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Meeting: 1419th meeting (December 2021) (DH)

Communication from the authorities (12/10/2021) concerning the case of M.C. and A.C. v. Romania
(Application No. 12060/12)

Information made available under Rule 8.2a of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1419^e réunion (décembre 2021) (DH)

Communication des autorités (12/10/2021) relative à l'affaire M.C. et A.C. c. Roumanie (requête n° 12060/12) **[anglais uniquement]**.

Informations mises à disposition en vertu de la Règle 8.2a des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

DGI

12 OCT. 2021

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH**Information Note****on general measures adopted in the case of *M. C. and A. C. v. Romania* (application no. 12060/12, judgment of 12 April 2016, final on 12 July 2016)**

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12 October 2021

4072 R/AG/ 148

I. Introduction

The abovementioned case concerns the failure of the authorities to conduct an effective investigation, including into possible homophobic motives, of a physical and verbal attack on the applicants, which occurred after they had left a police-protected LGBTI rally in 2006. Thus, the Court found that national authorities violated the provisions of Article 3 in conjunction with Article 14 of the Convention. Below, the Government would like to provide information on a number of measures further adopted by national authorities in view of executing the Court's judgment in *M. C. and A. C. v. Romania*.

II. General Measures**II.1. Information on the training of civil servants on issues related to hate crimes and homophobia**

The most recent decision adopted by the Committee of Ministers (the CM) expressed concern over the persistence of negative attitudes towards LGBTI persons in Romania including among public officials. Thus, significant efforts have been made by national authorities in order to raise awareness among civil servants (especially magistrates and law-enforcement personnel) on the subject of hate crimes and how to identify and adequately react to instances of homophobia.

i). **The National Institute of Magistracy** (the INM) informs that, during initial professional training course for magistrates (*programul de formare inițială*), the study of the Convention and the ECHR's case law is mandatory and takes the form of both classes and seminars, with the goal of equipping future magistrates with the tools needed for applying national law in accordance with the Convention or for directly applying the Conventional standard, accordingly.

The training seeks, by emphasizing the evolution of the case law, to allow magistrates to keep up, in the future, with any new issues related to the application of the Convention. At the same time, future magistrates are also taught to make use of the tools provided by the Convention and the Council of Europe for disseminating the ECHR's case law, such as the HUDOC portal, FRA guidelines, HELP courses etc., so as to be able to keep up with the most up to date case law.

With regard to the specific issues raised by the *MC and AC* case, INM informs that initial training includes thematic discussions and practical activities dealing with the application of articles 2 and 3 (emphasizing the positive obligation of carrying out an effective investigation), 14 (corroborated with and articles 2, 3 or 8), 8 (stressing the autonomous notion of private life) and 10 (including on the topic of hate speech) of the Convention.

Furthermore, the case of *MC and AC* has been included in the required reading list for the final exam (*examen de capacitate*) that has to be promoted by trainee magistrates starting from the 2017 exam session, the first one organized after the publication of the judgment's translation in the Official Gazette.

The initial formation of judges and prosecutors includes a mandatory class on combatting discrimination, seeking to create the conceptual basis and the foundational values of magistrates. This course deals with theoretical and practical issues concerning subjects such as the notions of prejudice and stereotype, the definition of discrimination, the concept of equality of chances, various forms of discrimination, the question of striking a fair balance between free speech and the right to personal dignity, so as to prevent and punish hate speech.

Future magistrates are called to debate practical cases, the procedures used to solve discrimination cases, means of eliminating discrimination and the students receive access to a vast teaching material, including a systematisation of the relevant case law of the ECHR.

In addition to the initial instruction received by trainee magistrates, the INM also carries out the permanent, continuous professional preparation of judges and prosecutors. In this area, one of the most important actions currently undertakes by the INM, in collaboration with the Higher Council of the Magistracy, the National School for Registrars and the Court Management Agency of Norway, is the program “*Professional Training and Capacity Building in the Justice System*”, which is financed by the Norwegian Financial Mechanism (the MFN) between 2014 and 2021.

This programme envisages the organisation of 15 seminars on ECHR's case law (7 seminars on civil matters and 8 on criminal aspects) between 2020 and 2022 and will focus on fundamental rights, including the prohibition of discrimination.

