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ON HIS VISIT TO ROMANIA

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for the Committee of Ministers and the Parliamentary Assembly

INTRODUCTION	3
GENERAL OBSERVATIONS	3
I. JUDICIARY AND POLICE	4
- <i>The General Prosecutor</i>	4
- <i>Prisons</i>	5
- <i>Police</i>	6
II. SITUATION OF CERTAIN VULNERABLE GROUPS	6
- <i>Children</i>	6
- <i>Victims of trafficking</i>	9
- <i>Persons with mental disabilities</i>	10
- <i>Victims of domestic violence</i>	12
III. MINORITIES AND THE SPECIAL SITUATION OF THE ROMA/GYPSY COMMUNITY	13
- <i>The special situation of the Roma/Gypsy community</i>	13
- <i>The National Council against Discrimination</i>	14
IV. THE OMBUDSMAN	14
V. FREEDOM OF EXPRESSION	15
VI. LABOUR AND SOCIAL SOLIDARITY	16
VII. CO-OPERATION WITH CIVIL SOCIETY	16
FINAL REMARKS AND RECOMMENDATIONS	17
ADDITIONAL COMMENTS	18

INTRODUCTION

In accordance with Article 3 e) of the Committee of Ministers Resolution (99) 50 on the Council of Europe Commissioner for Human Rights, I accepted the invitation addressed to me by the Romanian Minister of Foreign Affairs, Mr Mircea Geona, to make an official visit to Romania, from 5 to 9 October 2002 in Bucharest. I was accompanied on this visit by the Director of my Office, Mr Christos Giakoumopoulos, and by two members of my Office, Mr Fernando Mora and Ms Satu Suikkari; Mr Nino Karamaoun helped us with its planning. Above all, I should like to thank the Minister Mr Geona for his invitation and the resources which he made available throughout the visit, as well as the President of the Republic Mr Ion Iliescu and the Prime Minister Mr Adrian Nastase, with whom I had an opportunity to speak during my stay in Bucharest. I should also like to thank the Permanent Representation of Romania at the Council of Europe and the authorities in Romania for their valuable co-operation in the preparation and accomplishment of this visit. Lastly, I wish to stress the openness, availability and accessibility of the various Romanian government authorities, without whom such an ambitious programme would not have been possible.

I was thus able to meet the Minister of Justice, the Minister of Labour and Social Solidarity, the Secretary of State of the Ministry of Health and the Family, the General Prosecutor, the President of the National Council for Combating Discrimination, the People's Advocate (Ombudsman), the Secretary of State for Child Protection and Adoption, the Secretary of State of the Ministry of the Interior, Under-Secretaries of State from the Department of Interethnic Relations of the Ministry of Public Information, members of the Chamber of Deputies Commission for Human Rights, Religious Affairs and National Minorities, members of the Senate Commission for Human and Minority, members of the Parliamentary Group of National Minorities, representatives of the main Romanian trade unions, and representatives of civil society. I also spoke with the Minister of Education and Research during his visit to Strasbourg on 16 October of this year. In addition to these meetings, visits were organised, at my initiative, to the Roma/gypsy district of Ferentari, the Codlea prison, the Codlea orphanage, the Giurcani centre for children with mental disorders, the Ghimbav and Luminita children's placement centres, the Urlati Neuropsychic Rehabilitation and Recovery Centre, the Iasi Community Safety and Mediation Centre, a shelter in Bucharest for victims of trafficking in human beings as well as shelter for victims of domestic violence.

GENERAL OBSERVATIONS

1. After joining the Council of Europe on 7 October 1993, Romania ratified the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) and its first, fourth, sixth and seventh protocols on 20 June 1994; it has signed Protocol No. 12 (prohibiting discrimination) and No. 13 (abolishing the death penalty in all circumstances). Romania also signed and ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in 1994, the Framework Convention for the Protection of National Minorities in 1995, and, in 1999, the European Social Charter (revised).
2. The process of transition from a totalitarian State to a democracy is not without its hitches. It generally entails a period of uncertainty and a feeling of helplessness that afflicts all sections of the population; some evoke the image of going through a tunnel to describe it. In Romania's case, the latter image may be thought all the more striking and appropriate given the oppressive legacy of the communist system. Over thirty years of dictatorship had the effect of instilling an ideology based on systematic rejection and exclusion of difference and on marginalisation of elements considered out of line with the existing system.

3. Since then, far-reaching structural reforms – economic, legislative and institutional – have been undertaken, with accession to the European Union resolutely at the heart of political and civic action in Romania. The efforts being made reflect the support of the Romanian authorities and people for today's European values: democracy and respect for human rights.
4. This report is therefore intended as a tool to support the Romanian authorities' firm determination to combat social exclusion and promote respect for human dignity and tolerance. It will successively examine, (I) the judiciary and police, (II) the situation of certain vulnerable groups, (III) the problems of minorities and the Roma/gypsy community, together with some questions relating to (IV) the Ombudsman, (V) freedom of expression, (VI) work and social solidarity and (VII) co-operation with civil society.

I. JUDICIARY AND POLICE

5. The Romanian government has introduced an ambitious programme of legislative reform for the judiciary and for the demilitarisation of police. Judicial reform includes revision of the Criminal Code and Code of Criminal Procedure, covering matters such as arrest and pre-trial detention, enforcement of sentences, and witness protection. Furthermore, demilitarisation of the prison service has entered its final stage with a bill being considered by Parliament. It emerged from my meetings that the adoption and effective implementation of these reforms was one of the main priorities of Mrs Rodica Stanoiu, the Minister of Justice, and of the Secretary of State for the Interior, Mr Pavel Abraham. However, some questions remain concerning the powers of the General Prosecutor, prison overcrowding and police behaviour.

