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REPORT

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COMMISSIONER FOR HUMAN RIGHTS OF THE
COUNCIL OF EUROPE

**FOLLOWING HIS VISIT TO ROMANIA
FROM 31 MARCH TO 4 APRIL 2014**

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SUMMARY

Commissioner Muižnieks and his delegation visited Romania from 31 March to 4 April 2014. In the course of the visit the Commissioner held discussions with state authorities and non-governmental, national and international organisations. The present report draws on the themes of the Commissioner's visit and focuses on the following issues:

Human rights of persons with disabilities

The Commissioner is deeply concerned about the very large number of institutions for persons, including children, with disabilities, despite the deinstitutionalisation objectives established by the government. Of particular concern are numerous reports concerning the inadequate living conditions, social marginalisation and ill-treatment faced by children and adults with disabilities in institutions, as well as the reported lack of access to justice for these persons.

The Romanian authorities are called on to draw up, with the active involvement of persons with disabilities, a comprehensive plan for replacing institutions with community-based services, in full compliance with Article 19 of the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD). Useful guidance is provided in this regard by the Council of Europe Disability Action Plan 2006-2015. At the same time it is stressed that the existence of a disability cannot justify a deprivation of liberty, and that any deprivation of liberty or use of force against persons with disabilities must fully comply with Articles 3 and 5 of the European Convention on Human Rights (ECHR). All allegations of unlawful acts, especially those constituting serious human rights violations, committed against persons living in institutions must be promptly and effectively investigated and those responsible should be brought to justice. For this, the authorities must ensure effective access of persons with disabilities to all legal proceedings concerning them. In this context, the authorities are urged to set up an effective National Preventive Mechanism as provided for by the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading treatment or Punishment (OPCAT).

The Commissioner is concerned at the numerous barriers to independent living faced by persons with disabilities, including the poor accessibility of the built environment and of mainstream services open to or provided to the public. Also, persons with disabilities in Romania continue to suffer from an excessively high rate of unemployment and to be faced with serious difficulties in accessing the labour market on an equal basis with others. The authorities are urged to improve the overall accessibility of the environment and of services and to modify the existing legislation and practices so as to ensure the effective access of persons with disabilities to the labour market.

Commissioner Muižnieks notes with concern that persons with disabilities in Romania may be fully deprived of legal capacity and of a series of rights including the right to vote and to be elected. The authorities are called on to fully and effectively align domestic legislation and practice with the standards contained in the UN CRPD and with the relevant case-law of the European Court of Human Rights (hereinafter: the Court) to ensure that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

The fact that a large share of children with disabilities are educated according to special programmes, in special or mainstream schools, is of particular concern to the Commissioner. Of equal concern are the low levels of accessibility of higher education institutions to adult students with disabilities. The authorities are urged to promote inclusive education, to establish ambitious targets for the transfer of children with disabilities from special to mainstream education, and to ensure the accessibility of all education institutions to persons with disabilities.

Lastly, the Commissioner welcomes the ratification by Romania of the UN CRPD in 2010. However, he is worried that the dissolution of the National Agency for Persons with Disabilities in the same year has affected the smooth implementation of the UN CRPD both at legislative level and in practice. The authorities are called on to ensure the full participation of persons with disabilities and expert, domestic NGOs in the drafting of the National Strategy for the Social Inclusion of Persons with Disabilities 2014-2020, in line with the standards contained in the UN CRPD.

Human rights of the child

The Commissioner is seriously concerned about the high number of abandoned children living in Romania, some 80 000 of whom are left behind by migrant parents working abroad. The Commissioner is equally worried about the situation of at least 6 000 street children in the country, who are severely affected by social exclusion, violence and abuse. The Commissioner is particularly concerned that this phenomenon is transmitted over several generations. The authorities need to step up their efforts to prevent child abandonment and to reduce the number of children living on the streets.

Urgent measures should be taken to ensure that street children have effective access to education, health services, shelter and food. The authorities should support the reintegration of abandoned children in their families and provide alternative care where this is in the best interest of the child.

Of particular concern to the Commissioner is the institutionalisation of a large number of children, including children with disabilities, the inadequacy of the care provided to them in institutions, as well as the lack of transition programmes to adulthood. The authorities are urged to show a strong commitment to the deinstitutionalisation of child protection services and to continue to develop the alternative protection measures already in place. Pending deinstitutionalisation, the authorities should adopt measures to ensure that the rights of children to respect for their dignity and physical integrity are fully observed and that parents are supported with a view to the reintegration of children in the family and society.

The Commissioner welcomes the provisions of the new Criminal Code abolishing, as of 1 February 2014, the penalty of imprisonment for minors, and the introduction of a broader range of educative measures for children in conflict with the law. However, he regrets the lack of preparation of the authorities for the implementation of these new measures. He notes with concern the continued presence of children in prisons or in prison-like conditions, with no adequate access to education. The authorities are urged to do their utmost to bring their practice fully in line with the new legislation and ensure that children are no longer held in prisons or other similar settings.

The Commissioner notes with interest the reform process started by Romania in the past years, concerning the organisation of the juvenile justice system. The Commissioner encourages the authorities' efforts in this field and urges them to continue the systematic training of all staff involved in the administration of juvenile justice, to ensure a harmonised approach to issues concerning minors.

Lastly, the Commissioner welcomes the re-establishment, as of April 2014, of the National Authority for the Protection of the Rights of the Child and Adoption and urges the Romanian government to allocate adequate resources to ensure its effective functioning. The Commissioner urges the authorities to ensure the broad participation of civil society in the drafting of the new strategic document concerning child protection and that the best interest of the child is prioritised in all measures envisaged.

Human rights of Roma

The Commissioner is particularly concerned about the long-standing, institutionalised anti-Gypsyism in Romania, characterised by virulent, anti-Roma rhetoric in public discourse, including at the highest political level. The authorities are called on to condemn firmly and unequivocally all instances of hate speech and crime, while political parties and the parliament need to adopt self-regulatory measures to effectively counter and sanction intolerance and hate speech. In this context, the Commissioner welcomes the positive measures taken by the authorities to fight prejudice against Roma, including the implementation of anti-racism awareness campaigns and the recruiting of members of the Roma community in police academies and law enforcement agencies.

Of serious concern to the Commissioner is the fact that over 70% of Roma in Romania live below the poverty line, while only around 35% of them are employed. A lack of basic amenities, overcrowded spaces, segregation and a high risk of eviction characterise the housing situation of many Roma.

The Commissioner welcomes the measures taken by the authorities to enhance the social inclusion of Roma, including the recent registration of almost 5 000 Roma children and the issuing of identification documents to more than 30 000 adults. Despite progress in the inclusion of Roma children in the education system, a high percentage of Roma remain with no formal education and the early drop-out rates of Roma children are significantly higher than the average national rates. The authorities are urged to take measures to enhance the inclusion in the school system of Roma children, including those who, due to the migration of their families in particular to western European countries, are only intermittently present in Romania. The authorities should make better use of Roma school mediators, only half of whom are currently employed.

Commissioner Muižnieks notes with satisfaction the new legal provisions making racist motivation an aggravating circumstance for all criminal offences. However, it is noted with concern that the Romanian authorities appear to underestimate the incidence of racist hate crime in the country, which primarily affects Roma. Despite continued reports on racist crimes by NGOs and the media, in 2013 the courts did not record any cases concerning such crimes. The

Commissioner urges the authorities to pay particular attention to the recording of hate speech and hate crimes and to ensure that law enforcement officials and legal professionals are adequately and systematically trained to be able to recognise and effectively investigate and sanction crimes committed with a racist motive.

The Romanian authorities are urged to take all necessary measures to ensure that all allegations of ill-treatment committed by law enforcement officers, including those with an alleged racist motive, are promptly and effectively investigated and that adequate, dissuasive penalties are imposed on those committing such acts. The Commissioner calls on the Romanian authorities to establish an independent complaints mechanism covering the action of all law enforcement authorities in accordance with Council of Europe standards. The Commissioner is concerned by the very slow pace of execution by Romania of the Court's judgments concerning racist violence against Roma. He underlines that it is of the utmost importance for the rule of law in Romania that all judgments delivered by the Court be promptly, fully and effectively implemented. The authorities are urged to take all necessary measures to effectively address the outstanding issues in this matter.

Lastly, whilst he welcomes the adoption of the strategy for Roma inclusion for the period 2012-2020 and the setting up of an interministerial working group to coordinate the implementation of this strategy, the Commissioner is worried about the existing structural impediments to its implementation. The authorities are called on to allocate sufficient funding for the implementation of the strategy, to strengthen its implementation mechanism at central level, and to ensure the accountability of local authorities in implementing the strategy.

The report contains the Commissioner's conclusions and recommendations addressed to the Romanian authorities and is published on the Commissioner's website.