Another instrument for ensuring the continuous training of magistrates in the field of human rights is the collaboration between the INM and the National Council for Combatting Discrimination (the CNCD), based on a protocol concluded in 2016 and which has so far resulted in numerous training activities regarding discrimination and hate crimes, such as:

- The workshop titled “15 years of non-discrimination in Romania, case law and evolutions”, organised in 2017 and involving 11 judges, 6 prosecutors, 5 assistant magistrates and 3 experts assimilated with magistrates;
- Three seminars on the topic of combating discrimination, organised in 2018 as part of the EU program “Partnership for equality for LGBTI persons” and involving 31 judges, 22 prosecutors and 2 assistant magistrates from the High Court of Cassation and Justice (HCCJ);
- Eight seminars on combating discrimination, which addressed explicitly the subject of hate crimes, organized between 2019 (five seminars) and 2020 (three seminars) and targeted at judges and prosecutors.

These last eight activities have been part of the project “10 years of implementing the EU Framework Decision on racism and xenophobia in Romania: challenges and new approaches in the actions taken against hate crimes – NoIntoHate2018”, financed by the EU and coordinated by the CNCD, in partnership with the Institute for Public Policy (the IPP).

The subjects approached dealt with general notions on non-discrimination, national and European legislation against discrimination, the case law of the ECHR and of the Court of justice of the EU (including the case of *M. C. and A. C.*), the current situation of hate crimes, the practical involvement of law enforcement authorities in assessing, recording and the creation of a data base on hate crimes. Also, the participants debated practical cases concerning the application of EU legislation to concrete situations in the field of hate crimes.

In addition to the abovementioned elements, the INM included in the continuous training of magistrates the dissemination of information on the possibility for magistrates to take part in the course titled “Fighting racism, xenophobia, homophobia and transphobia”, organized by the HELP Programme.

ii). **The Prosecutor’s Office attached to the HCCJ** (the PO-HCCJ) informs that, following a correspondence with the Council of Europe’s Sexual Orientation and Gender Identity (SOGI) Unit, two components of the Human Rights Education for Legal Professionals (HELP) Programme emerged as being recommendable for the training of prosecutors, namely “Fight against racism, xenophobia, homophobia, transphobia” and “Hate crime/Hate speech”.

On March 23, 2021, consultations were held between representatives of the Council of Europe and the national institutions on the measures necessary to be taken at national level to enforce the judgment of the European Court of Human Rights *M.C. and A.C. Romania*.

During these consultations, it was decided to implement training activities, i.e. HELP courses: The fight against racism, xenophobia, homophobia and transphobia and hate crime/hate speech. The General Prosecutor's Office expressed their intention to cooperate with the Council of Europe to implement these training activities.

Therefore, the Council of Europe's Sexual Orientation and Gender identity Unit (SOGI) and the Council of Europe's HELP Unit are preparing the launch of the HELP course "Fight against racism, xenophobia, homophobia and transphobia" for prosecutors, in a first phase with a pilot group, and then exploring the possibility of wider expansion.

To launch this course, it was decided to set up a working group to prepare the national adaptation of the course that is to be made up of a HELP certified guardian of the National Institute of Magistracy, a representative of the General Prosecutor's Office, a representative of the National Council for Combating Discrimination and a representative of civil society (from the *ACCEPT Association*).

The launch of the course will take place on November 10, 2021, both in online and in physical form at the headquarters of the Prosecutor's Office of the High Court of Cassation and Justice in Bucharest. This launch will be followed by two sessions dedicated to combating homophobia and transphobia. The first session will address relevant European standards and the second session will address national issues.

iii). **The Police Academy of Romania** (the PA) informs that, in the curricula managed by its Centre for Human Rights and Postgraduate Studies (the CDOSP), we can find a course on human rights in law enforcement (*ordine și siguranță*) institutions, which includes the following subjects:

- The fundamental rights and freedoms of EU citizens;
- Means of legal protection for various categories of persons in case of international disputes or conflicts;
- The legal protection offered to victims;
- The protection of human rights in the integrated management of law enforcement institutions;
- The jurisdictional mechanism of the Council of Europe – the ECHR;
- Equality of chances and sustainable development;
- The role of law enforcement institutions in preventing child abuse.