The General Prosecutor

6. An area of concern relates to the extensive powers of the General Prosecutor to bring extraordinary appeals against judicial decisions, notably in civil matters. The General Prosecutor has the power to seek nullification of final or non-final judgments on a number of grounds, including that the court in question has exceeded its jurisdiction.
7. In a number of civil cases, the European Court of Human Rights has found the manner in which this power was exercised to be in contrary to Article 6.1 of the European Convention. In all these cases, the Romanian Supreme Court of Justice, had set aside a final and irreversible decision of a court, compromising the principle of legal certainty. The first judgment on this matter was the *Brumarescu case* rendered by the European Court in 1999, the latest judgments were given in summer 2002.
8. The modifications introduced to the Section 330 of the Code of Civil Procedure remain insufficient. I regret that new grounds have indeed been introduced to the law by an emergency ordinance adopted in 2001, for instance 'obviously ungrounded judicial decisions' - which makes the exercise of this power even more discretionary than before. I note that this ordinance also extends the time limit for requesting reopening from 6 months to one year. This prolongation is regrettable.
9. I raised this issue with the General Prosecutor, M. Tanase Joita. He would be in favour of further modifications in the law, and even that such a power be transferred from the General Prosecutor to another body. He felt, however, that this power cannot not be abrogated altogether, since there are lot of final judgments that would have been taken in violation of the law.

10. I would like to underline the need to ensure that the Romanian legislation be promptly changed so as to limit the presently excessive possibilities of reopening final civil judgments. Even before further modifications to the law are introduced, efforts have to be undertaken to ensure that the current law is interpreted and applied in a very restrictive manner both by prosecutors and courts so that no further violations of Article 6.1 of the European Convention occur. In light hereof, I consider that renewed efforts should be made in order to reinforce the taking into account in Romanian Law of the European Convention and the judgments of the European Court.

Prisons

11. The Romanian prison service will soon be demilitarised, and training and rehabilitation programmes for juvenile prisoners are under way with assistance from the Council of Europe. These developments are particularly encouraging, and during my visit to Codlea prison I noted the authorities' efforts to improve prisoners' living conditions. However, the prison service is facing serious problems, in particular the dilapidation of many of the prisons and, above all, chronic overcrowding. According to information from the Ministry of Justice, there should be 37 143 regular places in prisons,¹ whereas the number of prisoners at the time of our visit totalled 50 886; the number of available beds was only 47 656. Thus the overall occupancy level for prisons is 137% and there is a manifest shortage of beds. My visit to Codlea prison, which has an occupancy level of 197% and where 25 prisoners are regularly held in cells designed for 15, clearly illustrated the situation. I was all the more concerned to learn that some prisons had even higher occupancy levels, rising to 353%.
12. Being aware of the problem, the authorities keep the highest rates of overcrowding for open prisons, where the prisoners work during the day and are therefore not continually faced with the acute lack of space. However, this solution cannot be other than very temporary. The fact that several prisoners received pardons during my visit demonstrates that changes in prison policy are both possible and expected. Given that, for economic reasons, there are no plans to build new prisons at the moment I would urge the authorities to develop a system of alternative penalties, effective management of release on parole and a judicial policy requiring moderation in the use of detention. I welcome the efforts of the Ministry of Justice in this direction and invite it to complete these reforms as soon as possible. Furthermore, in this context, I encourage the authorities to publish the reports of the European Committee for the Prevention of Torture (CPT)².

Police

13. The two reports on Romania by the European Commission against Racism and Intolerance (ECRI)³, together with the European Commission's 2001 and 2002 regular reports on Romania's progress towards accession⁴, specifically deplore the behaviour of the Romanian police. However, the number of complaints reporting police abuse, especially towards the Roma/gypsy minority, is steadily growing. These assertions were echoed by the NGOs I met on the spot that cited cases of unwarranted police raids, use of physical force during questioning, and illegal and disproportionate use of firearms. It is essential that thorough inquiries be led by

¹ The number of available places is calculated on the basis of 6 m² per person.

² It has to be noted that the CPT carried out 3 visits in Romania, in 1999, 2001 and 2002.

³ CRI(99)9 and CRI(2002)5

⁴ SEC (2001) 1753; SEC (2002) 1409

the authorities against the public officers perpetrators of these reprehensible acts and, if need be, that appropriate sentences be rendered⁵.

14. In addition, the training programmes launched by the authorities to change police officers' attitudes to vulnerable groups must be intensified. Closer collaboration with NGOs in preparing such programmes would be desirable. Similarly, I would encourage the Government to continue its co-operation with the Council of Europe, especially for preparing training programmes and manuals on police ethics.

II. SITUATION OF CERTAIN VULNERABLE GROUPS

Children

15. In the past, the Romanian system of child welfare was based on the theory of institutionalisation. It was intended to marginalize and exclude children (orphans and others) considered out of line with the system. Following the fall of the communist government in 1989, the competent authorities found themselves facing a considerable challenge: reforming a system that was rotten at the base. At the same time, a large number of international adoption agencies established themselves in Romania and succeeded, in a very short space of time, in bringing about a liberalisation of the adoption market. Given the serious problem of dilapidated and overcrowded orphanages, adoption, and especially international adoption, emerged as the preferred option for the authorities at that time. In June 2001, under the pressure of a European Union report that compared this practice to trafficking in human beings, the Romanian authorities imposed a moratorium on international adoption. Despite the laudable intentions behind the introduction of this moratorium, its enforcement has created a regrettable situation, since many children whose adoption procedures were interrupted found themselves in a precarious position, their fate being uncertain.
16. I wished to recall the complex and difficult situation faced by the Romanian authorities in the field of child welfare in order to emphasise more clearly the considerable efforts made over the past few months, and which I was able to observe during my stay in Bucharest. My discussions with the Secretary of State for Child Protection, Mrs Gabriela Coman, and the Prime Minister Mr Adrian Nastase, allow me to state that Romania is determined to improve, and indeed to resolve, the situation of abandoned children.

International adoption

17. International adoption of Romanian children has caused much ink to flow over the past few years. Before the imposition of the moratorium, some practices revealed that it might not respect children's rights and that it was not always in the child's best interests. Indeed, reports referred to the growth of a veritable market for international adoption with reprehensible commercial practices. I am thinking in particular of certain adoption agencies which went so far as to publish photos of children for adoption on their website. However, Romania was one of the first States to ratify the United Nations Convention on the Rights of the Child and the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.