INTRODUCTION

1. The present report follows a visit to Romania by the Council of Europe Commissioner for Human Rights (“the Commissioner”) from 31 March to 4 April 2014.¹ The visit focused on the protection of the human rights of persons with disabilities, children, and Roma.
2. During his visit the Commissioner held discussions with the Romanian authorities, including the Minister of Foreign Affairs, Mr Titus Corlăţean, the Minister of Justice, Mr Robert Cazanciuc, the Minister of National Education, Mr Remus Pricopie, the Minister of Health, Mr Nicolae Băncicioiu, the Prosecutor General, Mr Tiberiu Mihail Niţu, the Secretary of State for Persons with Disabilities in the Ministry of Labour, Family, Social Protection and Elderly, Mr Codrin Scutaru, the Undersecretary of State in the Ministry of Interior, Mr Doru Dumitrescu, and the president and vice-president of the Superior Council of Magistrates, Mr Adrian Bordea and Mr Gheorghe Muscalu. In addition, the Commissioner met with the interim Ombudsperson, Ms Ecaterina Teodorescu and the deputy Ombudspersons Ms Erzsébet Dáné and Mr Ionel Oprea, the president of the National Council for Combating Discrimination, Mr Csaba Ferenc Asztalos, the president of the Romanian Institute for Human Rights, Ms Irina Moroianu Zlătescu, the president of the National Agency for Roma, Mr Daniel Vasile, and the presidents of the Human Rights Committees of the two chambers of the Parliament of Romania, Mr Nicolae Păun (Chamber of Deputies), and Ms Rozália Biró (Senate).
3. The Commissioner also met with a large number of representatives of civil society organisations active in the field of human rights. He visited the “Sfânta Maria” Multifunctional Centre for child abandonment prevention, early intervention and inclusive education in Sector 5 of Bucharest, the Tâncăbeşti School for Inclusive Education in Ilfov county, near Bucharest, as well as the Ferentari neighbourhood in Bucharest where the largest Roma community of the city resides. He also participated in a round-table organised by the NGO “Center for Legal Resources”, which focused on the access to justice of institutionalised persons.
4. The Commissioner wishes to thank sincerely the Romanian authorities in Strasbourg and in Bucharest for their assistance in organising his visit and facilitating its independent and smooth execution. He also extends his thanks to all his interlocutors for their willingness to share with him their knowledge and views.
5. The Commissioner notes that the legislative and institutional framework for the protection of human rights in Romania has changed significantly in the past few years in all areas covered in this report. While the Commissioner welcomes the improvements achieved, he is concerned that some initiatives taken in the framework of broader austerity measures appear to have led to the weakening of the institutional framework for the protection of human rights at central level. At the same time, reports indicate that the decentralisation of social services, in the absence of adequate resources and efficient monitoring mechanisms concerning the implementation of social protection standards, has diminished the accountability of local authorities in the implementation of these standards.
6. It has been noted that the authorities are currently preparing several policy documents concerning human rights protection for the period 2014-2020. The Commissioner encourages the authorities to use this opportunity to effectively address outstanding challenges and to strengthen their capacity to pursue systematic work on the protection of human rights. The [Commissioner’s 2009 Recommendation](#) on systematic work for implementing human rights at the national level provides useful guidance in this regard.
7. Further progress in the protection of human rights will require political determination, vigorous efforts and close co-operation between all relevant national authorities, as well as with the Ombudsman, the National Council for Combating Discrimination, and the Romanian Institute for Human Rights. He calls on the Romanian authorities to reinforce the independence, efficiency and effectiveness of these human rights structures, including by further clarifying the competencies of each of these institutions and ensuring that they benefit from adequate human and financial resources to carry out their mandates.

¹ During his visit the Commissioner was accompanied by Mr Nikolaos Sitaropoulos, Deputy to the Director of his Office, and his Adviser, Ms Patricia Ötvös.

8. The Commissioner wishes to continue his constructive dialogue with the Romanian authorities on these issues. He trusts that this dialogue will be facilitated by the present report and the recommendations contained herein covering three major themes: human rights of persons with disabilities (section I); human rights of the child (section II), and human rights of Roma (section III).

1 HUMAN RIGHTS OF PERSONS WITH DISABILITIES

9. According to official data, as at 31 December 2013 there were more than 648 000 adults and around 70 000 children with disabilities in Romania (3.52% of the total population).² Reportedly, these statistics do not include a large number of persons with disabilities classified under domestic law as “persons with invalidity”.³
10. The Commissioner notes that persons with disabilities in Romania are confronted with significant difficulties owing, in particular, to delays in the alignment of domestic legislation with the UN Convention on the Rights of Persons with Disabilities (UN CRPD), shortcomings in the implementation of the existing legislation, structural problems in the social care system, and poor access to quality education and to employment. The Commissioner was also informed about the existence of strong societal prejudices which tend to relegate persons with disabilities to a life of marginalisation.
11. Against this background, the Commissioner warmly welcomes the dedicated work of many national NGOs involved in the protection and promotion of the human rights of persons with disabilities, and encourages the authorities to use their valuable expertise to bring domestic legislation and practice fully into line with international and European standards.
12. The Commissioner notes the numerous decisions by the Court concerning various violations of the human rights of persons with disabilities in Romania, including serious ones. He is concerned that a common theme of these cases is the lack of access to justice, in particular for persons with disabilities living in institutions.
13. The specific issues that the Commissioner addresses in this section of his report are: the right of persons with disabilities to live independently and to be included in the community; the right to legal capacity; the right to inclusive education; and some major aspects concerning the legal and institutional framework for the protection of the human rights of persons with disabilities.

1.1 THE RIGHT TO LIVE INDEPENDENTLY AND TO BE INCLUDED IN THE COMMUNITY

1.1.1 THE SITUATION OF PERSONS LIVING IN INSTITUTIONS

14. According to official data, at the end of 2013, 97.6% of the total number of persons with disabilities in Romania were living in family or independent settings, while 2.4% (17 123 persons, most of them with intellectual and psychosocial disabilities) were living in institutions for adults with disabilities, coordinated by the Ministry of Labour, Social Protection, Family and Elderly (Ministry of Labour).⁴ However, the Commissioner was informed by expert NGOs that these figures do not include persons with disabilities living in institutions under the authority of the Ministry of Health or institutions run by private entities.
15. The Commissioner notes that, despite the deinstitutionalisation objectives set in the [National Strategy for the Protection, Integration and Social Inclusion of Persons with Disabilities 2006-2013](#) (“Disability strategy 2006-2013”), the number of residential social care institutions for adult persons with disabilities has more than doubled in the past eight years, from 141 at the end of 2005⁵ to 335 at the end of December 2013.⁶ Reports have indicated that between 2007 and 2013 Romania invested 27.6 million euros from European funds in refurbishing, restructuring or building such institutions.⁷

² Ministry of Labour, Social Protection, Family and Elderly, “[Statistical Bulletin, Persons with Disabilities](#)”, 4th quarter 2013, “Situation of children with disabilities at 31 December 2013”, available at: http://www.copii.ro/alte_categorii.html.

³ See the discussion concerning “persons with invalidity” in section 1, subsection 2.

⁴ The situation of children with disabilities living in institutions is addressed in section II.2 below.

⁵ Statistical data according to the Disability Strategy 2006 -2013.

⁶ Ministry of Labour, “[Statistical Bulletin, Persons with Disabilities](#)”, 4th quarter 2013.

⁷ Institute for Public Policies, “[The outcomes of structural funds investment during the current financial exercise – the lesson we \(fail to\) learn for 2014-2020](#)”, 2013; see also Appendix 11 in the [Appendices](#) to the report.