Starting from 2019, in addition to the abovementioned subjects, a new discipline on the subject of preventing and combating hate crimes through the means of criminal law was added to the curricula.

The CDOSP, in partnership with the Institute for Law-Enforcement Studies (the ISOP), also organizes training courses on human rights and hate crimes, aimed at the personnel of the Ministry of Internal Affairs (MAI) who enter in contact with persons belonging to vulnerable groups. The trainings seek to disseminate knowledge and procedures for approaching hate crimes.

Another similar training programme was organized by CDOSP and the EU FRONTEX Agency for the personnel of the Romanian Border Guards.

Starting from 2017-2018 academic year, the topic of “Hate-motivated criminality” has been incorporated in the Criminology subject, as an aspect of the wider theme of specific types of criminality. Hate crimes are analysed as a distinct theme, by presenting the particularities of the criminal acts, the authors and the victims.

Hate crimes are also taken into account in the training of future police agents in the context of studying criminal law, when analysing the provisions of art. 77 h) of the Criminal Code¹ or when studying the various aggravating circumstances provided for crimes (with an emphasis on the importance of identifying and legally proving the motivation of hate, so as to allow its use in the trial phase of the criminal case).

¹ The general aggravating circumstance represented by the commission of a crime motivated by race, nationality, ethnicity, language, religion, gender, sexual orientation, political opinion or affiliation, fortune, social origin, disability, chronic non-contagious disease, HIV/AIDS infection or any other circumstances seen by the author as a cause of inferiority of a person compared to others.

Furthermore, the study subject dealing with the legal protection of human rights approaches issues such as international conventions on human rights, at the level of the United Nations or the Council of Europe.

Finally, the AP, through the CDOSP, is actively involved in the problems raised by hate crimes and is constantly open to improving its curricula.

iv). **The General Inspectorate of the Romanian Police** (the IGPR) informs that the initial and continuous training of investigative bodies (*organe de anchetă*) is one of the activities carried out in the implementation of the *PDP 3 Project* (funded by Norwegian grants), and it involves the organization of a series of training activities, sessions and workshops for criminal investigation structures, in collaboration with the Norwegian partner and the PA. These activities will involve police agents from central and local structures, as well as prosecutors.

Therefore, the promotion and compliance with human rights legislation, with a focus on addressing the problem of preventing victimisation and combating stereotypes and racism, is an essential theme integrated into the continuous training activities organised by specialised institutions of the Romanian Police and is carried out in close connection with the employment requirements of the post, in order to obtain professional skills applicable to the workplace.

In this respect, in the educational plans of the police officer schools “*Vasile Lascăr*” from Câmpina and “*Septimiu Mureșan*” from Cluj-Napoca themes on preventing and combating discrimination, interethnic or intercultural/interconfessional conflicts, techniques and methods for settling conflicts of ethnic nature, information on the attitudes and behaviours required for the prevention of discriminatory acts, motivated by hatred have been introduced. Additionally, the study program of the PA includes disciplines and modules dedicated to the international protection of human rights, international humanitarian law, and techniques to prevent discriminatory acts.

Also, the CNCD initiated, in 2019-2020, a series of training sessions in the context of a project intended to mark 10 years of implementation of the EU Framework Decision on Racism and Xenophobia in Romania: challenges and New Approaches to Action on Hate Crime” — *NoIntoHate2018*, funded by the Rights, Equality, Citizenship 2014-2020 Programme of the EU. Thus, police personnel from the structures of criminal investigations, public order, detention and pre-trial detention, crime prevention and human resources participated in the sessions dedicated to the Romanian Police. The topics of discussion included general notions of non-discrimination and hate crime, preventing, managing and combating gender-based violence, and were presented by trainers from the CNCD and the IPP.

At the same time, between 9-12 March 2021, the specialised structure in the field of criminal investigations within the Romanian Police, in cooperation with the *ACCEPT* Association, carried out a training programme entitled “*Police Actions on Hate Crimes against LGBTI Persons: Training for a professional police response*”, attended by police officers from the central unit and territorial criminal investigation structures. The preparatory session was based on the “*Policing LGBTI hate crime*” manual, developed by the Council of Europe, aimed at effectively investigating hate crime and was supported by an OSCE trainer and a human rights lawyer, both experts in training on hate crime against LGBTI persons.