⁵ It is important to note a process of demilitarisation of police was undertaken in August 2002, transferring responsibility for investigation and prosecution to the civil authorities.

18. These two Conventions state that placement of the child, in the case of adoption abroad, must not result in undue material profit for the persons responsible, approved bodies must be strictly non-profit-making. As the rapporteur of the Council of Europe Parliamentary Assembly has observed⁶, a sentiment with which I concur, “The purpose of international adoption must be to provide children with a mother and a father in a way that respects their rights, not to enable foreign parents to satisfy their wish for a child at any price.” The belief in a right of adoption is erroneous and dangerous inasmuch as it tends to convert international adoption into a market governed by the laws of supply and demand.
19. As for the international adoption applications suspended by introduction of the moratorium, the figures that I was shown by the Secretary of State for Child Protection and Adoption indicate that implementation of the government decree passed in December 2001 is proceeding satisfactorily. As at 2 October 2002, 611 applications had been successful. Processing of applications must continue in order fully to resolve this unfortunate situation as soon as possible.
20. During our meeting, the Secretary of State told me of the existence of four bills to establish a new legal framework for child welfare. They had been submitted to the European Commission for its opinion. She also informed me of problems encountered by the authorities in interpreting subparagraph 21b) of the United Nations Convention on the Rights of the Child and asked for my opinion on the matter.

Subparagraph 21b) establishes the principle of subsidiarity for international adoption, specifying that such adoption “may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin”. The difficulty with this provision lies in determining the degree of subsidiarity specified for international adoption. Some claim that it implies total subsidiarity, and therefore a national solution must always be preferred, even if this means putting the child in an institution. The need not to uproot the child and the importance of preserving his/her cultural heritage is often advanced to support this argument. However, the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, adopted four years after the United Nations Convention and also ratified by Romania, seems to invalidate this argument, since in the third paragraph of its preamble and in subparagraph 4b), it confirms and clarifies the principle of subsidiarity for international adoption. These provisions emphasise the advantage of offering a child a permanent and suitable family, without necessarily denying or ignoring other care options. They underline the importance of a permanent family life, without, however, laying down the rule that a child should always be placed in a family rather than in an institution or non-family environment.

Furthermore, two other factors seem to militate against the theory of total subsidiarity. On the one hand, according to the statistics that I was given, the average age of children being taken into international adoption is 10 months. This substantially weakens the assumption of cultural deracination. On the other hand, an excessively restrictive interpretation would run counter to the modern theory of social reintegration of disabled children and orphans, to which paragraph 23(3) of the *Convention on the Rights of the Child* makes specific reference. Consequently, I am of the opinion that the child's best interests require the idea of total subsidiarity to be dropped. However, it remains the case that national adoption must be preferred and encouraged, as well as, where appropriate, placement in specialised group homes. Moreover, given the considerable progress made by Romania in establishing decentralised childcare

⁶ *International adoption: respecting children's rights*, Parliamentary Assembly Recommendation 1443 (2000)

institutions, the option of caring for a child outside the family at the local level, provided that appropriate care is available and the child's development is encouraged, should not be categorically rejected in favour of international adoption. Conversely, the child's interests may require a foreign adoption procedure to be initiated even though a family exists inside the country, because, for example, he cannot receive nationally the care needed for the special handicap from which he is suffering. Since each case is an individual case with its own special features, the subsidiarity principle for international adoption must always answer the child's best interests.

21. I note with satisfaction that, in Section 3, the Romanian bill for a legal framework for adoption lays down guidelines applicable to all adoption decisions. The child's best interests, the importance of a family environment, and subsidiarity for international adoption thus have to be taken into consideration and are given the status of fundamental principles. That said, in view of the controversy surrounding international adoption, it would have been desirable for a ban on undue profits to have been expressly included in the wording. I am nevertheless persuaded that this principle is generally enforced by the competent authorities given the Romanian ratification of the Convention on the Rights of the Child and the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption.

Institutions for abandoned children

22. The government's 2001-2004 strategy for the protection of children in need makes provision for allocating large sums of money to restoring and, above all, closing large and dilapidated institutions (orphanages) from the Ceausescu era, described by a number of NGOs as death-trap orphanages. At the same time, this strategy provides for the establishment of smaller foster homes and rehabilitation centres providing education and specialist care. Thus 31 establishments were closed during 2001 and 34 others were in the process of being so. The number of institutionalised children dropped from 50 000 in 2001 to 43 000 in 2002, while 40 000 others were placed in smaller foster homes. The reform to transfer orphanage management to local authorities has had encouraging results. The visits made confirmed this situation.
23. Visits were undertaken to the *Codlea* orphanage and the *Ghimrav* placement centre, both in the county of Brasov, and to the *Luminita* placement centre in Bucharest. The living conditions in these three establishments were more than adequate. The rooms were clean and comfortable, and the food served was of good quality. A range of activities, such as art, theatre and music courses, together with access to a computer room, were available to the children, including those suffering from mental disorders. Paediatricians, nurses, psychologists and other trained staff were present and available in sufficient number. Similarly, all the children attended school. In other words, these three institutions encouraged the children's harmonious growth and the development of their abilities. They are the fruit of substantial investment over the past few years and constant effort on the part of the Romanian authorities.
24. A visit was also made to the Camin Spital in Giurcani, in the county of Vaslui. Sixty-two children, forty boys and twenty-two girls, live in this institution near the border with Moldova, sharing eight dormitories between them. Its state of dilapidation is undeniable. The lack of heating in winter, the size of available beds and the lack of trained staff is worrying. Nevertheless, I believe that the material conditions, although far from ideal, are dignified in the main. This is partly attributable to the positive atmosphere reigning in the establishment since the appointment of a new director. Similarly, it must be pointed out that the relevant authorities

told us that the orphanage was to be closed; the children will be transferred to smaller foster homes and two new rehabilitation centres. That said, it is important that the process of closing dilapidated institutions should continue, whilst ensuring that supervisory programmes are established to promote the social integration of young people leaving such institutions, notably because they have reached their majority.

