of threatened witness, the prosecutor shall order the enforcement of one or more of the following measures:

a) observation and guarding of the witness's accommodation or ensuring a temporary accommodation;

b) escorting and ensuring the protection of the witness or of his/her family members when leaving the accommodation;

c) protection of identity data by granting a pseudonym by which the witness shall sign his/her testimony;

d) hearing of the witness without him/her being present with the help of audio-visual means of transmission, with voice and image blurred, when the other measures are not enough.

(2) The prosecutor shall order the enforcement of a protection measure ex officio or upon the request of the witness, of one of the parties or of a main subject involved in the trial.

(3) In case of the enforcement of the protection measures provided for in para. (1) letter c) and d), the testimony of the witness shall not contain the real address or his/her identity data, these being written in a special registry to which only the criminal prosecution body, the judge tasked with release/detention decisions or rulings, the preliminary chamber judge or the court shall have access, on conditions of confidentiality.

(4) The prosecutor shall order the granting of the quality of threatened witness and the enforcement of protection measures by motivated ordinance which shall be kept on conditions of confidentiality.

(5) The prosecutor shall verify, at reasonable time intervals, if the conditions which determined the ordering of the protection measures subsist and, if they do not, the prosecutor shall order by motivated ordinance their cessation.

(6) The measures provided for in para. (1) shall be kept during the entire criminal prosecution if the danger subsists.

(7) If the danger appeared during the preliminary chamber procedure, the preliminary chamber judge shall order, ex officio or upon the prosecutor's request, the protection measures provided for in art. 127. The provisions of art. 128 shall be applied accordingly.

(8) The protection measures provided for in la para. (1) letter a) and b) shall be communicated to the authority legally empowered with the enforcement of the measure.

ART. 127

Protection measures ordered during the trial

During the trial, at the same time with the granting of the quality of threatened witness, the court shall order the enforcement of one or more of the following measures:

a) observation and guarding of the witness's accommodation or ensuring a temporary accommodation;

b) escorting and ensuring the protection of the witness or of his/her family members when leaving the accommodation;

c) non-publicity of the trial during the hearing of the witness;

d) hearing of the witness without him/her being present with the help of audio-visual means of transmission, with voice and image blurred, when the other measures are not enough;

e) protection of identity data of the witness and granting a pseudonym by which the witness shall make his/her testimony.

ART. 128

Ordering the measure of witness protection during trial

(1) The court shall order the enforcement of a protection measure ex officio, upon the request of the prosecutor, witness, parties or the injured party.

(2) The proposal submitted by the prosecutor shall contain:

witness and measures related to persons who are granted the quality of vulnerable witness.

By way of assimilation, the minor who is a victim of an offence can benefit during the criminal trial, no matter if he/she has the quality of injured party or witness,

---

a) name of the witness who shall be heard during the trial and in relation to whom the ordering of the protection measure is requested;

b) the concrete motivation of the seriousness of the danger and of the need for the respective measure.

(3) When the request is submitted by the other persons mentioned in para. (1), the court can order the prosecutor to check immediately the grounds of the request for protection.

(4) The request shall be decided in a non-public session, without the participation of the person who made the request.

(5) The participation of the prosecutor is mandatory.

(6) The court shall decide by means of a motivated protocol which is not subject to any means of redress.

(7) The protocol by which the protection measure is ordered shall be kept on conditions of confidentiality. If the protection of the witness is also needed after the court decision remains final, the provisions of the special law shall be applicable.

(8) The protection measures provided for in art. 127 letter a) and b) shall be communicated to the authority legally empowered with the enforcement of the measure.

ART. 129

Hearing of the protected witness

(1) In the situations provided for in art. 126 para. (1) letter d) and art. 127 letter d), the hearing of the witness can be performed with the help of audio-visual means, without the witness being physically present at the place where the judicial body is.

*(2) *** Abrogated*

(3) The main subjects involved in the trial, the parties and their lawyers can ask questions to the witness being heard according to the provisions of para. (1). The judicial body shall dismiss the questions which could lead to the identification of the witness.

(4) The testimony of the protected witness shall be recorded with the help of visual and audio means and shall be rendered in whole in written form.

(5) During the criminal prosecution the testimony shall be signed by the criminal prosecution authority or, as case may be, by the judge tasked with release/detention decisions or rulings and by the prosecutor who participated at the hearing of the witness and shall be submitted to the file. The testimony of the witness, transcribed, shall be also signed by the witness and shall be kept in the file with the prosecution office, at a special place, on conditions of confidentiality.

(6) During the trial the testimony of the witness shall be signed by the president of the panel.

(7) The medium on which the testimony of the witness was recorded shall be kept, in original, sealed with the seal of the prosecution office or of the court before which the testimony was made, on conditions of confidentiality. The medium which contains the recordings during the criminal prosecution shall be submitted after the criminal prosecution is finished to the competent authority, together with the file, and shall be kept on the same conditions of confidentiality.

& 2. Protection of vulnerable witnesses

ART. 130

The vulnerable witness

(1) The prosecutor or, as case may be, the court can decide the granting of the quality of vulnerable witness to the following categories of persons:

a) to the witness who suffered a trauma as a result of the offence or as a result of the subsequent behaviour of the suspect or defendant;

b) to the underaged witness.