As the training of police officers consists not only of initial training but also in the continuous vocational training, it is important to note the fact that the curriculum of both initial courses and capacity/profile-changing courses (*cursuri de capacitate sau de schimbare de profil*) carried out by the “*Nicolae Goleescu*” Police Training Centre in Slatina contain topics dedicated to preventing and combating discrimination and committing hate crime and gender-based violence, such as *Police Intervention in hate crimes*, *Impact of hate crimes and incidents on victims* or *National and International Law on Hate Crimes*.

These elements illustrate that, at the level of the Romanian Police, there is a constant concern in order to adapt the needs of training and professional development, in the sense of respecting and applying the human rights legislation and adopting an ethical behaviour in everyday activity in relation to people belonging to communities facing different forms of discrimination.

The IGPR equally informs on a series of actions reflecting its cooperation with the Romanian civil society and with international partners in order to improve its effectiveness in combating hate crimes, particularly those committed against the LGBTI community.

As such, between April-May 2021, an implementation team of the Romanian Police, made up of specialists from the Directorate for Criminal Investigations and Project Implementation Unit had several online meetings with a number of representatives of the Council of Europe, including the SOGI unit, in order to establish a partnership for the implementation of Activity no. 3 of the *PDP3 Project*.

Thus, cooperation with the Council of Europe is planned to continue in the near future, with a view to organising 3 training sessions in the field of public policies and international standards on preventing and combating hate crime and hate speech.

In this respect, during 2022, criminal investigation officers of the central unit and territorial services should be trained in this area by means of the two courses developed by the CoE and specified by the Government Agent, namely the fight against racism, xenophobia, homophobia, transphobia and the fight against hate crime and hate speech.

In collaboration with the *ACCEPT* Association, between March-April 2021, the specialised structure in the field of criminal investigations of the IGPR became involved in a new project, within Call no. 5, titled “*Human Rights — National Implementation*” of the Programme, “*Local Development, Poverty Reduction and Increase of Roma Inclusion*” funded by the EEA and Norway Grants 2014-2021 and implemented by the Romanian Social Development Fund (FRDS).

The project proposal concerned in particular two cases solved by the ECHR (*M. C. and A. C. v. Romania* and *X. and Y. v. Romania*) dealing with breaches of the rights of LGBTI persons arising from their sexual orientation or gender identity and was transmitted by the *ACCEPT* association, in partnership with the Public Ministry — POHCCJ and the Romanian Ombudsman.

In conclusion, the IGPR stressed that the efforts it has undertaken to obtain the financing of the abovementioned projects, as well as through all other measures adopted, confirm that it is aware of the importance of hate crime and is willing to allocate material and human resources in order to successfully implement the main objectives of the above mentioned project, including the establishment of a specialised structure for investigating these crimes at the level of the IGPR.

II.2. Information on data collection and the improvement of domestic statistics

i). **The POHCCJ** informs that, as of 2018 and following the Order no. 298/2017 of its general prosecutor, it has collected statistical data in a disaggregated form (*în mod dezagregat*) on the discrimination criteria established in article 77 h) of the Criminal Code, in order to allow the monitoring of the types of crimes committed, the dynamics of their solving and the reasons for discrimination encountered.

The first assessment of the data collected regarding article 77 h) was carried out in August 2020, yet the quantitative results obtained could not allow the drawing of conclusions which could lead to the creation of strategies or policies. At the same time, a series of issues were noted with the manner in which the statistical indicators were collected (particularly the indicator concerning the discrimination criterion), which led to the conclusion that prosecutors' offices (PO) need to reach a unified approach and interpretation on this matter is required.

Initially, it is envisaged to improve the data collection mechanism, but a complete solution will only be brought about, as *per* the POHCCJ, by the implementation of the new electronic case file management system for courts of justice and POs (*ECRIS V*), which is managed by the Ministry of Justice (the MJ).

The POHCCJ also completed two thematic controls (*controale tematice*), dealing with violations of article 369 (incitement to hatred or discrimination) of the Criminal Code investigated and solved by POs between 2016-2019 and with violations of the Government's Emergency Ordonance no. 31/2002², investigated and solved by POs between 2018-2019.