Preventing abandonment

25. The closure of obsolete orphanages, the humanisation of conditions in existing orphanages, the introduction of solutions other than institutionalisation and substantive reform of the legislation on international adoptions certainly constitute important advances in the field of respect for children's rights in Romania. Even so, I feel that further progress can and must be made by framing a genuine policy for preventing abandonment.
26. The frenzied birth-control policy of the Ceausescu era and the communist system of assumption by the state of responsibility for unwanted children have institutionalised the abandonment of children, something that still afflicts Romania today. Side by side with the material and financial assistance to families provided for under the child-protection bill, I call on the government to develop an anti-abandonment awareness and education campaign. The anxieties expressed to me by Mr Radu Deac, State Secretary at the Ministry of Health and the Family, about the low birth rate must be reconciled with the requirement to combat child abandonment. Likewise, the possibility of setting up reception centres for mothers which, among other things, would support and advise the mothers of newborn babies must be carefully examined.

Victims of trafficking

27. Trafficking in human beings continues to be a serious problem in Romania, both as a country of origin and transit, and to some extent also a country of destination. The vast majority of victims are women and girls who are trafficked for sexual exploitation. Children, including children with disabilities, have been trafficked to work on streets as beggars or thieves.
28. Whilst no official estimates exist on the total number of victims of trafficking, the International Organization for Migration (IOM) estimated that as many as 20.000 women are trafficked from Romania each year⁷. According to the statistics of the Ministry of the Interior, a great demand market is developing in the Balkan countries⁸. Between January 2000 and August 2002, the IOM assisted 566 victims returning to Romania, the vast majority of whom had been trafficked to Bosnia-Herzegovina, "the former Yugoslav Republic of Macedonia", Albania and Kosovo. Trafficking in large numbers occurs towards several Western countries mainly for the purposes of prostitution or labour.
29. I raised the issue of trafficking with the Prime Minister, Mr. Adrian Nastase, and the Secretary of State of the Ministry of the Interior, Mr. Pavel Abraham. The Government has indeed made putting an end to this tragedy a priority by notably adopting in December 2001 a law for combating trafficking in human beings. It criminalizes trafficking and notes that such activities constitute a violation of human rights and a violation of the dignity and integrity of a person. The law includes provisions on assistance and protection to the victims, and foresees a number

⁷ See 2002 Regular Report on Romania's Progress towards Accession, Commission of the European Communities, SEC (2002) 1409, 9 October 2002.

⁸ See report by the Ministry of the Interior: *Brief presentation of the latest developments in fighting against trafficking in human beings and tackling illegal immigration*, 2002.

of measures to prevent trafficking. However, It was reported to me that law enforcement officials in many cases still regard trafficked persons as offenders rather than victims. It is therefore important to intensify the training efforts for police officers, prosecutors and judges on the implementation of the new law. The fact that grounds on which victims of trafficking are exempted from criminal charges on prostitution are too limited in the new law also seems to be a concern.

30. I welcome the adoption of the National Plan for Combating the Trafficking in Human Beings of 2001 and the active involvement of the Government in regional and international efforts to combat trafficking.⁹ Regional and international approaches are indeed of utmost importance to combat simultaneously the root-causes and the demand in the destination countries.
31. A visit was made to a shelter for victims of trafficking in Bucharest, which is a partnership between the Romanian Ministry of the Interior, the IOM and the Estuar foundation, a non-governmental organization commissioned for providing customized assistance to the victims of trafficking. The Centre provides assistance in voluntary return, transportation, shelter services, trauma counselling, job and life skills training, medical care and legal assistance. This being said, the lack of adequate shelters and recovery services, particularly with regard to long-term support in reintegration is still a concern. I would like to encourage local authorities to establish such shelters in partnership with local non-governmental organisations so that victims in all parts of the country would have access to the appropriate protection and assistance required in the new law.
32. My attention was drawn to the potentially negative effects of migration laws for victims of trafficking, in particular emergency ordinance No 112 of 2001 on sanctioning offences committed outside the Romanian territory by Romanian citizens or by stateless persons domiciled in Romania. A victim of trafficking who has illegally crossed the border of a transit or destination country, could be prosecuted in Romania on the basis of this law for such border-crossing. This would seem to be in contradiction with the victim approach upon which the law against trafficking is based.

Persons with mental disabilities

33. My conversations on the spot and the reports of the specialised NGOs in Romania appear to show that difficult living conditions in many psychiatric institutions hamper the development of their inmates. Most of these establishments are over-crowded; ideas of privacy and a private life are virtually non-existent. In addition, educational programmes designed to encourage inmates' independence are thin on the ground. All these problems appear to be due to under-financing. Here it is important to stress the important difference between the allocation of funds for the restructuring of child-protection institutions and that for adults with mental disabilities. The reform of child-protection institutions is subsidised from the central budget and by the European Union, the World Bank and the US Government¹⁰, while much smaller resources are granted to institutions for adults with mental disabilities. This situation is regarded as worrying on the grounds that it could gradually cause the condition of such adults to be marginalized.
34. Despite this, the three visits I paid to institutions for persons with mental disabilities (namely the Giurcani, Judet and Urlati institutions) demonstrated to me that, generally speaking, the

⁹ The afore-mentioned report by the Ministry of the Interior includes detailed information on these measures.

¹⁰ Inclusion Europe, *Human Rights of Persons with Intellectual Disability*, Country Report Romania, January 2002

Romanian authorities have effected an important change of "attitude" in the way such persons are treated, particularly by taking better account of their need for education, integration and privacy. The State Secretary for the Handicapped, Mr Constantin Stoenescu, informed me of a national strategy for the protection and social integration of handicapped persons which has been drawn up in consultation with the NGOs. This strategy provides for, inter alia, the setting up of new programmes in co-operation with local and/or international NGOs.

35. Finally, although the right to work of persons with mental disabilities is recognised by the Romanian constitution, only very few support, research and work-training services are devoted to them (what was observed at Judet was a particularly good example of what can be done). The special allowance made by the Romanian Government for adults and children with mental disabilities¹¹ remains insufficient to live on. The authorities should try to ensure that persons who are to receive such an allowance can lead a life of dignity.