(2) At the same time with granting the quality of vulnerable witness, the prosecutor and the court can order the protection measures provided for in art. 126 para. (1) letter b) and d) or, as case may be, art. 127 letter b) - e), which shall be applied accordingly. The blurring of the voice and image is not mandatory.

(3) The provisions of art. 126 and 128 shall be applied accordingly.

of the protection measures provided for any of the two categories of witnesses with special quality[56].

The threatened witness:

If there is some reasonable suspicion that the life, physical integrity, liberty, property or professional activity of the witness or of a family member of the witness could be jeopardized as a result of the information the witness provides to the judicial authorities or of his/her depositions, the competent judicial authority grants him/her the quality of threatened witness and orders one or more of the following protection measures:

During the criminal prosecution: - observation and guarding of the witness's accommodation or ensuring a temporary accommodation;

- escorting and ensuring the protection of the witness or of his/her family members when leaving the accommodation;

- protection of identity data by granting a pseudonym by which the witness shall sign his/her testimony;

- protection of identity data by granting a pseudonym by which the witness shall sign his/her testimony.

During trial:

- observation and guarding of the witness's accommodation or ensuring a temporary accommodation;

- escorting and ensuring the protection of the witness or of his/her family members when leaving the accommodation;

- non-publicity of the trial during the hearing of the witness;

- hearing of the witness without him/her being present with the help of audio-visual means of transmission, with voice and image blurred, when the other measures are not enough;

- protection of identity data of the witness and granting a pseudonym by which the witness shall make his/her testimony.

The vulnerable witness:

The following persons can be included in the category of vulnerable witnesses:

- the witness who suffered a trauma as a result of the offence or as a result of the subsequent behaviour of the suspect or defendant;

- the underaged witness.

The protection measures for the vulnerable witness are the following:

- escorting and ensuring the protection of the witness or of his/her family members when leaving the accommodation;

- hearing of the witness without him/her being present with the help of audio-visual means of transmission, with voice and image blurred, when the other measures are not enough.

[56] ART. 113

Protection of the injured party and of the civil party

When the legal conditions concerning the quality of threatened or vulnerable witness or for the protection of private life or dignity are met, the criminal prosecution body shall order in relation to the injured party or to the civil party the protection measures provided for in art. 125 - 130, which shall be applied accordingly.

b) escorting and ensuring the protection of the witness or of his/her family members when leaving the accommodation;

- non-publicity of the trial during the hearing of the witness;
- hearing of the witness without him/her being present with the help of audio-visual means of transmission, with voice and image blurred, when the other measures are not enough;
- protection of identity data of the witness and granting a pseudonym by which the witness shall make his/her testimony.

Among the reasons for which the **pre-trial custody** can be ordered is also the act of the defendant of putting pressure on the injured party. (art. 223 new Code of Criminal Procedure)

Inclusion in the witness protection program, according to the special legislation: To the extent in which the minor fulfils the legal conditions, the minor can benefit of the provisions of Law No. 682/2002 concerning the witness protection, by being included in a witness protection program.

In order for the minor to fulfil the conditions necessary for the inclusion in this program, the minor has to have the quality of witness within the criminal trial or, without having a procedural quality in the file, to contribute by deciding information and data to finding the truth within files concerning serious offences or to the prevention of serious damages which could be caused by such offences or to their recovery.

The other legal conditions need also be fulfilled, for example, jeopardizing life, physical integrity or liberty of the minor, family members or persons close to the minor, as a result of the information and data provided or which the minor agreed to provide to the judicial authorities or as a result of his/her testimonies;

The protection measures which can be included, individually or cumulatively, in the protection program are the following:

a) protection of the identity data of the protected witness;

b) protection of his/her testimony;

c) hearing of the protected witness by the judicial authorities under another identity than his/her real identity with the help of special techniques for blurring image and voice;

d) protection of the witness who has been detained, is in pre-trial custody or serving a penalty of imprisonment, in cooperation with the administration of the place of detention;

e) increased measures of protection at the domicile, as well as measures of protection of the witness when going and coming back from the judicial authorities;

f) change of domicile;

g) change of identity;

h) change of the looks.

(3) The measures of assistance which can be ordered, as case may be, within the support scheme are as follows:

a) re-insertion into another social environment;

b) professional reorientation;

c) change or ensuring a job;

d) ensuring an income until finding a job.

f. Please specify whether the victim and his/her family are informed when the person prosecuted or convicted is released temporarily or definitely from detention or custody. Please indicate who delivers this information and how (Article 31, para. 1, letter (b));

ANSWER:

The new Code of Criminal Procedure provides, with a character of novelty in the Romanian legislation, the right of victims to be informed of the release, in any manner, of the perpetrator.

The victim shall be informed at the first hearing that if the defendant will be deprived of freedom, respectively sentenced to imprisonment, the victim has the right to be informed of the perpetrator's release in any way (art. 111).

If the perpetrator is subject to preventive arrest:

When the injured party has requested notification on the release of the arrested person in any manner, the judge will record the request in a separate report, together with the issuance of the warrant of arrest, which he handles to the police authority. Both the judgment and the minute noted above are communicated administration of the detention.

If the perpetrator is convicted:

The administration of the prison has the obligation to inform the victim about the release of the perpetrator, when the sentence has been fully executed.

If the release of the offender occurs before the deadline for penalty or custodial preventive measures, the judicial organ that decided the release will inform the victim.