16. In his discussions with representatives of civil society the Commissioner was informed that some of the larger institutions hosting several hundreds of persons⁸ were reorganised into smaller institutions. However, the Commissioner considers that this alone cannot explain the dramatic increase in the number of institutions as reflected in the statistics. The Commissioner is looking forward to receiving further information from the authorities concerning this issue.
17. Concerning admittance to institutions, the Commissioner notes that according to the Law on disability,⁹ admittance to a residential institution takes place where it is not possible to ensure the provision of care in community-based settings. According to the Law on mental health,¹⁰ involuntary committal to a psychiatric institution, as well as release from involuntary confinement, is decided by the courts. Legal aid is granted where the concerned person does not have a lawyer of his or her choice. The law provides for the monthly review of involuntary confinements, by a medical commission, with additional re-examinations taking place by this commission on condition that a request is made by, *inter alios*, the concerned person, their representative, or the prosecutor.
18. The Commissioner is concerned that despite the existing safeguards, persons with disabilities often do not have effective access to proceedings of judicial review concerning their placement in an institution. This is true in particular of those who appear in psychiatric institutions' records as "voluntary patients" and thus do not benefit from the guarantees provided by law to involuntary patients.¹¹ Most patients recently interviewed in the context of a report by the European Union's Fundamental Rights Agency (FRA) claimed that the Romanian authorities did not consider their opinion, they were not asked to give their consent for admissions, and did not receive information about the legal provisions on measures involving deprivation of freedom.¹²
19. In addition, the Commissioner was informed that the law does not provide for an automatic periodic review of involuntary placements to be carried out by the courts at reasonable intervals. A number of relevant cases concerning the lack of initial or subsequent judicial review of involuntary committals have reached the Court. In *Filip v. Romania*¹³ and *C.B. v. Romania*,¹⁴ the Court found violations of the Convention on account of, *inter alia*, the applicants' unlawful committal to psychiatric hospitals on the basis of prosecutors' orders, without a medical opinion stating that deprivation of liberty was necessary, without consideration of alternatives, and without any judicial review of the lawfulness of the detention. The Court found gaps in the Law on mental health, which restricted access to justice for persons seeking to complain against their involuntary committal to psychiatric hospitals. In the later cases of *Cristian Teodorescu v. Romania*¹⁵ and *B. v. Romania (no. 2)*¹⁶ the Court found that no complaints based on the above law had been introduced over a period of ten years since its entry into force in 2002.
20. Concerning living conditions in institutions, the Commissioner recalls the numerous deficiencies found by the European Committee for the Prevention of Torture (CPT) during a series of visits carried out to various institutions in Romania between 1995 and 2009.¹⁷ Problems included the dilapidated state of accommodation and sanitary facilities, inadequate access to personal hygiene items, malnutrition, the use of isolation as punishment, and degrading treatment such as confinement to cage beds.¹⁸ In this context, the Commissioner notes the Court's

⁸ According to the Disability Strategy 2006-2013, the institutions existing at 31 December 2005 had a capacity of 20 to 500 persons.

⁹ Law 448/2006 concerning the protection and promotion of the rights of persons with disabilities.

¹⁰ Law no. 487/2002 concerning mental health and the protection of persons with mental disorders.

¹¹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "[Report](#) following the CPT's visit to Romania from 8 to 19 June 2006", 11 December 2008, "[Report](#) following the CPT's visit to Romania from 28 September to 2 October 2009", 26 August 2010.

¹² FRA, "[Involuntary placement and involuntary treatment of persons with mental health problems](#)", 2012, pp. 42, 43 and 48.

¹³ Judgment of 14 December 2006.

¹⁴ Judgment of 20 April 2010; see also *Stelian Roșca v. Romania*, judgment of 4 June 2013.

¹⁵ Judgment of 19 June 2012 (concerns also involuntary treatment).

¹⁶ Judgment of 19 February 2013.

¹⁷ Available at: <http://www.cpt.coe.int/en/states/rom.htm>.

¹⁸ See also Anand Grover, UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Juan E. Méndez, UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, [Allegation letter](#) regarding the "Gheorghe Șerban" Centre for Recuperation and Rehabilitation of Neuropsychiatry of Bucharest, 16 August 2013.

judgment of 2012 in *Parascineti v. Romania*,¹⁹ in which the Court found a violation of Article 3 ECHR on account of the substandard conditions existing in a psychiatric ward in Sighetu Marmăției.

21. Recently the Center for Legal Resources (CLR) lodged a number of criminal complaints regarding serious abuses against institutionalised persons with intellectual and psychosocial disabilities. One of the cases concerns the “Centre for recovery and reintegration” in Aldeni, hosting around 100 residents. In November 2013 and February 2014 during two visits to this centre CLR documented various abuses against the residents that included: bruises; sedation; hunger; marks evidencing that residents were tied with rope; head shaving; and forced abortions.²⁰
22. The Commissioner is deeply concerned at the absence of effective access to justice affecting persons with disabilities following their involuntary admission to an institution. The Commissioner was informed that in most cases, the legal representation of these persons is inadequate, with no guardian being appointed, or with conflicts of interest arising between the guardian and the concerned persons, for example, when a staff member of the institution assumes this role. In addition, no special complaints mechanism is in place at national level concerning cases of abuse committed against persons living in social care and psychiatric institutions. The CPT also noted that although theoretically the persons living in the visited institutions could address complaints in writing to the prosecutor or other authorities, the practical possibilities for doing so were lacking.
23. The Commissioner recalls the case *Center for Legal Resources on behalf of Valentin Câmpeanu v. Romania*,²¹ concerning an intellectually disabled HIV positive 18-year-old man of Roma origin who had no family ties and no legal representative and who died while assigned to the Poiana Mare psychiatric hospital. In his third party intervention in this case before the Court the Commissioner stressed that access to justice is particularly difficult for persons with disabilities who experience isolation, have lost contact with their families, or are orphans. The Commissioner underlined the necessity to remove the barriers that hinder persons with disabilities from accessing courts, and that failure to ensure that they have effective access to justice will always allow abuses to be committed against them.²²
24. The Commissioner notes with satisfaction that the issue of access to justice of persons with disabilities was raised last April at a round table organised in Bucharest by CLR, which he also attended. It was a first-time event where representatives of civil society, of state authorities and of national human rights structures discussed the CLR’s findings during 30 monitoring visits carried out in institutions since October 2013. The Commissioner is aware of no successful prosecution until now in any of the cases concerning serious human rights violations, including ill-treatment, which occurred in Romanian institutions. The Commissioner welcomes the undertaking of the Deputy Prosecutor General of Romania, Mr Dimitrie Bogdan Licu, present at the above round table, to ensure the swift and thorough investigation of the abuses notified by the CLR, and looks forward to receiving information from the authorities on the outcome of these investigations.
25. The Commissioner regrets, however, that the Romanian authorities have not yet effectively addressed the above-mentioned issues, despite the relevant judgments delivered by the Court and credible reports concerning other cases of ill-treatment and unclarified deaths in institutions. The Commissioner hopes that the measures provided in the action plans recently submitted by the authorities to the Council of Europe Committee of Ministers in the context of several of the above-mentioned cases, including amendments to the Law on mental health, will be effectively implemented in the shortest time possible.

¹⁹ Judgment of 13 March 2012.

²⁰ CLR, “Summary of criminal complaints recently filed by CLR regarding abuses against institutionalized children and young adults with mental disabilities”, March 2014.

²¹ Application no. 47848/08, currently pending before the Grand Chamber. Other cases concerning ill-treatment resulting in the death of persons with disabilities living in institutions, currently pending before the Court: *Malacu and others v. Romania*, application no. 55093/2009; *Stepanian v. Romania*, application no. 60103/2011.

²² [Third party intervention](#) by the Council of Europe Commissioner for Human Rights under Article 36, paragraph 3, of the European Convention on Human Rights, *The Center for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, Strasbourg, 11 October 2011.

1.1.2 BARRIERS TO INDEPENDENT LIVING AND INCLUSION IN THE COMMUNITY

26. The Commissioner was informed that one of the major barriers to independent living for persons with disabilities is the lack of alternatives to institutional care. Thus, at the end of 2013 only 1 669 adults with disabilities were benefitting from community-based care, provided by 57 non-residential institutions, while more than 17 000 were living in 335 residential institutions.
27. In practice, the lack of alternative care makes residential institutions a life-time arrangement for the majority of institutionalised persons. A recent study carried out by the NGO Institute for Public Policies (IPP) indicates that 67% of persons with disabilities placed in an institution remain there for life, while 14% are transferred at some point to other centres. Only 14% of cases of leaving the institution are related to integration in the family.²³
28. In their discussions with the Commissioner, several interlocutors, including representatives of civil society, of the Ombudsman's office and of the National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării*, "CNCD") have underlined the necessity to devise a comprehensive de-institutionalisation strategy covering both children and adults with disabilities, providing for clearly defined objectives and measures and with adequate funding.
29. It was also brought to the Commissioner's attention that the very poor accessibility of public spaces and services to persons with disabilities continues to be a major problem. Studies conducted in 2012-2013 showed that social protection directorates and county hospitals were the only public institutions which fully complied with accessibility criteria. 50% of the county capitals had no accessible pedestrian crossings and public transportation was accessible only in the largest county capitals.²⁴ The Commissioner noted during his visit the view expressed by experts that the authorities' failure to make notably the built environment and public services accessible to persons with disabilities means that even those living in the community remain isolated in their homes and at risk of being excluded from society.²⁵
30. Concerning employment, statistics provided by the Ministry of Labour show that at 31 December 2013, there were 29 842 persons with disabilities employed in Romania, representing 4.6% of all adults with disabilities. According to a survey carried out in 2012-2013 by several NGOs, including the National Organisation of Persons with Disabilities of Romania (ONPHR),²⁶ 42% of the persons with disabilities interviewed have never been employed. Only 9% of those without formal education were active, while of those with formal education, including a university degree, 44% were active. Only 7% of the persons interviewed were informed by the relevant agencies about the possibility of benefitting from career guidance and orientation services.
31. Concerning the access of persons with disabilities to the labour market, the Commissioner was informed that according to the labour legislation, at least 4% of the employees in any public or private entity having more than 50 employees must be persons with disabilities. As an alternative obligation to employing persons with disabilities, the concerned entities are required to pay a special tax (contribution). A study conducted in 2011 revealed that up to 7% of the surveyed public entities did not comply with any of these obligations, while almost half of the public institutions preferred to pay the special tax.²⁷ The Commissioner was informed that sanctions against non-compliant employers are only rarely imposed and enforced. The Commissioner was pleased to learn, however, about the CNCD's intention to promote a bill for the elimination of the alternative obligation consisting in paying a special tax.
32. The Commissioner noted the criticism expressed by his interlocutors concerning the legal obligation imposed on persons living in institutions, or their families having an income, to pay monthly maintenance fees to the