Victims of domestic violence

36. Domestic violence affects particularly women and children, but also the elderly. In addition to the physical and psychological consequences of such violence, it often renders its victims vulnerable to other human rights abuses¹².
37. I welcome that steps have been taken in recent years on the legislative front in order to combat domestic violence, as was informed to me by the Minister of Justice. Some of the most serious shortcomings in the past legislation were addressed by law No. 197/13 of November 2000 which modified and completed some dispositions of the Penal Code. It introduced stricter penalties for physical violence and rape when the victim is a family member, new penalties in relation to a sexual act with a minor and a prohibition of a convicted rapist to return back for a determined period in the family living place. It also abrogated the widely criticized provision which lifted penalties for a rapist who subsequently married his victim. The Minister of Justice informed me that during the first semester of 2002, 111 (100 men, 11 women) persons were sentenced on the basis of the provisions of domestic violence.
38. This being said, efforts are still needed in order to implement the new provisions of the Penal Code in a more efficient manner. It was brought to my attention that women do not always receive adequate protection from the police. Perception of domestic violence as a private matter still seems to be prevailing in many places, sometimes rendering police officers indifferent in the face of such violence. Training and awareness raising of the new provisions of the penal law are therefore of utmost importance. While such training already exist, it was brought to my attention that the efforts are not yet sufficient. The Government should have a structured training programme covering all regions of the country.
39. I was informed that the Parliament is currently discussing proposals for a law on the protection of victims of domestic violence. Such a law should be more detailed on various aspects relating to domestic violence, including stronger measures to protect the victims and to prevent future violations. I would like to urge for a prompt adoption of this law and I would welcome a strong involvement of non-governmental organisations in its preparation. I would also like to refer to the recent recommendations adopted by the Council of Europe on this issue, namely recommendation (2002) 5 of the Committee of Ministers on the Protection of women against

¹¹ It should be stressed that the social-security system in Romania comes under three ministries: Ministry of Health, Ministry of Labour and Social Solidarity and the State Secretariat for Handicapped Persons

¹² According to a research conducted by the IOM, victims of abuse are among those most vulnerable to fall victim for trafficking.

violence and recommendation 1582 (2002) on Domestic violence against women adopted by the Parliamentary Assembly.

40. Finally, during the visit of the Community Safety and Mediation Centre in Iasi, it was reported to me that bringing a case of domestic violence is often very difficult in practice. For instance, it seems that medical professionals often apply different standards in determining the period needed for recovery depending on the professional status of the victim. Another problem raised was the inadequacy of shelters for victims of domestic violence. Few such centres currently exist, and there seem to be regional imbalances. There are centres for victims of domestic violence in all the six sectors of Bucharest, some of which also have a shelter, while the situation in other parts of the country is even bleaker. I would like to encourage more shelters to be established elsewhere in the country with the support of the Government.

III. MINORITIES AND THE SPECIAL SITUATION OF THE ROMA/GYPSY COMMUNITY

41. A number of Romanian national institutions concern themselves with the protection of the rights of minorities. They include the Secretariat for Inter-ethnic Relations at the Ministry of Public Information (with three directorates, for the Roma/Gypsies, the Hungarian minority and the German minority respectively), the Council for National Minorities composed of all the minorities with seats in Parliament and the Ombudsman. The Senate and the Chamber of Deputies each has a committee on human rights, [religion] and minorities. The National Council against Discrimination also plays an important part in this field. I was able to meet representatives of all these bodies during my visit.
42. On the basis of the result of the 1992 census¹³, the Romanian Government considers 17 minorities to be covered by the framework convention on respect for national minorities, while 20 minority languages are recognised, with some of these minorities possessing schools. In addition, the Local Government Act authorises the official use of minority languages in areas where they are spoken by over 20% of the population. According to the Minister for Education and Research, Mrs Ecaterina Andronescu, great efforts are being made to ensure that minorities are taught their language and thus their culture and traditions. For example, in the north of the country there is a pilot project for the opening, in a village of 300 persons belonging to the Csango community¹⁴, of a school providing teaching in the Hungarian language.
43. The representatives of minorities in Parliament have reported to me their anxieties about the way in which the traditional minorities and migrants are lumped together as regards the rights specific to each of them. I am however convinced that the national authorities will be able to find a solution to this problem and I invite them, in that aim, to keep up the dialogue with minorities and migrants. I also invite the Romanian authorities to ratify the European Charter for Regional or Minority Languages as well as to examine the possibility of ratifying Additional Protocol No 12 to the European Convention on Human Rights, which forbids any form of discrimination.

¹³ The results of the 2002 census are still provisional

¹⁴ A working party is currently examining the situation of this community in order to establish its status – community, minority – at national level

The special situation of the Roma/Gypsy community

44. In 2001 Romania adopted a governmental strategy for improving the conditions of Roma/Gypsies¹⁵ under its action plan to eradicate discrimination. This strategy has resulted in the setting up of a joint committee for application and follow-up, ministerial commissions and county offices and in the appointment of local experts; all these bodies and individuals work exclusively on Roma/Gypsy matters. A State Secretary has also been appointed; this position is currently filled by a member of that community.
45. On the occasion of the meeting with the NGOs and of my visit to Ferentari, a Roma/Gypsy area of Bucharest, I had an opportunity to talk to Roma/Gypsy representatives and to observe the deplorable living and hygiene conditions afflicting part of that community. Refuse is dumped more or less anywhere, in particular near houses. This is a serious public-health problem. The measures that need to be taken seem to me to be simple and realistic. Nevertheless, it is imperative for town hall and local residents to work together; otherwise any solution is doomed to failure. It was also reported to me that heating and hot-water supplies had been cut off in a number of local properties because of unpaid bills left by previous occupants. I learned that many of the existing residents of those properties were rigging up dangerous electrical connections in response to this situation. All this poses undeniable risks of fire and electrocution, with their consequent potential for high costs, and I call on the authorities to take the proper steps as soon as possible.
46. I also visited a neighbourhood school. During my chats with teachers and pupils, I was told that no distinctions were made on the school premises in the treatment of pupils, all of whom were regarded as Romanian. There is little doubt that this approach is the best, namely to have a single school for all Romanian children regardless of origin.
47. The Roma/Gypsy community suffers greatly from poverty, unemployment, lack of schooling, lack of access to health care and justice and discrimination in all its forms. Likewise, according to Roma/Gypsy organisations, one of this community's growing concerns is the "anti-Roma/Gypsy phenomenon", which is gaining ground both in Romania and in Europe.
48. It is important that Roma/Gypsy leaders become fully aware both of the problems confronted daily by their community and of its real needs. To this end, closer collaboration and the maintenance of a dialogue with the new generations of Roma/Gypsies¹⁶ must be encouraged in order to ensure that specific actions and suitable policies are proposed.