The results of these controls have been disseminated in order to raise awareness on the phenomena of hate crimes and hate speech and to remedy the deficiencies found. Another conclusion that was disseminated concerned the importance to accurately gather and maintain disaggregated statistical data on hate crimes.

² Ordonance on the prohibition of organizations, symbols and acts of a fascist, legionary, racist or xenophobic character, and on the prohibition of the personality cult of persons guilty of having committed crimes of genocide, crimes against humanity and war crimes.

In a plenary meeting of the Superior Council of the Magistracy (the CSM) organized on 13 May 2020, several decisions were made based on the conclusions of the thematic controls concerning article 369 of the Criminal Code and the OUG no. 31/2002:

- The introduction of goals related to the management of the abovementioned crimes into the PO bi-annual (*programe semestriale*) activity programs;
- The introduction into the decentralized training programs of themes dealing with hate speech, from the point of view of the freedom of expression, as well as on the use of Internet as a means for disseminating potentially discriminatory, xenophobic materials and messages, as well as fascist symbols;
- The discussion, within the professional training sessions organized by each PO (as also by each court), of aspects noted in the reports drafted following the thematic controls, including with regard to the initiation of criminal proceedings in light of several decisions of the HCCJ (no. 13/19 September 2011, 17/10 May 2017) and of the Order no. 184/30.10.2020 of the prosecutor general of the POHCCJ.

Another important evolution worth mentioning is the role of the POHCCJ in the implementation of the National Strategy for preventing and combatting antisemitism, xenophobia, radicalization and hate speech for the interval 2021-2023, adopted through the Government's Decision (HG) no. 539/2021, in which the POHCCJ will be part of an inter-institutional working group (that shall also include representatives of the Ministry of Justice, the CSM, the Police and the National Institute of Statistics – which will serve as a guiding partner) dedicated to the elaboration of a common methodology of collecting statistical data on hate crimes – the objective 1.2 of the National Strategy.

This working group will establish a unitary set of principles for collecting and harmonizing among the participating institutions a set of statistical indicators for hate crimes.

ii). **On this subject, the IGPR** informed that, at the level of the Romanian Police, all crimes regulated by the Criminal Code and by special hate/discrimination laws are highlighted in statistics, without being disaggregated by dissemination criteria, with the exception of the crimes established under the recently adopted anti-Gypsyism (*antițigănist*) law, which will be introduced in the following period.

However, the statistical statements drawn up at the level of the Romanian Police do not contain data or information on the number of offences for which the aggravating circumstance referred to in Article 77 (h) of the Criminal Code has been established and there is no possibility to disaggregate indicators on grounds of discrimination.

By dealing with this phenomenon responsibly, the Romanian Police informs that it has obtained funding through the Norwegian Financial Mechanism 2014-2021 for the project titled “*Integrated action to combat crimes with a discriminatory motive, especially those committed against Roma communities and ensuring a high quality standard of police service*” aimed at improving the process of identification and registration of hate crimes in the Police records and a correct implementation in the databases of the Romanian Police, through training sessions or IT solutions.

This project aims to improve the process of identification and registration of hate crimes in Police records and databases through training sessions or IT solutions, and training activities, exchanges of experience and best practices with authorities from other European countries collecting statistical data on hate crime line are thus envisaged.

The IGPR also plays a role in the recently adopted National Strategy for preventing and combatting antisemitism, xenophobia, radicalization and hate speech for the interval 2021-2023 and, as mentioned above, one of the specific objectives of the strategy is to improve data collection mechanisms on incidents associated with anti-semitism, xenophobia, radicalization and hate speech by developing a unified methodology to identify hate crime and systematically collect statistical data on these categories of crime.

This legislative act provides for the development of a system for collecting statistical data on hate crime, and **the IGPR was appointed as the coordinator of the working group set up for the uniform establishment of data collection principles, as well as the harmonization across all authorities of a set of statistical indicators in the domain of hate crimes.**

In order to standardize the activities and carry them out in a coordinated and unified manner, in June 2021, a working group was organized, at the request of the IGPR, which asked the MJ, the POHCCJ, the CSM and the National Institute of Statistics to designate representatives for this group.