²³ IPP, "Monitoring report on Romania's readiness to enforce the UN Convention on the Rights of Persons with Disabilities", December 2013, available at: <http://www.ipp.ro/eng/pagini/monitoring-report-on-romaniias-readiness.php>.

²⁴ IPP, *ibid.*

²⁵ See also *Elvira Popa v. Romania*, application no. 4238/2009, currently pending before the Court.

²⁶ ONPHR, Excelnet project: "Studiu privind reabilitarea și integrarea profesională a persoanelor cu dizabilități în regiunile selectate: barierele întâmpinate de persoanele cu dizabilități în găsirea unui loc de muncă" ("Study concerning the professional rehabilitation and integration of persons with disabilities in selected areas: barriers encountered by persons with disabilities in finding employment"), January 2014.

²⁷ Junjan, Ciumăgean, Micluția, Crăciun, "[Labor integration of persons with disabilities in public institutions in Romania](#)", 2011.

institutions.²⁸ Representatives of a self-advocacy group considered that this obligation usually constitutes a very serious financial burden limiting, in practice, the autonomy and life of the persons concerned outside of the institutions.

33. The Commissioner is concerned by the existence of the outdated legal category of “invalidity”, used in Romania with reference to the loss of working capacity, following initial employment or contribution to the social welfare system. Contrary to persons with disabilities who have become disabled before being employed, persons affected by “invalidity” are only permitted to engage in part-time work, which drastically limits their career prospects, the level of their income, as well as their access to unemployment benefits and old-age pension, on an equal basis with others. The ONPHR estimates that 75% of the 742 000 persons recorded as having an “invalidity” in 2013²⁹ are persons with disabilities according to the UN CRPD definition. However, the current legislation leads to the recognition of a lesser proportion of persons with “invalidity” as being disabled.
34. The Commissioner notes the consensus existing between ONPHR, the Ombudsman and the Romanian Institute for Human Rights (*Institutul Român pentru Drepturile Omului*, “IRDO”) to the effect that no distinction should be allowed in the law between persons with disabilities on the grounds of the moment when they became disabled.³⁰ The Commissioner is concerned that this inconsistency has not yet been effectively addressed by the authorities, although it had been flagged in the Disability Strategy 2006-2013.
35. Finally, the Commissioner was informed about prevailing societal prejudices according to which the place of persons with disabilities is in institutions and that they do not have the capacity to fully participate in social life. The Commissioner wishes to underline the responsibility of the authorities to fight these prejudices and to ensure an inclusive environment for all persons, without any discrimination motivated by any disability status.

CONCLUSIONS AND RECOMMENDATIONS

36. Isolating persons with disabilities in institutions perpetuates their stigmatisation and marginalisation, in violation of their right to live independently in the community, guaranteed by Article 19 UN CRPD.³¹ Under this Article, Romania is obligated to take measures to ensure that persons with disabilities have effective access to a range of community-based arrangements including the personal assistance necessary to support independent living and inclusion in the community. Useful guidance in this context is provided by the Council of Europe Committee of Ministers Recommendation Rec(2006)5 and the accompanying [Disability Action Plan 2006-2015](#).
37. The Commissioner stresses the importance of ensuring that the existence of a disability is not treated as a justification for arbitrary deprivation of liberty and that any deprivation of liberty of persons with disabilities fully complies with Article 5 ECHR, as interpreted by the Court. The authorities are urged to ensure that any use of coercion against persons with disabilities does not violate the prohibition of torture or other forms of ill-treatment, provided for by Article 3 ECHR.
38. The authorities’ particular attention is drawn to the reported cases of serious abuses committed against persons living in institutions. They must be promptly and effectively investigated and those responsible should be brought to justice in accordance with the 2011 Council of Europe Committee of Ministers [Guidelines on eradicating impunity for serious human rights violations](#).
39. The Romanian authorities are urged to improve domestic legislation and introduce practical measures ensuring the effective access of persons with disabilities to all legal proceedings concerning them, including at investigative and other preliminary stages.

²⁸ Government Decision No. 532/1999 concerning the approval of the methodology for establishing the maintenance fee owed to social care institutions by assisted persons or those obligated by law to support them.

²⁹ National Institute of Statistics, [Press release no. 74 of 28 March 2014](#).

³⁰ People’s Advocate (Ombudsman), [“Raport special privind protecția persoanelor cu handicap”](#) (“Special report concerning the protection of persons with disabilities”), May 2013.

³¹ See also the Commissioner’s Issue Paper, [“The right of people with disabilities to live independently and be included in the community”](#), 2012.

40. In this context, the Commissioner draws the authorities' attention to the Council of Europe Disability Action Plan's line No. 12 on legal protection and urges them to ensure that those working in, and contributing to the administration of justice, including law enforcement officers, judges, prosecutors, forensic experts and other professionals are trained to recognise persons with disabilities as persons before the law who are entitled to exercise their rights on an equal basis with others.
41. The Commissioner urges the authorities to draw up, with the active involvement of persons with disabilities, a comprehensive plan for replacing institutions with community-based services. The Commissioner calls on the authorities to show their commitment to reforming the social care system for persons with disabilities by closing down old-type residential institutions and allocating adequate resources for the development of community-based alternatives.
42. The authorities are further urged to take appropriate measures to ensure that the physical environment, as well as all services open to or provided to the public, including transportation, information and communication are accessible and effectively available to persons with disabilities on an equal basis with others.³²
43. Measures are equally necessary to ensure that the right to work is recognised for persons with disabilities, including those who acquired disability during the course of employment, on an equal basis with others. In this context, it is recommended that the category of "invalidity" cease to be officially used. The authorities are urged to take measures to ensure the effective access of persons with disabilities to the public and private labour market and to encourage the employment of persons with disabilities.
44. Lastly, the Commissioner calls on the authorities to take measures to address societal prejudices against persons with disabilities and to promote an inclusive environment conducive to the full integration of persons with disabilities in society.

1.2 THE RIGHT TO LEGAL CAPACITY

45. Romanian legislation provides for the possibility to fully deprive persons with psychosocial and intellectual disabilities of their legal capacity and to place them under guardianship. The Commissioner was informed by his interlocutors that although this measure does not affect a large number of persons, a survey showed that in 2009-2010 more than 4 000 persons were recorded by 44 municipalities as being placed under guardianship.³³
46. The Commissioner regrets that the new Civil Code of Romania which entered into force in October 2011 did not bring about the abolition of full incapacitation and guardianship and their replacement with measures providing persons with disabilities with the support they may require in exercising their legal capacity. Moreover, the new Code continues to refer to "alienation or mental debility" causing a person's incapacity to manage his or her own matters, as the reason for full deprivation of capacity, called "interdiction".
47. The Commissioner notes that the "interdiction" leads to a loss of the right to vote and stand for election, as well as to a presumption of incompetence affecting all areas of social life, including the right to have a family (marriage and parental rights), personal integrity (including consent to medical treatment), contractual matters, and the right to work. As an improvement, the new Civil Code recognises the legal capacity required to carry out small acts of everyday life, as well as acts aimed at conserving their assets for persons placed under guardianship. In addition, the new Civil Code allows individuals to designate in advance the person they wish to be appointed as their guardian in the event of their future incapacitation.
48. Concerning the incapacitation procedure, the Commissioner was informed that deprivation of legal capacity is subject to safeguards including the obligation of the court to hear the concerned person. However, experts have expressed concerns at the practice of some courts to sometimes omit the hearing of the concerned persons. The

³² See UN Committee on the Rights of People with Disabilities, [General Comment No. 2 \(Article 9 - Accessibility\)](#); see also Council of Europe Committee of Ministers Recommendation [CM/Rec\(2013\)3](#) on ensuring full, equal and effective participation of persons with disabilities in culture, sports, tourism and leisure activities.