Access to health care

49. Several members of that community informed me of the great difficulties encountered in access to health care. For example, hospitals have refused care to sick children. They have been admitted to the emergency department only when their condition has deteriorated. Most of these irregularities appear to be due to the fact that Roma/Gypsies do not have the identity documents required for access to health care. Although it is essential that the community take the necessary steps to obtain such documents, the authorities should make the process easier,

¹⁵ The Government of Romania, Ministry of Public Information, *Strategy of the government for improving the condition of the Roma*, Bucharest 2001

¹⁶ It is important to stress that the rising generations appear to be dissatisfied with certain leaders of the community who, in their ignorance, are helping to perpetuate various stereotypes with respect to the Roma/Gypsies. Report on the Human Rights Situation as regards Roma in Romania, Aven Amentza, Centre for Public Policies.

for example by reducing the costs connected with the issue of birth certificates, which in the view of many Roma/Gypsies are exorbitant.

Employment

50. Although the whole Romanian population of working age is affected by unemployment, the Roma/Gypsy community remains the most affected by it. According to the NGOs, this situation is worsened by the failure to apply equal-opportunity legislation in practice. Legal proceedings should be taken against employers who explicitly state in their job advertisements that no Roma/Gypsies need apply, and against the newspaper publishers who publish such advertisements.
51. I remain convinced that, with the development of the national strategy for Roma/Gypsies, reintegration policies will enable members of that community possessing qualifications to find jobs and those without them to take part in training activities. It is also important to join with the private sector in establishing programmes to encourage the recruitment of Roma/Gypsies. I appeal to the authorities to continue their policy on behalf of that community and to allocate the necessary resources.

The National Council against Discrimination

52. This council's function is to give practical everyday expression to the principle of equality laid down in the 1991 Romanian Constitution, under which all citizens are equal regardless of their race, nationality, ethnic origin, religion, gender, opinion, political allegiance or social origin. It is also required to institute information and prevention programmes and to impose fines for behaviour found to be discriminatory, even when the latter results from a public authority. The Council enjoys full financial autonomy until 2006 and its president is named for a period of 7 years in order to insure continuity in the policies brought forward. It also appears that the procedure of appointment and dismissal of the president is well defined by the law in order to shield it from undue political pressure. With regards to the actual absence of representatives of vulnerable groups on this body, the authorities informed me that the Council was presently studying the advisability of hiring members of the Roma/Gypsy community.
53. I learned from my interview with Mr Cristian Jura, the president of the Council, that since this institution started operation in August 2002 it has examined 200 complaints covering a wide range of different questions, including access to schooling, recognition of qualifications and sexual equality on the labour market. It is too early to report in detail on the activities of this body but I encourage it to remain independent and effective in the exercise of its powers.

IV. THE OMBUDSMAN

54. During our meeting, the People's Advocate – "Avocatul Poporului"- Mr Ioan Muraru informed me that he was continuing to deal with complaints lodged by persons whose civil rights and freedoms had been abused by the public authorities. He stressed that the vast majority of complaints concerned wrongful actions by the police, domestic violence, restoration of ownership, and the right to a decent standard of living and social assistance. He nevertheless deplored the fact that his recommendations were not heeded by the authorities.
55. It was moreover apparent that due to lack of adequate human and financial resources, the Ombudsman was not yet in a position to open other offices. Regarding his Bucharest office, it is located inside a governmental building that also houses police quarters, notably barracks. In

my view, public access is difficult¹⁷. I therefore invite the Romanian authorities to assist the work of the People's Advocate by arranging an early removal to premises easily accessible to all.

V. FREEDOM OF EXPRESSION

56. When I met the NGOs, the provisions of the Romanian Penal Code that limit journalists' activities were spoken to me condemnation. I accordingly broached this subject in my talks with the Minister of Justice Ms Mihaela Rodica Stanoiu and with the Committee on Human Rights, Religious Affairs and National Minority Issues of the Chamber of Deputies.
57. Until very recently, Romanian legislation on libel and defamation prescribed heavy fines and also suspended or non-suspended prison sentences, which was in blatant contradiction with European standards. On 23 May 2002 an emergency ordinance was adopted, abolishing the offence of insult to the authorities and reducing the maximum prison sentences for libel against private individuals and officials. This revision of the Penal Code is a step in the right direction.
58. Nonetheless, certain matters of concern persist. For instance, considering that Article 10 of the European Convention establishes a presumption of freedom of expression, it is regrettable that in libel and defamation cases the burden of proof is placed firstly on the defendant who is compelled to prove the truth of his statements. However, in its *Dalban* judgment against Romania¹⁸, the European Court considers it unacceptable for a journalist to be debarred from expressing critical value judgements unless he or she can prove their truth. In addition, whereas the Court holds that the limits of acceptable criticism are wider for a politician than for a private individual, Romanian legislation still punishes the offence of libel more severely an official than when it concerns a private individual.
59. Having regard to the foregoing and to the continually growing number of charges of defamation and libel brought before the Romanian courts, a legislative reform is necessary: reversal of the burden of proof is essential; the journalist's good faith must have precedence and preference over the truth of the statements as a ground of defence; the possibility of punishing these offences with a prison sentence must be abolished; the principle of proportionality should guide any pecuniary penalty. Having pointed this out, I observe that the Minister of Justice is seriously looking into this matter, as demonstrated by the document handed to me, which draws comparisons between Romanian legislation on defamation and libel and similar provisions originating from certain Council of Europe member states. But I should like to recall that in this area the terms of Article 10 of the European Convention, and above all the construction placed on it by the Court, are the most suitable guides and absolutely must be central to any proposed reforms. The requirements deriving from the Court's case-law as regards freedom of expression represent no more than the minimum standard to be met, whereas a tendency towards decriminalisation of defamation and libel is starting to appear in Europe¹⁹.
60. Finally, the latest ECRI report on Romania²⁰ condemned the attitude of the Romanian media, specifically the printed press, for their tendency to sensationalism. Likewise, it is clear that a

¹⁷ For instance, the identity check at the entrance can act as a deterrent.