If case of permission out of prison for the inmates that execute the imprisonment in open regime, in case of escape, the victim will be informed by the police authority notified by the administration.

g. Please also indicate what measures have been taken to ensure that contact between victims and perpetrators, within court and law enforcement agency premises, is avoided. Please specify under which conditions the competent authorities may authorize such contact in the best interests of the child or when the investigations or proceedings require such contact (Article 31, para. 1, letter (g));

ANSWER:

The contact between victims and offenders can be avoided both during the criminal investigation and in court (for example by their hearing on different dates, hearing of the victim without the victim being physically present in the prosecution office and court or the presentation in court of a hearing of the victims which was performed previously).

There are, however, no explicit provisions concerning this aspect.

The judicial bodies can derive the necessity for avoiding the contact between the child victim and offender from the whole range of provisions concerning child protection, as detailed in the answers to the present questionnaire, as the ones concerning the child's best interests, measures for special protection of the child within the criminal trial, etc.

The judicial authorities can request the contact between the victim and offender when during the criminal trial it is necessary to confront the parties. When it is ascertained that there are inconsistencies between the testimonies of the persons heard within the same case, they can be confronted, if deemed necessary for clearing the case. The persons confronted are heard about the facts and circumstances in relation to which their previous statements are inconsistent and the criminal prosecution body or the court can allow the persons confronted to ask each other questions (art. 131 of the new Code of criminal procedure).

Although the attendance of child victims in the court room is not mandatory, their statement is often necessary.

Where the minor child victim is heard, it is deemed advisable that the meeting with the court of law and the environment specific thereto only occur once.

However, the instances informed that total avoidance of the contact between the victim and the perpetrator during criminal proceedings is difficult to achieve, considering that the defendant's right to defence renders the observance of the principles of direct examination and submission of evidence.

The judges also informed that they do not always have the conditions to realize a safe hearing of the victim from this point of view.

Among the difficulties mentioned by the instances regarding the observance of this principle was the fact that the route of the victims to the court generates a series of risks, taking into consideration that many times the victims and the perpetrators from rural areas use the same public transportation.

It was appreciated by the judges that, in concrete, there are not enough conditions ensured for them to facilitate the hearing of the minor victim in conditions of safety, avoiding the contact with the perpetrator or his/her family.

It is also shown that, also it is necessary that, the waiting before the calling of the cause not be long and not be in the courtroom, but in a place separate from the other subjects, which should be relaxing for the child, most of the courts cannot ensure such conditions, because of the absence of the separate waiting rooms for children.

Furthermore, some instances do not have a subterranean way of access for the defendants, which makes it possible for the victim and the perpetrator to meet in the court halls.

h. Please specify under which conditions child victims of the offences established according to the Convention have access to legal aid provided free of charge (Article 31, para. 3).

Answer:

- See the answers to questions 15 a) and 21 c).

Question 22: Investigations and criminal measures to protect the child victim

a. What protective approach towards victims has been adopted to ensure that the investigations and criminal proceedings do not aggravate the trauma experienced by the child and that the criminal justice response is followed by assistance, where appropriate? (Article 30, para. 2, Explanatory Report, paras. 211-215);

ANSWER:

Except the protection measures detailed in the previous questions, we would also like to mention the provisions of the new Code of criminal procedure concerning special cases for the hearing of the witness. The hearing of the child witness who has not reached the age of 14 has to be done in the presence of one of the parents, of the legal guardian or the representative of the institution which was entrusted the care and education of the child. If the persons mentioned in para. (1) cannot be present or are the suspect, defendant, injured person, civil party, person liable in civil law or witness in the case or if there is the reasonable suspicion that they can influence the child's statement, the hearing will be performed in the presence of a representative of the guardianship authority or of a relative with full capacity of exercise, designated by the judicial authority (art. 124 of the new Code of criminal procedure). If deemed necessary, upon request or ex officio, the criminal prosecution body or the court can order the hearing of the child to be performed in the presence of a psychologist.

The same article also provides for the hearing of the child to avoid any negative effect on the child's mental health.

There are also special provisions concerning the hearing of the children in cases of trafficking in human beings and exploitation of vulnerable persons (among them trafficking in children, procuring, use of services of an exploited person) and in cases of facilitation of illegal stay in Romania and child pornography. The hearing of the child who has not reached the age of 14 shall also be performed in the presence of at least one parent or of the legal representative, whereas it is also mandatory to also call a psychologist and a representative of the General Direction for Social Assistance and Child Protection.

b. Which legislative or other measures have been taken to ensure that investigations or prosecutions of offences established in accordance with the Convention shall not be dependent upon the report or accusation made by a victim and that the proceedings may continue even if the victim has withdrawn his or her statement? (Article 32, Explanatory Report, para. 230);

ANSWER:

The criminal prosecution in relation to any offence can be initiated both as a result of a complaint filed by the injured person, as a result of a report from any person who has an information about an offence having been committed, and ex officio[57].

[57] **The New Code of Penal Procedures – Law no. 135/2010**
CHAPTER II
Notifying the prosecution services
SECTION 1
General provisions
ARTICLE 288
Notification types
(4) The prosecution services are notified by complaint or denunciation, according to the documents drawn by other investigation authorities provisioned by the law or shall be notified ex officio.
(5) *When, according to the law, the commencement of the penal action is made only upon the prior complaint of the injured party, upon the notification made by the person provisioned by the*

law or upon the authorization of the institution provisioned by the law, the penal action cannot be started in their absence.