³³ Center for Legal Resources and "Pentru voi" Foundation: "Tutela – protecție sau obstacol în calea integrării persoanelor cu dizabilități intelectuale?" ("Guardianship – protection or barrier to the integration of persons with intellectual disabilities?"), 2011.

law does not provide for automatic periodic reviews of the decision concerning the deprivation of capacity and the placement under guardianship.

49. Finally, the Commissioner notes reports indicating that despite potential conflicts of interest, heads of institutions are often appointed as guardians of persons living in institutions. In other cases the guardians are representatives of local authorities whose role remains purely formal, without any personal involvement in the support of the person placed under guardianship. In relation to this issue, the Commissioner was informed about the difficulties faced by persons with disabilities, in particular those living in institutions, to challenge the guardianship or the way in which it is administered.
50. The Commissioner noted with satisfaction that IRDO is aware of the above, and that in 2013 it recommended that the authorities take legislative measures for the introduction of supported decision-making, as a flexible protection measure ensuring respect for the person's autonomy, will and preferences.³⁴
51. The Commissioner wishes to thank the Minister of Justice, Mr Robert Cazanciuc, for his interest in continuing a dialogue concerning the above-mentioned issues and warmly welcomes the Minister's initiative for an assessment of the domestic legislation concerning legal capacity and guardianship, in light of Article 12 UN CRPD. The Commissioner is looking forward to receiving further information about the outcome of this assessment.

CONCLUSIONS AND RECOMMENDATIONS

52. The Commissioner wishes to recall the case-law of the Court establishing that the non-recognition of a person's legal capacity severely limits their human rights and that full deprivation of legal capacity is a very serious interference with the right to private life protected by Article 8 of the Convention. The existence of a mental disorder, even a serious one, cannot by itself justify incapacitation.³⁵
53. The Commissioner calls on the Romanian authorities to further review domestic legislation in light of Article 12 UN CRPD, in order to establish a single system recognising the right of persons with disabilities to enjoy legal capacity on an equal basis with others in all aspects of life. The Commissioner invites the authorities to use the guidance provided in [General Comment No. 1](#) of the UN Committee on the Rights of Persons with Disabilities.
54. The Commissioner urges the authorities to develop laws and policies to replace the regime of substituted decision-making with supported decision-making. While the guardianship system remains in place, the Romanian authorities are urged to ensure that persons placed under guardianship have effective access to judicial review proceedings to challenge the guardianship or the way in which it is administered. In respect of supported decision-making, safeguards must be put in place to ensure that the support provided respects the preferences of the persons receiving it, is free of conflict of interest and is subject to judicial review.³⁶
55. The Commissioner calls on the authorities to take measures to ensure that persons with disabilities are recognised as persons with equal standing in courts and tribunals and can effectively challenge any interference with their right to legal capacity.³⁷
56. Lastly, the Commissioner wishes to recall the Council of Europe Committee of Ministers [Recommendation CM/Rec\(2011\)14](#) on the participation of persons with disabilities in political and public life, and urges the Romanian authorities to ensure that persons with disabilities, including with intellectual impairments, are not deprived of their right to vote and to be elected by any law limiting their legal capacity, by any judicial or other decision or by any other measure based on their disability, cognitive functioning or perceived capacity.

³⁴ IRDO, "Recent Developments in the promotion and the protection of the rights of persons with disabilities in Romania", 2013.

³⁵ See *Shtukhaturov v. Russia*, Court's judgment of 27 March 2009; *Salontaji-Drobnjak v. Serbia*, Court's judgment of 13 October 2009; *Berková v. Slovakia*, Court's judgment of 24 March 2009.

³⁶ See the Commissioner's Issue Paper "[Who gets to decide? Right to legal capacity for persons with intellectual and psychosocial disabilities](#)", 2012.

³⁷ See *Stanev v. Bulgaria*, Court's judgment of 17 January 2012.

1.3 THE RIGHT TO INCLUSIVE EDUCATION

57. Romania has a long tradition of special schools for children with disabilities, supported, not least, by prevailing views in society that children with disabilities are best educated in segregated settings. Romanian NGOs have recently requested the prioritisation of inclusive education for children with special education needs in the National Strategy for the Social Inclusion of Persons with Disabilities 2014-2020, currently under preparation. A bill concerning the rights of children with disabilities, including the development of an inclusive education system, was introduced to the Romanian parliament on 31 March 2014. The Commissioner was informed that the bill was met with significant resistance by the professional groups employed in special education, who do not envisage their new role in the reformed system.
58. According to official statistics, at the end of 2013 approximately 60% of children with disabilities were included in mainstream education,³⁸ while according to data published by the IPP, in 2013 the average share of children with disabilities registered in primary, lower secondary and upper secondary school in the mainstream education system was only 38%.³⁹ Expert NGOs have questioned the reliability of official statistics, due to, *inter alia*, the differences found in the relevant data collected by school inspectorates and child protection authorities. Moreover, the categories used to designate various types of education programmes and institutions do not always reflect the segregation of children with disabilities from other children. For example, former “placement centres” (residential institutions) for children with disabilities have been renamed as “inclusive education centres”, however, this change has only been cosmetic.
59. According to data quoted in the [Draft National Strategy for the Promotion and Protection of the Rights of the Child](#) (“Draft Child Protection Strategy 2014-2020”), around 50% of persons with disabilities have only completed formal education up to lower secondary school, compared to about 29% of the total population. They also have lower rates of representation in higher secondary and tertiary education than the national rates. Lack of schooling is seven times higher for children with disabilities as compared to those without disabilities, while early drop-out rates are double those of the general population.⁴⁰
60. The Commissioner was informed that the main reported reasons for the non-attendance of school by children with disabilities are health problems related to their disability, as well as the lack of trained teachers and adapted teaching methods and school equipment. Most specialised teachers are employed in the special education system and there are also significant discrepancies in their distribution across the country. The IPP found that in 2013, 11 of the 40 counties of Romania did not have any staff specialised in educating children with disabilities.
61. The Commissioner understands that the lack of support teachers and adequate materials in mainstream schools is the consequence of, *inter alia*, the financing arrangements existing in the education system since 2011. As a result of the partial decentralisation of the education system, costs are split between the central and the local authorities, leading to insufficient or delayed payments particularly in smaller, poorly developed localities. Although the law provides for the right of children with disabilities to receive assistance in schools, including by support teachers, in most cases the funding for such assistance is lacking. The scarcity of funding and of available specialised staff is in fact conducive to the concentration of children with disabilities in special schools, in segregated settings.
62. While NGOs provide funding for support teachers in some mainstream schools, they underlined in their discussions with the Commissioner their inability to reach out to a large number of children with disabilities. In practice, parents are often forced to pay themselves for the assistance necessary in their children’s education, or to move to other localities to enrol their children in schools which employ support teachers.

³⁸ Ministry of Labour, “Situation of children with disabilities at 31 December 2013”, *ibid*.

³⁹ IPP, “Monitoring report on Romania’s readiness to enforce the UN Convention on the Rights of Persons with Disabilities”, December 2013, p. 17.

⁴⁰ According to the Draft Child Protection Strategy 2014-2020, approximately 56 000 children of primary education age were not included in the education system in 2012/2013, while the total number of children who abandoned primary and secondary school in 2011/2012 exceeded 28 000.

63. In relation to special schools, the Commissioner's interlocutors emphasised the lack of personal development and of any career prospects for the majority of children enrolled in special programmes, despite the better resources existing in such schools. Representatives of NGOs have further underlined the lack of early intervention programmes for children with disabilities, except those provided by private providers. Similarly, there is no programme ensuring the transition of children with disabilities to adulthood and independent life.
64. However, the Commissioner notes that representatives of some organisations of persons with visual and hearing impairments sustain the maintenance of segregated schooling for children having such impairments, owing notably to the complete lack of any arrangements for teaching children with such disabilities in mainstream schools.
65. In addition, in their discussions with the Commissioner, parents of children with disabilities have expressed their concern that they are not heard by the authorities in respect of the education of their children, are not offered sufficient information about the available options and the rights of their children and are not allowed to participate in the education of their children.
66. The Commissioner also took note of the reported practice of mainstream schools refusing the enrolment of children with disabilities. In many cases the schools give in to pressure from parents of children without disabilities who do not support the concept of inclusive education. Moreover, in some reported cases, children with disabilities have been ill-treated by their educators and peers. The Commissioner's interlocutors have underlined the difficulties faced by parents of children with disabilities to challenge refusals by schools to enrol their children.⁴¹