¹⁸ Judgment in the case of *Dalban v. Romania*, 28 September 1999, application n° 28114/95.

¹⁹ See for instance the *Conclusions of the Regional Conference on Defamation and Freedom of Expression*, Strasbourg, 17-18 October 2002.

²⁰ Second ECRI report on Romania, CRI (2002)5.

number of journalists do not trouble to verify the soundness of their statements before making them public. Both these shortcomings mean that the journalistic profession's credibility and image are besmirched, and this debasement of the ethics of journalism furnishes arguments in favour of more stringent control over freedom of expression. In order to break the vicious circle, it is crucial to introduce proper self-regulation mechanism. The preparation of a code of professional conduct and the formation of an independent body responsible for its application would represent significant steps in that direction. I urge the Government to encourage and support such action.

VI. LABOUR AND SOCIAL SOLIDARITY

61. The Romanian Constitution secures the freedom to form and join trade unions, the right to work, the right to social security and the right to strike. The issues relating to social rights and trade unions were raised both with Mr Marian Sirbu, Minister of Labour and Social Solidarity, and with the representatives of the principal trade unions. The Minister told me of the new measures taken by the Government, such as the law on minimum income which enabled some 400 000 underprivileged families to receive a cash allowance. He also informed me that legislative proposals were afoot in order to guarantee the introduction of trade union branches and collective agreements in all enterprises employing over 21 wage-earners. This is a prospect which I welcome and encourage.
62. For their part, the union representatives informed me of cases of unfair dismissal of unionists and of the difficulties that they meet in exercising the freedom to engage in union activity, including the consultative functions assigned to them by Romanian and European law. These malfunctions are reported to be particularly apparent in highly privatised sectors such as tourism and banking.
63. What is more, the rapid progress towards a market economy, the growing presence of foreign enterprises and the process of integrating the "acquis communautaire" into the Romanian legal system pose new challenges, and demand adaptation of structures and targeted efforts. In fact the adoption of new standards in industrial relations entails consultation of labour and management together with an administrative and judicial apparatus capable of enforcing these standards effectively. Yet in view of the urgency and the scale of the reforms in progress, labour-management dialogue does not seem to have the dominant role which could have been wished. In addition, the current delays of civil justice allegedly render the legal protection granted to employees and trade unions ineffective. For that reason, a justice system in closer contact with labour and management, and capable of reacting quickly to the problems raised by a labour market in the midst of change, seems to me necessary. I therefore encourage the Government to consider the possibility of setting up labour courts and giving them the necessary constitutional foundation. It would also be desirable for Romania to agree as soon as possible to be bound by the collective complaints procedure laid down by the revised European Social Charter.

VII. CO-OPERATION WITH CIVIL SOCIETY

64. The transition taking place in Romania as regards the participation of civil society in public life is at present having effects at different levels. First of all, during my stay and on the occasion of my field visits, I was aware of the presence of unease due to the constant proliferation of NGOs whose professionalism is considered deficient. Secondly, although dialogue between the NGOs and the Government is theoretically maintained, it still remains very haphazard in certain

spheres. May I recall at this juncture the conclusions adopted this year in Ankara concerning “The role of civil society in the consolidation of modern democracy²¹” in which I stress the importance of maintaining genuine dialogue and true co-operation between the State and the non-governmental organisations. I accordingly urge the Romanian authorities to regard the NGOs as real partners in the democratic process, and the NGOs to organise themselves in such a way that their role is appropriate, recognised and respected. Finally, I consider that the Ombudsman institution would be a significant instrument, by virtue of its mediating role, for fostering co-operation between the authorities and the representatives of civil society.

FINAL REMARKS AND RECOMMENDATIONS

65. Romania is a democracy which upholds human rights. Very substantial progress was achieved since its accession to the Council of Europe in 1993 thanks to the strong determination of the authorities. In order to assist the authorities and encourage them in the pursuit of their goal, and in accordance with Article 8 of Resolution (99) 50, the Commissioner makes the following recommendations:

1. With respect to the extensive powers of the General Prosecutor, limit, by additional legislative reforms, the excessive possibilities of reopening final civil judgments and ensure that the current law is interpreted and applied in a most restrictive manner both by prosecutors and courts so that no further violations of Article 6.1 of the European Convention occur;
2. In order to face the overcrowding of prisons, devise a system of alternative penalties, efficient management of release on parole and a judicial policy invoking moderation in recourse to custodial sentences;
3. Ensure effectiveness of investigation and prosecution in respect of police force members who have committed abuses; intensify, through closer collaboration with the NGOs, the training programmes launched by the authorities for the purpose of altering the attitudes of police officers to vulnerable groups, in particular the Roma/Gypsy community, as well as victims of trafficking in human beings and domestic violence;
4. Concerning the abandoned children, ensure that as the process of closing obsolete institutions proceeds, care programmes are introduced to aid the social integration of the young people leaving them; frame a policy for preventing abandonment of children, to involve awareness-raising and education campaigns; examine the possibility of setting up reception centres for mothers;
5. Step up the programmes to assist and protect victims of trafficking in human beings, by insuring effective implementation of the new law and continuing regional and international efforts;
6. Develop further programmes aimed at adults suffering from mental disorders;