(6) In respect of the offences committed by militaries, the notification of the commanding officer is required only in what concerns the offences provisioned in Article 413-417 of the Penal Code.

.

ARTICLE 289

Complaint

(1) The complaint is the notification made by an individual or legal entity, in respect of a prejudice which it incurred as a result of the offence.

(2) The complaint shall contain: the name, first name, personal identification number, the capacity and domicile of the applicant or, for legal entities, the name, headquarters, sole registration code, fiscal identification code, registration number with the trade registry or with the registry of legal entities and the bank account, indication of the legal or conventional representative, the description of the act forming the object of the complaint, as well as the indication of the perpetrator and the means of evidence, if known.

(3) The complaint may be submitted in person or by proxy. The assignment shall be of a limited nature, and the power of attorney shall remain attached to the complaint.

(4) If made in writing, the complaint shall be signed by the damaged person or by their attorney in fact.

(5) The electronic complaint shall fulfil the conditions of form only if it is certified by electronic signature, in accordance with the legal provisions.

(6) A complaint submitted verbally shall be recorded in minutes by the services receiving it.

(7) The complaint may also be submitted by a spouse for the other spouse or by the major child for the parents. The damaged person may declare that they do not acknowledge the complaint.

(8) In relation to a person without legal capacity, the complaint shall be submitted by the legal representative thereof. The person with restricted legal capacity may submit a complaint subject to the approval of the persons provided for in the civil law. In the case where the perpetrator is the person legally representing or approving the actions of the damaged person, notification of the prosecution services shall be made *ex officio*.

(9) The complaint is wrongfully sent to the prosecution services or to the court of law shall be referred, by administrative means, to the competent judiciary authorities.

(10) Where the complaint is drawn up by a person residing in the territory of Romania, a Romanian, foreign citizen, or a person without citizenship, and it is used to notify that an offence was committed in the territory of another Member State of the European Union, the judiciary authority shall have the obligation of receiving the complaint and forward it to the competent services in the country in whose territory the offence was committed. The rules governing judicial cooperation in criminal matters shall apply accordingly.

ARTICLE 290

Denunciation

(3) Denunciation is the information made by a natural or legal entity concerning the commission of an offence.

(4) Denunciation can only be made in person, as provisions of Article 289 (2), (4) - (6) and (8) - (10) shall apply accordingly.

ARTICLE 291

Notifications made by persons in leading positions and by other persons

(3) Any person holding a leading position within a public administration authority or other public authorities, public institutions or other legal entities of public law, as well as any person having control duties, who during the exercise of such duties, found out the commission of an offence for which the penal action starts ex officio are compelled to notify the prosecution services at once and to take measures to prevent the consequences of the offence, the corpus delicti and any other means of evidence from disappearance.

(4) Any person holding a public office who was appointed by the public authorities or is submitted to the control or supervision of the public authorities in respect of compliance with that public service, who during the exercise of the duties, found out the commission of an offence for which the penal action starts ex officio are compelled to notify the prosecution services at once and to take measures to prevent the consequences of the offence, the corpus delicti and any other means of evidence from disappearance.

(…)

The exercise of the criminal proceedings is a procedural stage distinct from the initiation of the criminal prosecution and can be, as a general rule, conditioned for specific offences by the victim having filed a request to this effect – called previous complaint.

For offences which are referred to in this report, however, the initiation of the criminal proceedings is also performed ex officio and there is no condition as to a previous complaint of the victim.

One exception is the rape when the victim has reached the age of 16, in which situation the initiation of the criminal proceedings is performed upon previous complaint of the victim. In spite of this, even in case of a rape where the victim has reached the age of 16 there is the possibility for the initiation of the criminal proceedings ex officio. The criminal code provides as a general rule (art. 157) that in case the victim is a person without capacity of exercise or with limited capacity of exercise, the criminal proceedings can also be initiated ex officio.

Moreover, in case the offender is the person who legally represents the victim or approves the documents of the victim, the previous complaint shall be necessarily done ex officio (art. 295 and art. 289 para. (8) of the new Code of criminal procedure).

This means that the initiation of the criminal prosecution or the initiation of the criminal proceedings is not conditioned, in respect to any of the offences in the Convention, by a complaint or claim having been filed by the victim.

c. Which legislative or other measures have been taken to ensure that the statute of limitation for initiating proceedings with regard to the offences established in accordance with Articles 18, 19, paragraph 1.a and b, and 21, paragraph 1.a and b, shall continue for a period of time sufficient to allow the efficient starting of proceedings after the victim has reached the age of majority and which is commensurate with the gravity of the crime in question? (Article 33, Explanatory Report, paras. 231-232);

ANSWER:

By the provisions of art. 154[58] para. 4 of the new Criminal Code, in case of the offences against liberty and sexual integrity committed on a child the statute of

---

ARTICLE 295

Preliminary complaint

(1) The penal action shall be set in motion only upon the submission of a preliminary complaint by the damaged person, in the case of the offences for which the law stipulates that such a complaint is necessary.

(2) The preliminary complaint shall be addressed to the prosecution services or the prosecutor, in accordance with the law.