CONCLUSIONS AND RECOMMENDATIONS

67. The Commissioner wishes to underline that the lifetime exclusion of persons with disabilities from society often begins with their exclusion from mainstream education, which further reinforces and validates their marginalisation in the later stages of their lives.
68. The Commissioner urges the authorities to adopt inclusive education as a fundamental principle of the National Strategy for the Social Inclusion of Persons with Disabilities 2014-2020, as well as of the National Strategy for the Promotion and Protection of the Rights of the Child 2014-2020. The authorities are encouraged to adopt an integrated approach to the development of an inclusive education policy, reflecting the strong link between social care services and education.
69. The authorities must ensure that children with special education needs effectively benefit from individual support and reasonable accommodation in mainstream settings, in accordance with Article 24 UN CRPD. The authorities are encouraged to take measures making the transition to inclusive education possible, including through provisions establishing an enforceable obligation on mainstream schools to reasonably accommodate children with disabilities.
70. Such measures should be accompanied by a clear and ambitious timetable and an adequate budget. The concrete transfer of children from special to mainstream education should be based on up-to-date, comprehensive and accurate statistical data concerning children with disabilities enrolled in special education.
71. The Commissioner urges the authorities to ensure that children with disabilities are protected from any form of ill-treatment or violence occurring in schools and wishes to highlight the importance of the Ombudsman, as well as of the National Council for Combating Discrimination, in raising awareness about the right of persons with disabilities to inclusive education and in protecting children with disabilities from any form of discrimination in the education system.

⁴¹ See *Gherghina v. Romania*, Court's judgment of 6 March 2012, currently pending before the Court's Grand Chamber (lack of access to university education); *Stoian v. Romania*, application no. 289/2014, currently pending before the Court.

1.4 LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE PROTECTION OF THE HUMAN RIGHTS OF PERSONS WITH DISABILITIES

72. The Commissioner welcomes the ratification by Romania of the UN CRPD in 2010 and the support given by the Human Rights Committees of the Parliament, the Ombudsman's Office and the CNCD to the ratification in the near future of the Optional Protocol to the UN CRPD providing for an individual complaints mechanism.
73. The Commissioner notes the reports by various actors concerning the slowing down of the implementation of the UN CRPD pursuant to the dissolution, in June 2010, of the National Authority for the Protection of Handicapped Persons and of the National Institute for Preventing and Combating the Social Exclusion of Handicapped Persons. The Commissioner notes that Romania has appointed the Ministry of Labour as the focal point and the coordination mechanism for matters relating to the implementation of the UN CRPD, under Article 33 (1) UN CRPD.
74. The Commissioner was informed that persons with disabilities and organisations representing them have consistently promoted the re-establishment of a national authority for the protection of the rights of persons with disabilities and that a dialogue was initiated recently between NGOs and the government in respect of this proposal.
75. Concerning monitoring, the Commissioner notes that IRDO was designated in October 2012 as an independent mechanism to promote, protect and monitor the implementation of the UN CRPD under Article 33 (2) UN CRPD. In addition, the Ministry of Labour concluded agreements with ONPHR, in October 2012, and with CLR, in October 2013, in order to enable the smooth participation of civil society in the monitoring process, as provided for by article 33 (3) UN CRPD.
76. The Commissioner is pleased to note that pursuant to the agreement concluded with the Ministry of Labour, the CLR has carried out, from October 2013 to April 2014, 30 visits to various types of residential institutions in particular for children and young people with disabilities, and has issued a preliminary report on its findings.⁴²
77. The Commissioner welcomes the work of the Office of the Ombudsman in respect of the protection of the right of persons with disabilities. The Commissioner notes that one of the Deputy Ombudspersons is in charge of matters related, *inter alia*, to the rights of persons with disabilities and of children. The Commissioner notes that the Office of the Ombudsman has 14 regional offices and is thus an organisation with a significant outreach potential.
78. The Commissioner was informed, however, that most complaints concerning persons with disabilities are addressed to the CNCD, which is vested with quasi-judicial powers, including the issuing of fines. The CNCD has received mostly complaints from or on behalf of persons with physical or sensory disabilities, often related to their lack of access to education.
79. During his visit the Commissioner learned with satisfaction about the co-operation existing between the above-mentioned national human rights structures, as well as their close co-operation with several NGOs. The Commissioner regrets, however, that these structures have suffered the impact of austerity measures adopted by Romania in recent years.
80. The Commissioner noted during his visit the vivid debates existing in Romania concerning the setting up, in the following months, of a National Preventive Mechanism (NPM) under the OPCAT. The Commissioner notes that the debates revolved mostly around two models: while some interlocutors proposed the setting up of a new institution, others considered that the NPM could function within the Office of the Ombudsman.
81. Concerning the implementation of standards at local level, the Commissioner was informed that pursuant to an ongoing decentralisation process in Romania, the local authorities exercise full powers as concerns the protection of persons with disabilities. Although a National Agency for Payments and Social Inspection exists at central level and similar agencies have been set up at local levels, NGOs have noted that their activity is largely related to the monitoring of social benefits payments, while their responsibilities related to inspection and sanctioning seem to

⁴² Center for Legal Resources, "[Summary report](#)", Monitoring visits October 2013-April 2014.

be less emphasised. The Ombudsman⁴³ and NGOs have also underlined that decentralisation has led to malfunctions in the provision of social care and to the lack of accountability of local authorities to central authorities concerning violations of their implementation obligations.

82. In many situations, institutions do not provide the required services according to their profile, but limit themselves to providing food and shelter, often in substandard conditions. This is illustrated by a report released by the National Agency for Payments and Social Inspection in 2013, concerning the inspection carried out at all 51 “centres for recuperation and neuropsychiatric rehabilitation” existing in the country. The agency found that only 13 of these institutions provided rehabilitation services and none of them provided professional integration services. Despite these and other violations, concerning the substandard conditions provided, only two of the institutions were sanctioned, and only with warnings.⁴⁴
83. In connection with this issue, experts have brought to the Commissioner’s attention that Law no. 197/2012 on the quality of social services allows for the preliminary accreditation of social services for up to one year, provided that the minimum quality standards for those services are respected in the proportion of 75% and that “the life and safety of beneficiaries is not endangered”. The Commissioner is concerned that these provisions are conducive to violations of minimum standards and promote the impunity of providers for such violations.
84. Concerning the policy framework, the Commissioner learned with satisfaction that a working group coordinated by the Directorate for the Protection of Persons with Disabilities within the Ministry of Labour was set up recently for the preparation of the National Strategy for the Social Inclusion of Persons with Disabilities 2014-2020. The Commissioner welcomes this initiative, which was taken pursuant to repeated requests addressed by representatives of several NGOs to the authorities to withdraw the initial draft of this strategy and to ensure their full participation in the drafting process.
85. The Commissioner urges the authorities to use this important moment to effectively integrate the UN CRPD principles into domestic policies and to set the framework for the further alignment of domestic legislation and practices with the UN CRPD. The authorities are encouraged to use the valuable guidance provided by the General Comments of the UN Committee on the Rights of Persons with Disabilities and the extensive experience of NGOs.
86. At legislative level, several interlocutors, including the Deputy Ombudspersons, the CNCD, IRDO and NGOs have informed the Commissioner that the definition of disability in domestic law does not include all the elements of the UN CRPD definition. In general, the legislation needs to be updated to reflect the shift from a medical or charity-based perspective concerning people with disability to a human rights-based perspective, in accordance with the UN CRPD.

CONCLUSIONS AND RECOMMENDATIONS

87. The Commissioner encourages the Romanian authorities to ratify the Optional Protocol to the UN CRPD providing for an individual complaints mechanism.
88. The authorities are called on to ensure transparent and effective consultations with persons with disabilities in the drafting of the National Strategy for the Social Inclusion of Persons with Disabilities 2014-2020, in order to ensure their full participation in all decision-making processes which directly concern their daily lives.
89. Romania is encouraged to use this opportunity to fully align domestic legislation and practices with the UN CRPD, using the valuable guidance provided notably in the General Comments of the UN Committee on the Rights of Persons with Disabilities and the extensive experience of NGOs.
90. The Commissioner invites the authorities to set up the National Preventive Mechanism under OPCAT in the shortest time possible and to provide adequate conditions for its effective functioning, in line with the standards contained in the protocol.

⁴³ People’s Advocate (Ombudsman), “Raport special privind protecția persoanelor cu handicap” (“Special report concerning the protection of persons with disabilities”), May 2013, *ibid*.

⁴⁴ Available at: <http://www.crj.ro/Noutati/Romania-ar-putea-avea-din-un-mecanism-independent-de-monitorizare/>.

91. Lastly, the authorities are encouraged to consider re-establishing an independent body for the protection of the human rights of persons with disabilities. Such an independent body could usefully assume in the future the role of focal point and coordinating mechanism for the implementation of the UN CRPD.