²¹ See the conclusions by Mr Alvaro Gil-Robles, Commissioner for Human Rights, concerning the seminar on the role of civil society in the consolidation of modern democracy, Ankara, 6-7 May 2002

7. Insure greater protection and assistance to victims of domestic violence by the adoption of a new law, efficient implementation of the Penal Code provisions and the opening of shelters;
 8. Allocate the necessary resources for developing the national strategy on behalf of Roma/Gypsies to foster improvement in their circumstances; reduce or eliminate charges for issuing a birth certificate; take up the necessary measures in order to remedy to the serious public-health problem afflicting the Ferentari area;
 9. Assist the work of the People's Advocate by making it possible for this institution to be relocated as soon as possible in premises easily accessible to all;
 10. Carry on the legislative reform concerning the offences of libel and defamation, by notably abolishing the provisions that make these offences punishable by a prison sentence and by giving the journalist's good faith precedence and preference over authenticity as a ground of defence, and that in accordance with the European Court for Human Rights' case-law;
 11. Encourage the introduction of a self-regulation mechanism for journalists by drawing up a code of professional conduct and forming an independent body responsible for its application;
 12. Look into the feasibility of setting up labour courts and giving them the necessary constitutional basis;
 13. Ratify the European Charter for Regional or Minority Languages, and examine the possibility of ratifying Protocol n° 12 to the European Convention on Human Rights prohibiting all forms of discrimination;
 14. Accept the collective complaints procedure prescribed by the revised European Social Charter.
66. In accordance with Article 3(f) of Resolution (99) 50, this report is addressed to the Committee of Ministers and the Parliamentary Assembly.

ADDITIONAL COMMENTS

67. This report has been presented to the Committee of delegated Ministers of the Council of Europe, on November 27, 2002. At the end of this presentation and in the light of the comments brought by the permanent representative of Romania, the Commissioner decided to add the following precise details concerning the measures taken by the Romanian authorities following his visit:
- With regards to the penitentiary system, after the presentation of the present report, the Ministry of foreign Affairs will propose the government to publish the reports of the CPT visits.
 - Concerning freedom of expression, the President of Romania sent back to the parliament the bill that was amending articles 205 and 206 of the Romanian Criminal code for the offences of libel and defamation.

- The Romanian authorities renewed their resolve to insure effective implementation of the measures introduced in 2001 to improve the condition of the Roma/Gypsy community in the health sector, namely the Partnership Protocol that regulates the collaboration between the Ministry of Health and Family and the Roma/Gypsy Social Democratic Party, the creation of a Ministerial Commission for the Roma/Gypsy and the Agreement instituting the position of sanitary mediator (a representative of the community chosen by it to channel contacts with the local authorities). With regards to the latter, the Government considers that, in the course of 2003, sanitary mediators will be established in all of Romania's counties.

Alvaro Gil-Robles
Commissioner for Human Rights

APPENDIX

**PROGRAMME OF THE VISIT BY THE COUNCIL OF EUROPE
COMMISSIONER FOR HUMAN RIGHTS, MR ALVARO GIL ROBLES,
TO ROMANIA**

Saturday 5 October

9:00 -17:00 Visit of the Codlea prison
 Visit of the Codlea orphanage
 Visit of the Ghimbav placement centre
 Visit of a shelter for victims of domestic violence

For M. Fernando Mora et Ms Satu Suikkari

10 :00 Visit of the Camin Spital of Giurcani
 Visit of the Community Safety and Mediation Centre

Sunday 6 October

10 :00 -12 :00 Visit of the Urlati Neuropsychic Rehabilitation and Recovery Centre
 15 :00 - 17 :00 Visit of the Estuar Foundation for victims of trafficking in human beings
 Visit of a centre for victims of domestic violence

Monday 7 October

8 :00 - 8 :45 Meeting with Mr Cristian Jura, president of the National Council against
 Discrimination
 9 :00 - 11 :30 Meeting with NGOs
 11 :00 - 11 :30 Meeting with Mr Ion Iliescu, President of Romania
 11 :45 - 12 :30 Meeting with Mr Tanase Joita, General Prosecutor
 12 :45 - 14 :15 Working lunch hosted by Mr Marko Attila and Mr Gheorghe Ivan, Under-
 Secretaries of State from the Department of Interethnic Relations of the
 Ministry of Public Information
 14 :30 - 15 :15 Meeting with Mrs Mihaela Rodica Stanoiu, Minister of Justice
 16 :30 - 17 :00 Meeting with Mr Adrian Nastase, Prime-Minister
 17 :30 - 18 :15 Meeting with the Chamber of Deputies Commission for Human Rights,
 Religious Affairs and National Minorities

Tuesday 8 October

- 09 :00 - 09 :45 Meeting with Mr Radu Deac, Secretary of State of the Ministry of Health and the Family
- 10 :00 - 10 :45 Meeting with Mr Ioan Bartos, the People's Advocate (Ombudsman)
- 11 :15 - 12 :00 Meeting with Mrs Gabriela Coman, Secretary of State for Child Protection and Adoption
- 12 :15 - 13 :00 Meeting with Mr Pavel Abraham, Secretary of State of the Ministry of the Interior
- 13 :15 - 14 :45 Working lunch with Mr Mihnea Motoc, Secretary of State of the Ministry of Foreign affairs
- 15 :00 - 15 :45 Meeting with Mr Marian Sirbu, Minister of Labour and Social Solidarity
- 16 :00 - 16 :30 Meeting with Mr Mircea Geona, Minister of Foreign Affairs
- 16 :30 - 16 :50 Press Conference at the Ministry of Foreign affairs
- 17 :00 - 17 :50 Visit of the Luminata placement centre
- 18 :00 - 19 :00 Meeting with des representatives of trade unions

Wednesday 9 October

- 9 :00 - 9 :45 Meeting with the Parliamentary Group of National Minorities
- 10 :00 - 13 :00 Visit of a Roma/Gypsy community in the Ferentari neighbourhood accompanied by Roma/Gypsy leaders and by Mr Georghe Ivan, Under-Secretary of State from the Department of Interethnic Relations of the Ministry of Public Information, in charge of the National office for the Roma