(3) The provisions of Article 289 paragraphs (1) - (6) and (8) shall apply accordingly.

[58] ARTICLE 154

Statute of limitations periods for criminal liability

(1) The statute of limitations periods for criminal liability shall be as follows:

a) 15 years, where the law provides, for the offence that was committed, life detention or more than 20 years imprisonment;

b) 10 years, where the law provides, for the offence that was committed, more than 10 years, but no more than 20 years imprisonment;

c) 8 years, where the law provides, for the offence that was committed, more than 5 years, but no more than 10 years imprisonment;

d) 5 years, where the law provides, for the offence that was committed, more than one year, but no more than 5 years imprisonment;

limitation starts to flow from the date on which the child has reached the age of majority.

d. Please clarify whether your judicial authorities may appoint a special representative for the victim who may be party, where the holders of parental responsibility are precluded from representing the child in proceedings related to sexual exploitation or sexual abuse of children as a result of a conflict of interest between them and the victim. Please specify who may be appointed as a representative and what are his/her tasks (Article 31, para. 4). Please also describe under which conditions it is possible;

ANSWER:

In this field, the provisions of the code of criminal procedure supplement the provisions of the code of civil procedure, as well as of the special laws concerning child protection.

When between the child and the holders of parental responsibility (parents, legal guardians, other legal representatives) there is a conflict of interests within the criminal trial, the court can order the measure of the special guardianship, according with the provisions of the Code of civil procedure[59]. The appointment of these special

---

e) 3 years, where the law provides, for the offence that was committed, no more than one year imprisonment or fine.

(2) The statute of limitations periods provisioned for herein shall start running from the date when the offence was committed. In the case of continuous offences, the period shall start running from the date when the action or inaction ceased, in the case of continued offences, from the date when the last action or inaction was committed, and in the case of habit offences, from the date when the last act was committed.

(3) In the case of progressive offences, the statute of limitations period for criminal liability shall start running from the date when the action or inaction was committed and it shall be calculated depending on the sentence applicable to the final result occurred.

(4) In the case of offences against sexual freedom and integrity, committed against a minor, the statute of limitations period shall start running from the date when the minor came of legal age. If the minor died before he came of legal age, the statute of limitations period shall start running from the date of death.

[59] ARTICLE 2

General applicability of the Code of Civil Procedures

(1) The provisions hereof shall also constitute general law procedures for civil matters.

(2) Furthermore, the provisions hereof shall also apply to other matters, unless otherwise provided by the laws governing the latter.

ARTICLE 58

Special guardianship

(1) As a matter of emergency, if the natural person without legal standing in relation to their civil rights has no legal representative, the court, upon the demand of the interested party, shall appoint a special guardian, to represent the former until the appointment of their legal representative, in accordance with the law. In addition, the court shall appoint a special guardian if there is a conflict of interests between the legal representative and the represented person or when a legal entity or an entity among the ones provisioned for in Article 56 paragraph (2), brought before the court, does not have a representative.

(2) The provisions of paragraph (1) shall also apply accordingly to the persons with restricted legal standing.

(3) The appointment of such guardians shall be made by the court conducting the proceedings, from among the attorneys especially designated in this regard by the Bar Association for each court of law. The special guardian shall have all the rights and obligations provided by law to the legal representative.

(..)

guardians shall be made by the court which has jurisdiction for the case from among the lawyers especially designated by the Bar for each court. The special guardian has all rights and obligations provided for by the law for the legal representative which means that he can perform any procedural acts on behold of the child he represents and can participate in the criminal trial instead of the child, except the cases in which the presence of the child is absolutely necessary, like for example the hearing of the child.

Procedural acts of disposition, like for example renouncing the trial or the right which is the subject matter of the trial, the approval of the court decision, conclusion of a settlement concerning the civil aspects of the case by the representatives of the child, will not hinder the trial if the court finds that they are not in te interest of these persons.

e. Please describe how your internal law allows for groups, foundations, associations or governmental or non-governmental organisations assisting and/or supporting victims to participate in legal proceedings (for example, as third parties) (Article 31, para. 5). Please specify under which conditions, if so required;

Groups, foundations, organizations or associations can provide different forms of assistance to the child victim, like legal assistance, psychological assistance or can participate in the child's hearing in cases and conditions strictly determined by law, but cannot participate as third parties in the criminal trial.

For example, with a view to granting some forms of assistance adapted to children who are victims of such offenses, at local level the probation services have concluded protocols of cooperation with the general directions for social assistance and child protection, with the public service for social assistance within municipalities, with laboratories of mental health, as well as with different non-governmental organizations which have this scope of activity.

The Law also sets out that non-governmental organizations can provide, independently or in cooperation with public authorities, services for the psychological counselling, legal assistance, victim's information, as well as for ensuring other forms of assistance of the victims of crime. To this end, non-governmental organizations can benefit, according with the applicable legislation, from subventions from the state budget (ART. 12, 34 of Law No. 211/2004, Art. 27 of Law No. 678/2001).

The application for free legal assistance, the application for financial compensation from the state and the application for the allocation of the amount necessary for the enforcement of the court decision by which damages were granted to the victim can also be filed by the non-governmental organizations which are active in the field of victim protection, if they are signed by the victim (art. 20 and art. 34 of Law No. 211/2004).