2 HUMAN RIGHTS OF THE CHILD

92. Romania's child population dropped from 6.6 million in the early 1990s to 3.65 million at 1 January 2013⁴⁵ due to a series of factors, including decreasing birth rates and the migration of a large section of its young population, mostly to western European countries. In 2012, more than half of Romania's children (52.2%) were reported to be at risk of poverty and/or social exclusion.⁴⁶ While an almost equal number of children live in rural and urban areas, the Commissioner was informed that rural poverty is significantly higher than in the urban areas. According to the Draft Child Protection Strategy 2014-2020, in 2012 over 170 000 children within the age bracket of compulsory education were not attending school.
93. Poverty significantly affects Roma children in both rural and urban areas, with studies indicating that approximately 40% of Roma children do not have access to sufficient food.⁴⁷ About 28% of Roma children and young people aged 15 to 19 live in civil or traditional marriages, which significantly affects their school attendance. The attendance of pre-school education by Roma children is almost 50% lower than that of other children (37% compared to 63%). Between the ages of 16 and 19 the attendance of school by Roma children is four times lower than of other children. Many Roma children work in informal settings in order to contribute to the household's income, often engaging in begging or selling trinkets on the streets.
94. As in the case of issues pertaining to the rights of persons with disabilities, the decentralisation of social services has prompted the question of the accountability of local authorities in protecting children. Data collection concerning children is not consistently or uniformly carried out by the authorities.
95. In the subsections below the Commissioner addresses the following specific issues: abandoned and homeless children; institutionalised children; juvenile justice; and the legal and institutional framework for the protection of the rights of the child.

2.1 ABANDONED AND HOMELESS CHILDREN

96. The Commissioner is seriously concerned about the high number of abandoned children living in Romania. According to official data, at 31 December 2013 there were more than 80 000 children living in Romania who had at least one parent working abroad.⁴⁸ The Commissioner notes that this phenomenon goes back several years and was more dramatic in the first years after Romania acceded to the European Union. With an increasing number of parents migrating abroad, the number of children left behind reached approximately 350 000 in 2008 (over 8% of the child population), of which some 126 000 were affected by the migration of both parents.⁴⁹
97. In the same year it was also estimated that half of the children with both parents abroad were below the age of 10 years, 16% had not seen their parents for a year, while 3% had not seen them for at least four years.⁵⁰ Children left at home by their migrant parents were usually in the care of the extended family, especially their grandparents. Parents very rarely (only in 7% of the cases) informed the authorities about their intention to go abroad and usually did not prepare their children in any way before leaving the country.
98. While reports indicate that children left behind by parents working abroad do not necessarily suffer from poverty, as they benefit from their parents' remittances, the Commissioner shares the concerns expressed by UNICEF and expert NGOs at the profound emotional consequences which abandonment has on the children. In addition, the Commissioner was informed about the risk incurred by children left behind of ending up in institutions.

⁴⁵ Draft Child Protection Strategy 2014-2020.

⁴⁶ Eurostat, [People at risk of poverty or social exclusion by age and sex](#), 2012.

⁴⁷ Open Society Foundations, Roma Education Fund, UNICEF, "[Roma early childhood inclusion report](#)", 2012.

⁴⁸ Ministry of Labour, "Situation of children with parents working abroad, December 2013", available at: http://www.copii.ro/alte_categorii.html. The phenomenon of the "child left behind" by migrating parents was also noted in 2009 by the UN special rapporteur on the Human Rights of Migrants, Jorge Bustamante, and by the Committee on the Rights of the Child (documents available at: <http://www.ohchr.org/en/countries/enacaregion/pages/roindex.aspx>).

⁴⁹ UNICEF and Alternative Sociale Iași, "[National analysis of the phenomenon of children left home by their parents who migrate for employment](#)", 2008.

⁵⁰ *Ibid.*

99. In this context, the Commissioner notes with satisfaction that in October 2013 the government adopted Law 257/2013 for the protection and promotion of the rights of the child, which strengthened existing rules concerning the protection of children with parents working abroad, including the parents' obligation to inform the authorities before leaving the country.
100. Another group of concern to the Commissioner are children abandoned in hospitals. The Commissioner notes that according to the Draft Child Protection Strategy 2014-2020, the number of children abandoned in health care facilities dropped almost to a quarter in the past ten years. However, despite this overall drop, the number of abandonments rose by 12% between 2010 and 2012. In 2013 a total of 1 449 children were recorded as abandoned in health care facilities, of whom 915 in maternity wards.⁵¹
101. The Commissioner is equally worried about the situation of street children. While official statistics on the number of street children were not available, data collected by the NGO Save the Children showed that their number in 2009 was approximately 1 400, of whom more than 1 100 lived in Bucharest. During his visit the Commissioner was informed by NGOs working for the protection of street children that at present the estimated number of street children is between 1 000 and 2 000 in Bucharest, and up to 5 000 in other localities around the country, being on the increase since the assessment of 2009.
102. An action plan for the social reintegration of street children was adopted by the government in 2006, defining several categories of street children according to their circumstances, and providing for several measures for their protection.⁵² The general objectives set by the action plan included the assessment of the situation of street children, intervention for the improvement of the situation, and prevention activities, including information provided to parents on the prohibition of child labour. Amongst the concrete measures envisaged were also the registration of children without identification documents and institutionalisation.
103. However, in 2009 the UN Committee on the Rights of the Child, while noting the reported decrease in the number of children living on the streets, was concerned that many street children had to work for their sustenance, while the majority did not go to school and lacked birth certificates. Concerning Roma children on the streets, the Committee was concerned that forced evictions of Roma families with children have been carried out without the provision of alternative lodging or adequate compensation.⁵³
104. The Commissioner also learned that the profile of street children has changed in the past years. The street children of the 1990's have grown up and continue to live on the streets, and are now the parents of a second generation of street children. Another category of street children are those of impoverished families who came to Bucharest from other areas, as of the onset of the economic crisis in 2008. The Commissioner was informed that according to estimations by NGOs, Roma children represent approximately 30% of street children, in decline from the higher percentages recorded in previous years.
105. While the second-generation street children live in a relatively more established environment, but still earn their livelihood on the streets, the newly arrived are more severely affected by social exclusion as well as poor health, chronic malnutrition, early drop-out from school and illiteracy (approximately half of them), physical and sexual abuse, stigmatisation and discrimination.
106. The Commissioner was informed that while "intervention services" consisting in day and night shelters, as well as emergency centres which can accommodate street children are run by local authorities, these are geared to providing temporary protection, ensuring mainly that children have access to vital items such as clothing, hygiene products and food. Moreover, due to the decentralisation of child protection services, the approach taken by the local authorities in providing the above-mentioned services is variable and fragmented.
107. The Commissioner shares the concern expressed by his interlocutors that no public funds are currently allocated for a more integrated protection of street children and that authorities rely to a great extent on NGOs for prevention services and for the reintegration of street children in their families.

⁵¹ Ministry of Labour, "Situation of children abandoned in sanitary units, January-December 2013", available at: http://www.copii.ro/alte_categorii.html.

⁵² Order No. 100/2006 for the approval of the Framework action plan for the social reintegration of street children.

⁵³ Concluding observations of the Committee on the Rights of the Child: Romania, *ibid*.

108. The Commissioner is pleased to note, however, that since 2008, the 116111 European helpline number for children who seek assistance is operated in Romania by the NGO “Child’s Telephone Association”, and that the authorities, including law enforcement agencies, co-operate with this association in assisting street children.
109. Lastly, the Commissioner notes with satisfaction that the Draft Child Protection Strategy 2014-2020 and the Operational Plan for the implementation of this strategy address the issue of street children.

CONCLUSIONS AND RECOMMENDATIONS

110. The Commissioner calls on the authorities to strengthen their efforts to prevent the separation of children from their families. The authorities should support the reintegration of abandoned children in their families and provide alternative care where this is in the best interest of the child.
111. The authorities are urged to undertake a systematic assessment of the situation of street children in order to obtain an accurate picture of its root causes and magnitude. The authorities are called on to take measures to ensure that street children have effective access to health services, shelter, and food.
112. Lastly, the Commissioner welcomes the inclusion by the authorities of the problem of street children in the Draft Child Protection Strategy 2014-2020 and urges them to develop a comprehensive plan targeted at street children, including preventive and protective measures.