After establishing the specialists, the calendar of activities will be drawn up so that the methodology for identifying hate crime and systematic collection of statistical data on these categories of facts is promoted within the deadline stipulated by the Government Decision, i.e. no later than 18 months after the adoption of the strategy.

iii). **The MJ informs** that, on the topic of collecting statistical data on hate crimes, the ECRIS system, used by courts and POs, serves as the means for collecting and recording data regarding cases, in accordance with a classification of objectives (*nomenclator de obiective*). A part of the data collected by the courts and POs is then replicated in the databases created by the MJ and the CSM, for statistical purposes.

Currently, the classification of objectives, which is maintained by a Commission within the MJ (the ECRIS classification Commission), contains an objective represented by “acts committed due to hate (in accordance with art. 77 CP)”.

The MJ commenced already, in 2016, a process of updating the classification, by including, along with the objective “act committed due to hate”, information on the circumstances listed in article 369 CP (hate crime committed for reasons of race, religion etc.). This request has been approved by the ECRIS classification Commission in November 2017 but, so far, the changes have not been implemented due to technical and procedural reasons that make it difficult to modify the ECRIS programme.

Nevertheless, **efforts are being made to improve the ECRIS programme by developing a new version. On 10 February 2021, MJ signed a contract for financing the development of ECRIS V, which shall be carried out between 2021-2023.**

Among several improvements in the future ECRIS V, the MJ informs that it will contain a configurable statistical module which will allow more easily to introduce new statistical attributes.

II.3. Improvements in investigation methodologies used by national authorities

i). **On 30 October 2020, a unified investigation methodology for hate crimes was adopted through Order no. 184/2020 of the general prosecutor of the POHCCJ**, which was then disseminated to prosecutors, and also to the INM, in order to have it included in initial/continuous trainings.

The POHCCJ adds that said methodology is a streamlined and synthetic document that contains a general, introductory part (drawing attention to the particularities of hate crimes) and a part dedicated to investigative methodologies, and aims to guide prosecutors when investigating hate crimes. The goal of this methodology is to improve the recognition of hate crimes and also increase confidence in authorities.

One of its central elements is the listing of the indicators that can be used in practice to help identify the hate-based motive of the crime. Another relevant element is the recommendation contained herein to refer to the CNCD the cases where a decision to not prosecute (*netrimitere în judecată*) is adopted, when there are indications that a different form of legal responsibility (other than criminal) could be applicable.

At the same time, a project financed by Norwegian Funds (*Mecanismul Financiar Norvegian*) and undertaken in a strategic partnership with the Fundamental Rights Agency of the EU (the FRA) is underway, aiming to improve the protection of victims of crimes, which, among other goals, sets about to improve the response of authorities when confronted with hate crimes.

The pillars of this project are the improvement of legislation and its implementation, the use of counselling, assistance and expertise in real time for creating policies which are in accordance with the fundamental rights, the effective promotion of rights and values by authorities and the strengthening of cooperation between authorities and national/local actors.

The cooperation with FRA will target the drafting of recommendations on reporting and recording crimes, investigation, public communication and the professional training of personnel.

Moving towards the specific topic of hate crimes motivated by homophobia, the POHCCJ informs that, in April 2021, it has concluded a partnership agreement with the *ACCEPT* NGO, on the realization of a project financed with funds provided by SEE Grants within the framework of the program “*Human rights – national implementation*”.

The project of the POHCCJ and *ACCEPT* aims to promote dialogue and partnership between the LGBTI civil society and national authorities competent in combatting hate crimes, by disseminating best practices and consolidating participative processes in the field of registering, reporting and investigating such crimes, by communicating with the LGBTI community in order to improve the reporting of crimes, by raising awareness among authorities through trainings on

non-discrimination against LGBTI persons. Finally, nation-wide information campaigns on the humanity and rights of LGBTI persons are also envisaged.

ii). **The IGPR** equally informed that, with regard to the implementation of a common methodology for investigating hate crimes, according to the provisions of the Criminal Code of Procedure, the investigating bodies of the judicial police carry out their prosecution activities under the direction and supervision of the prosecutor, and, as such, the POHCCJ has developed a Methodology for investigating hate crimes, approved by Order No. 184/20.10.2020 of the Prosecutor General. In view of the relationship between the criminal investigation bodies of the judicial police and the prosecutor, the prosecution activity is carried out in compliance with the provisions of the aforementioned order, which is a useful tool during police investigations of hate crimes.