---

(2) Dispoziţiile alin. (1) se aplică în mod corespunzător şi persoanelor cu capacitate de exerciţiu restrânsă.

(3) Numirea acestor curatori se va face de instanţa care judecă procesul, dintre avocaţii anume desemnaţi în acest scop de barou pentru fiecare instanţă judecătorească. Curatorul special are toate drepturile şi obligaţiile prevăzute de lege pentru reprezentantul legal.

(..)

f. Please describe under which circumstances the use of covert operations is allowed in relation to the investigation of the offences established in accordance with the Convention (Article 30, para. 5);

ANSWER

The provisions of the code of criminal procedure provide for the following special surveillance or investigation techniques:

- surveillance of telecommunications of any type or of distance communications;
- access to an IT system;
- video, audio or photo surveillance;
- localization or observation by technical means;
- obtaining the data concerning the financial transactions of a person;
- retention, delivery or search of postal items;
- use of undercover investigators and collaborationists;
- authorized participation to certain activities;
- controlled deliveries;
- obtaining the data generated or processed by the providers of public networks of electronic communications or providers of electronic communication services for the public, other than the content of the communications.

By using covert investigators and collaborationists we mean the employment of one person with another identity than his real identity with the aim of obtaining data and information about the perpetration of an offence (art. 148 of the new Code of criminal procedure).

Their use can be authorized by the prosecutor under the following conditions:

- there is a reasonable suspicion about the preparation or perpetration of certain types of offences, among them trafficking in human beings, crimes committed by means of IT systems or electronic communication systems (this can be the case of child pornography, for example) or any other offences for which the legal penalty is imprisonment of 7 years or more (for the level of penalties for the offences in the present Convention see the answers to the previous questions).
- the measure is necessary and proportional with the limitation of the fundamental rights and freedoms;
- the means of evidence or the localization and identification of the offender, suspect or defendant could not be obtained in other way or obtaining them is connected with important difficulties which could hinder the investigations or there is a danger for the safety of persons or valuables.

The measure is ordered by the prosecutor for a maximum period of 60 days which can be extended for grounded reasons in case the conditions in para. (1) are met, whereas each extension may not exceed 60 days. The total duration of the measure, in the same case and with respect to the same person, cannot exceed one year, except offences against life, domestic security, drug crimes, weapon smuggling, trafficking in human beings, acts of terrorism, money laundering, as well as crimes against the financial interests of the European Union.

If the prosecutor finds necessary for the undercover investigator to be able to use technical devices for making photographs or audio and video recordings, he will ask the judge of custody and release to issue the warrant for technical surveillance.

The judicial bodies can use or make available to the undercover investigator any written documents or items necessary for the performance of the authorized

activity. The activity of the person who makes available or uses the written documents or the items is not an offence.

Undercover investigators can be heard as witnesses within the criminal trial under the same conditions as threatened witnesses.

In exceptional situations, if the use of the undercover investigator is not sufficient for obtaining the data or information or is not possible, the prosecutor who observes or carries out the criminal prosecution can authorize the use of a collaborationist, to the same conditions, who can be assigned another identity than his real identity.

g. Please also describe what techniques have been developed for examining material containing pornographic images of children (Article 30, para. 5).

ANSWER:

Currently, the competence in performing criminal prosecution lies with the Directorate for Investigating Organised Crime and Terrorism.

The prosecutor may delegate the performance of criminal prosecution acts to judiciary police officers, in particular officers within the Romanian General Police Inspectorate, the Directorate for the Control of Organised Crime, the Office for the Control of Trafficking in Human Beings or the Office for the Control of IT Crimes.

In respect of the techniques developed for the review of pornographic materials, applications are used at the level of the Office for the Control of IT Crimes IT with the following general features:

- they allow the management of identification data of the reviewed materials, in own data bases;

- the reviewed materials are broken down in categories, in accordance with the legal provisions in force;

- the possibility to compare between reviewed files, based on the hash signature, PhotoDNA and their visual contents;

- corroboration of data with that in the ICSE (International Child Sexual Exploitation database) database of INTERPOL;

- they allow direct cooperation and exchange of data among users;

- they provide the technical possibility of extracting materials during the search of IT systems and the automatic identification of the categories where the known materials pertain in the corresponding data bases;

- they allow the implementation of reviewed materials in management solutions for the investigations referring to the control of the sexual exploitation of children (e.g. CETS).

Question 23: Child friendly interviewing and proceedings

a. Please describe how interviews (Article 35) with child victims are carried out, indicating in particular whether:

- **they take place without unjustified delay after the facts have been reported to the competent authorities;**
- **they take place, where necessary, in premises designed or adapted for this purpose;**
- **they are carried out by professionals trained for this purpose;**
- **the same persons are, if possible and where appropriate, conducting all interviews with the child;**
- **the number of interviews is as limited as possible and in so far as strictly necessary for the purpose of proceedings;**

- **the child may be accompanied by his or her legal representative or, where appropriate, an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.**

ANSWER:

Hearing within judicial proceedings:

The hearing is performed in cases of emergency by specially designated prosecutors or specialized officers, in special hearing rooms.

Persons involved in the investigation enjoy stability and continuity until the end of the criminal investigation.

The child is usually heard two times at the most – at the beginning and end of the investigation – to the extent in which further clarification of some circumstances is necessary.