II.4. Legislative and institutional developments

i). **On 15 May 2021, by order of the Minister of Internal Affairs, the Directorate for Criminal Investigations — Bureau of Investigation of Hate Crimes was established**, and steps will be taken in the near future in order to carry out the recruitment process for the staff of this structure.

ii). **In the field of legislative amendments, the MJ informs** that, on 18 February 2021, the Government approved a legislative bill modifying the provisions of article 369 of the Romanian Criminal Code (CP).

This proposal expressly recognizes as a victim of discrimination (a passive subject of the crime – *subiect pasiv*) any individual belonging to a category that can be the subject of discrimination and, in addition, mentions the public incitement to violence as a means of committing the crime of incitement to hatred and discrimination.

The bill has been adopted by the Senate (on 22 March 2021) and by the Chamber of deputies (on 30 June 2021)³. The new text of article 369 CP states that:

“The incitement of the public, by any means, to acts of violence, hatred or discrimination against a category of persons or against a person on the basis of it belonging to a specific category of persons defined by criteria of race, nationality, ethnicity, language, religion, gender, sexual orientation opinions or political leanings, fortune, social origins, age, disability, chronic non-transmissible disease or HIV/AIDS infection, or for any other criteria of the same kind, considered by the legislator as a cause of inferiority of a person in relation to others, is punishable by imprisonment between six months and three years or a fine.”

After its adoption by the Chamber of deputies, the bill was sent to the President, for promulgation. On 22 July 2021, the President raised an exception of non-compliance of the bill

³ http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=19219

with the provisions of the Constitution and sent it for review before the Constitutional Court of Romania (CCR), where the procedure is currently pending.

II.5. Additional information on the recent dialogue between national authorities, CoE and civil society

On 23 March 2021, an on-line meeting was organized, between the Governmental Agent for the ECHR, representatives of SOGI Unit, the Department for the Execution of Judgments of the Court and from national authorities (the Police Academy, POHCCJ, CNCD, MJ, INM, IGPR).

The meeting included a presentation of the state of play from the point of view of the national authorities involved and allowed the representatives of SOGI and the Department for the Execution to present the outstanding issues that have to be addressed in order to ensure the full compliance with the Convention and the ECHR's judgment.

Additionally, the meeting allowed the presentation of relevant HELP courses dealing with the fight against racism, xenophobia, homophobia and transphobia and the combatting of hate crimes and hate speech to the national authorities. As shown above, national authorities (for example the POHCCJ) have already taken steps to make good use of said HELP courses.

After the meeting, the Governmental Agent requested information on the execution of the case and reminded the national authorities about the opportunity to make use of HELP's courses.

Furthermore, on 27 April 2021, a new on line meeting was held, in which took part the Governmental Agent for the ECHR, representatives of *ACCEPT Association*, SOGI Unit, the CNCD, the Romanian Ombudsman and the Department for the Execution of Judgments of the Court. Its goal was to discuss the implementation of ECHR rulings against Romania dealing with gender identity and sexual orientation, which included the case of *M. C. and A. C. v. Romania* and allowed an exchange of views on this topic among the participants.

III. Conclusions

The Government wish to stress the numerous and diverse efforts undertaken by the competent national authorities in order to comply with the requirements of the Convention and of the ECHR's ruling in the case of *M. C. and A. C. v. Romania*, which have dealt with improving the training of police agents and magistrates and their sensitization to the issue of the rights of LGBTI persons, the ongoing improvement of data collection and statistical tracking of hate crimes, evolutions in the field of investigation methodologies, as well as legislative and institutional updates.

National authorities shall continue their efforts toward safeguarding the rights of LGBTI persons, in accordance with the Convention and the conclusions of the Court's ruling, and the Governmental Agent will keep the Committee informed on said evolutions.

In conclusion, the Government respectfully ask the Committee to take into account the ample information provided in the present note and reflect it in the draft decisions that will be prepared in the case of *M. C. and A. C. v. Romania* on the occasion of the its next meeting, no. 1419, of 30 November – 2 December 2021, when the case will be included on the meeting agenda.