The hearing of the child witness who has not reached the age of 14 has to be done in the presence of one of the parents, of the legal guardian or the representative of the institution which was entrusted the care and education of the child. If the persons mentioned above cannot be present or are the suspect, defendant, victim, civil party, person liable in civil law or witness in the case or if there is the reasonable suspicion that they can influence the child's statement, the hearing will be performed in the presence of a representative of the guardianship authority or of a relative with full capacity of exercise, designated by the judicial authority (art. 124 of the new Code of criminal procedure). If deemed necessary, upon request or ex officio, the criminal prosecution body or the court can order the hearing of the child to be performed in the presence of a psychologist.

The same article also provides for the hearing of the child to avoid any negative effect on the child's mental health.

There are also special provisions concerning the hearing of the children in cases of trafficking in human beings and exploitation of vulnerable persons (among them trafficking in children, procuring, use of services of an exploited person) and in cases of facilitation of illegal stay in Romania and child pornography. The hearing of the child who has not reached the age of 14 shall also be performed in the presence of at least one parent or of the legal representative, whereas it is also mandatory to also call a psychologist and a representative of the General Direction for Social Assistance and Child Protection.

During the criminal prosecution the hearing of the injured person is recorded by audio and video devices if the criminal prosecution body considers this necessary or the injured person has requested this explicitly and the recording is possible (art. 111 para. (4) of the new Code of criminal procedure).

The legislation does not contain any explicit regulations concerning the place where the hearing is to be performed during the criminal prosecution stage.

As mentioned in the previous questions, the NGO Social Alternatives together with the National Institute for Magistracy have published in **2009 the Guide for child hearing within judicial proceedings**.

This guide contains detailed rules concerning the way in which children should be heard within judicial proceedings, whereas the issue of child hearing is looked at both from a psychological point of view and from a legal point of view.

Some recommendations comprised in the Guide:

- respect for the principle of the child's best interests

- the principle of the specialization of the judge or prosecutor

- the principle of hearing the child depending on its age, personal experience, background, process-related status of the child being heard.

- the principle of prior preparation of the magistrate in terms of his interacting with the child

- the necessity for summoning the legal representatives of the child victim.

- admitting there can be situations in which the hearing of the child can only be carried out after a prior preparation and in the presence of a psychologist due to the fact that the articulation of the child concerning the traumatic event can only be reproduced as a statement with the help of specialists.

- necessity for legal assistance

- the possibility to use the psychologist as an expert within the judicial procedure. It is considered that in fact the psychologist is a specialist in child development and if his legal involvement is necessary he can be considered an expert who expresses his point of view concerning the psychological development of the child, the consequences of the abusive behaviours on the child, as well as the diagnose in terms of the child's recovery.

- the need for prior preparation as it is considered necessary for the child victim to get prepared prior to the hearing as such and informed by a specialist about the procedures which a case like the one in which the child is involved has to follow, as well as about what the hearing as such means, the importance of that hearing for the identification and punishment of the offender, all this in order to avoid the secondary victimization of the child victim and in order to obtain a relevant statement.

- the need for the presence of the psychologist at the hearing

- choice of the person of trust

- the need for the magistrate to prepare. In order to perform a complete hearing of the child victim it is deemed necessary for the person who will hear the child, namely the magistrate, to get prepared. This stage refers to two distinct aspects: professional training of the person who will interview the child (knowledge concerning: psychology of child development, psycho-social consequences of child abuse, investigation techniques in relation to child victims, etc.) and elaboration of the victim hearing plan).

- the need for the provision of appropriate rooms. It is recommended that the hearing of the child does not take place in the office of the police officer or prosecutor where other persons usually also have access, but rather in a specially designated room where the hearing is not disturbed.

- conditions concerning the hearing room. It is recommended that the room where the hearing shall take place is acoustically insulated and equipped with simple, but friendly furniture meant to create an environment able to diminish the agitation of the child and to give him emotional safety. It is recommended to use the unidirectional separation window.

- information of the child about his statements being recorded.

- avoiding prolonged waiting. The contact with the person who is performing the hearing should take place within the shortest time possible after the child entered the facility, so that the child does not have to wait for a long time (given the limited patience of children), as well as to avoid the possibility of meeting the offender or his family.

- stages of the child hearing

- avoiding repeated hearing

The Guide also looks at the case of victims of sexual offences, with the recommendation to consider their additional trauma.

The instances informed that, generally, the hearing takes place either in the council room, in the presence of the legal representative, of the prosecutor, of the defendant's lawyer and of the probation service, or in the court room, in non-public session.

Hearing by specialists within the DGASPC in non-judicial procedures:

The way in which the hearing is performed and the procedures in cases with children is regulated in detail in the Framework methodology concerning the prevention and intervention within multi-disciplinary team and in network in cases of violence on children and domestic violence and of the Methodology concerning the multi-disciplinary and interinstitutional intervention with exploited children and children who are in danger of being exploited through labour, children who are victims of trafficking in human beings, as well as Romanian migrant children who are victims of other forms of violence on the territory of other states, approved by the Government's Decision No. 49/2011:

„The interview with the child

..... The interview with the child has to take place in a place which is perceived by the child as safe: at home (only if this is not the place where the abuse/case of negligence/exploitation/form of violence occurred), at school, in a practice, etc. The most suitable place for interviewing / hearing the child is the psychologist's practice which should be necessarily equipped with unidirectional mirror and recording system. These facilities have to be provided in the centres for the counselling of the abused, exploited and neglected child, no matter if public or private. By these facilities the following can be achieved:

a) participation of other specialists involved in the clearing of the case, behind the unidirectional mirror, with the possibility to adjust the interview depending on the information which is necessary, according with the professional profile of each specialist;

b) gathering of some audio and video means of evidence, with the consent of the child and its family, which can be used in court;

c) preventing repeated revictimization of the child in case the issues related to the act of abuse are talked about often times.

If there are also other children involved in that case, one can also consider interviewing them as a group. This has advantages and disadvantages at the same time which have to be well balanced by the evaluator. For example there is the advantage that the investigation is facilitated by the interaction among the children, but also the disadvantage of inducing some wrong answers from one child to another. This is why it is recommended to have first the individual interview and only then the group approach. It is recommended to have some interview protocols (the minimum of necessary / relevant questions) adapted to the forms of violence on the child. The interview protocols are elaborated by the members of the multi-disciplinary team – the psychologist and the police worker, followed by the magistrates (prosecutor, judge) who are most involved in such cases.

It is recommended to have the statement of the child in an environment in which the child feels comfortable and safe, even if this is not the police building or the headquarters of the competent prosecution office. In this case the police worker or the prosecutor will go to the psychologist's practice which will be equipped with

unidirectional mirror and recording system. It is better to have the statement of the child prepared ahead, in cooperation with the case manager.

Whenever possible it is recommended to consider the child's opinion concerning the planning of its hearing. According with Law No. 272/2004, with subsequent amendments, when hearing the child the psychologist who is part of the multi-disciplinary team (usually the psychologist who is hired with the DGASPC) will necessarily be present, as well as the parents / legal representatives of children aged below 14. In certain situations, except the persons required by law, it is also recommended to have a person present there with whom the child has developed a relationship of trust, in order to support the child.

Upon request of the child who is older than 14, the interview can take place without the consent and / or presence of the parents / foster parent / legal representative.

All recordings, including taking photographs, will be done after having informed the child about this and with his consent, taking into consideration his level of maturity, as well as after having informed the parents / foster parent / legal representative.

It is also recommended to request, prior to performing the interview, information from the case manager concerning the child's situation and the opportunity for the child to be heard, in writing, as well as the identification of some other means of evidence.

Among the criteria based on which it can be assessed if the direct hearing of the child with a view to using it as a means of evidence is appropriate and in which conditions we would like to mention:

a) the child's personal circumstances (for example age. Level of development, possible disabilities, trauma suffered, if now the chid is safe, etc.);

b) if the statement thus obtained is a sufficiently relevant and credible means of evidence;

c) type and gravity of the abuse, negligence, exploitation and/or trafficking in children and their possible consequences;

d) circumstances in which the offence was committed (including the relationship of the child with the alleged offender);

e) mental state of the child (for example shock or posttraumatic stress);

f) possible fears of intimidation or incrimination;

g) if the child is willing and cooperative with a view to making a statement.

Repeated interviewing of the child is recommended to be avoided.

Before the interview, the child should be explained in a language the child can understand the aim of the hearing.

The person who will make the interview should introduce himself/herself and should explain what his/her role is and how the interview will take place.

It is recommended to have the first questions establish a relationship at emotional level with the child being heard. Further on, detailed descriptions of the acts suffered by the child should be requested by:

a) free description;

b) open questions; and

c) specific questions.

The interview with the child has to be performed by professionals trained for this job.

According to information provided by DGASPC, the hearings always take place in the presence of the psychologist and as a rule in the council room, whereas the recording technology available in courts is less used.

b. Please also specify whether all interviews with the victim or, where appropriate, those with a child witness, may be videotaped and whether these videotaped interviews may be accepted as evidence during the court proceedings;

ANSWER:

During the criminal prosecution, the hearing of the injured person is performed by audio and video technical means if the criminal prosecution body considers this necessary or if the injured person has explicitly requested this and the recording is possible (art. 111 para. (4) of the new Code of criminal procedure).

According with the general rules in the field, the following can be considered means of evidence: testimonies of the suspect or defendant, testimony of the injured person, statements of the civil party or of the person liable in civil law, statements of the witnesses, written documents, reports, protocols, photographs, material evidence, as well as any other means of evidence which is not forbidden by law.

In criminal matters the rule is the direct consideration of evidence by the court in order to ensure the respect of the principle of the adversarial system and of the principle of directness; however, the court can decide on the consideration as a means of evidence of the recorded previous statements of the child, both during the criminal prosecution and during some extra-judicial procedures.

According with the Government's Decision No. 49/2011 the interview with the child in non-judicial proceedings can be made with gathering some audio and video, in order to constitute means of evidence which can be used in court. All recordings, including taking photographs, will be done after having informed the child and with his consent, taking into consideration his level of maturity, as well as after having informed the parents / foster parent / legal representative."

According with information provided by DGASPC, the recording of the interview / hearing of the child is not a rule and the recordings are not used or always requested by the court.

c. Please describe under which conditions the judge may order the hearing to take place without the presence of the public and the child victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies? (Article 36).

ANSWER:

See the answers to the questions 21a) and 21 e).