2.2 CHILDREN LIVING IN INSTITUTIONS

113. According to data published by the Ministry of Labour, at 31 December 2013 there were 61 749 children included in the special protection system for children deprived of parental care, of whom 22 189 (35.93%) were living in residential institutions (18 148 in public institutions and 4 041 in private institutions) and 37 889 (61.36%) were benefitting from a family-based protection measure, including placement with foster families, extended families, other families, and with guardians. The Commissioner notes that while the number of children in residential institutions has dropped dramatically since the end of the 1990s, when it was estimated at more than 100 000, the deinstitutionalisation process has slowed down significantly since 2007.⁵⁴
114. At the same time, it appears that children with disabilities have been largely left out of the deinstitutionalisation process, although the [National Strategy for the Protection and Promotion of the Rights of the Child 2008-2013](#) (“Child protection strategy 2008-2013”) included specific deinstitutionalisation and social inclusion measures aimed at these children. Thus, at the end of 2013, the number of children with disabilities living in institutions was 7891, an increase from the 6 909 recorded at the end of 2005, despite a slight drop over recent years.
115. The Commissioner shares the concerns expressed in 2009 by the UN Committee on the Rights of the Child that Law No. 272/2004 on the protection and promotion of the rights of the child, while forbidding the placement of children under the age of two in residential care, allows for such placements exceptionally in cases of children with severe disabilities. In this respect, the Romanian Federation of NGOs for Children (FONPC) has advocated the amending of the legislation so as to prohibit the placement of children under the age of three in institutions. This measure has been included in the draft Operational Plan for the implementation of the Child Protection Strategy 2014-2020.
116. While official statistics about the ethnicity of children in institutions are not available, research carried out in 2010 by several NGOs in 22 residential homes showed that the representation of Roma children in institutional care was of 28%, much higher than their overall share in the total population (estimated in the research at 9%).⁵⁵
117. Concerning the number of institutions, at 31 December 2013 there were 1 532 residential institutions for children, of which 373 were functioning as institutions for children with disabilities. The Commissioner is satisfied that from

⁵⁴ Ministry of Labour, “[Statistical Bulletin, Children](#)”, 4th quarter 2013.

⁵⁵ European Roma Rights Centre, Bulgarian Helsinki Committee, Milan Šimečka Foundation, Osservazione, “[Life sentence - Romani children in institutional care](#)”, 2011.

1994 to 2005 the majority of old-type institutions having a capacity of more than 100 places (196 institutions) were closed down and alternative, family-type services were developed.⁵⁶

118. However, the Commissioner notes the numerous reports by NGOs concluding that although children have been moved from big to small institutions, they continue to suffer from a lack of basic care. Despite the government's commitment to improving conditions, children in institutions are still reported to suffer from physical and emotional neglect, corporal punishment and the use of unlawful restraints. During his visit, the Commissioner was informed that the majority of calls to the helpline number for children who seek assistance are related to punishment or other forms of violence suffered by children in institutions. Regarding children with disabilities, one of the criminal complaints recently lodged by CLR concerned the "placement centre for children with psychosocial issues" in Oradea. Recorded abuses included: slapping; choking; beatings with fists, knees and a cane; crushing the children's fingers using a door; sexual abuse; and no access to toilets at night time.⁵⁷
119. As in the case of adults, there is no effective mechanism available to children for submitting complaints related to such incidents. While the setting up of a National Preventive Mechanism under OPCAT is essential, the Commissioner's interlocutors stressed that such a mechanism can only partly respond to the needs of systematic monitoring in the large number of existing institutions. The Commissioner notes that representatives of civil society consider that the social inspection structures currently functioning under the National Agency for Payments and Social Inspection are inefficient and lack independence.
120. Other problems highlighted by NGOs include the poor state of the premises, overcrowding, the placement of unrelated children and adults in the same living areas, the lack of adequate teaching arrangements and of meaningful activities, as well as the lack of school and medical records.
121. The Commissioner witnessed some of these problems during his visit to the Tâncăbești Centre for Inclusive Education of Snagov commune, near Bucharest. Despite its name suggesting a mainstream school for children with and without disabilities, the centre is a residential institution accommodating more than 50 infants, children and young adults with disabilities. The Commissioner was sad, but not surprised, to learn from the representatives of the local authorities present during the visit that the health situation and the impairments of most of these children and young people have worsened over the years. The only future envisaged for the children close to the age of adulthood was their transfer to a private residential institution.
122. One of the major reasons for continued institutionalisation, identified by many interlocutors, is the lack of measures aimed at preventing the institutionalisation of children, in particular those with disabilities, and at promoting the reintegration of institutionalised children in their families. The lack of adequate support provided to families with children with disabilities contributes to the abandonment of young children by parents not being able to cover the costs of private care at home.
123. The Commissioner was informed that the main providers of community-based care for children with disabilities are NGOs. In this context, he welcomes the participation of several local authorities, together with NGOs, in pilot projects for the transformation of old-type institutions into multifunctional support centres for children with disabilities and their families.
124. The Commissioner visited the "Sfânta Maria" Multifunctional Centre operated by the foundation World Vision Romania in co-operation with the local authorities of Sector 5, Bucharest, which functions on the premises of a previous orphanage closed in 2012 at the end of a transition process that lasted six years. At the time of the Commissioner's visit, 40 parents were involved in the early intervention, support and education programmes carried out by the centre for 35 children and 9 young people with disabilities. The Commissioner learnt with satisfaction that the project has had positive results and that it represents a model that other local authorities in the country are willing to replicate.

⁵⁶ National Strategy for the Protection and Promotion of Children's Rights 2008-2013.

⁵⁷ CLR, "Summary of criminal complaints recently filed by CLR regarding abuses against institutionalized children and young adults with mental disabilities", March 2014.

125. In addition to the above-mentioned issues, it was brought to the Commissioner's attention that a number of children go missing every year from institutions. According to a [study](#) by the Ministry of Interior, in 2008 more than 830 children have left institutions, including because of mistreatment by peers or staff. More recent official data show that in the first 10 months of 2013, 2 699 cases of missing children were reported to the police, which included an unspecified number of children who had voluntarily left institutions.
126. In this context, the Commissioner notes that Romania was one of the first countries to introduce the 116000 European hotline number for missing children. The Commissioner was informed that in 2007 the Ministry of Interior issued a Guide of Best Practices concerning police action in cases of missing children or children who are victims of abuse, trafficking in human beings or child pornography. However, the Commissioner's interlocutors have highlighted that many institutions are in fact not aware of the procedures to follow in situations where children go missing.

CONCLUSIONS AND RECOMMENDATIONS

127. The authorities need to show a strong commitment to the deinstitutionalisation of child protection services. Efforts to step up the deinstitutionalisation must be intensified as a matter of priority. The Commissioner hopes that the new National Strategy for the Promotion and Protection of the Rights of the Child 2014-2020 will be instrumental in this process.
128. The authorities are urged to give effect to the guidelines contained in the Council of Europe Committee of Ministers [Recommendation CM/Rec\(2010\)2](#) on deinstitutionalisation and community living of children with disabilities and [Recommendation CM/Rec\(2013\)2](#) on ensuring full inclusion of children and young persons with disabilities into society, notably ensuring that in all actions concerning children with disabilities the best interest of the child shall be a primary consideration.
129. Pending deinstitutionalisation, the authorities should adopt measures to ensure that children's right to respect for their dignity and physical integrity is observed. The Commissioner wishes to highlight the importance of an independent, efficient monitoring mechanism to identify any forms of abuse committed against children in institutions. The authorities are called on to ensure that full and effective investigations into allegations of ill-treatment of children are carried out and that the perpetrators are brought to justice.
130. Lastly, the Commissioner urges the authorities to continue to develop the alternative protection measures already in place and to ensure that parents are supported with a view to the reintegration of children in the family and society.

2.3 JUVENILE JUSTICE

131. The Commissioner notes the important legislative changes that took place in the past few years in Romania and is aware of the strenuous efforts required to implement large scale reforms in the area of juvenile justice. In particular, the current legal environment is marked by the recent adoption and entry into force of the new civil and criminal codes, as well as the respective codes of procedure. All of these instruments have introduced new provisions concerning juvenile justice.
132. The Commissioner welcomes the provisions of the new Criminal Code abolishing, as of 1 February 2014, the penalty of imprisonment for minors, and is pleased at the introduction of a broader range of educative measures for children in conflict with the law. The Commissioner notes that the age of criminal liability remained 14.
133. The majority of the new educative measures do not entail a deprivation of liberty and consist in: civil education training; supervision; the obligation not to leave the domicile at weekends, and to participate in programmes or activities established by the court; and daily assistance in school and extra-curricular activities established by the court, and carried out under the supervision of a probationary office.
134. The Commissioner notes, however, that two of the educative measures provided by the new Criminal Code (Article 115 § 2), entail deprivation of liberty in an "educative centre" from one to three years, or a "detention centre" from two to five years. The committal to a detention centre can be ordered for five to 15 years if the punishment provided by law for the offence is imprisonment of 20 or more years or life imprisonment.

135. Information obtained by the Commissioner indicates that in practice the two re-education centres existing under the former regulation have been transformed into educative centres, while three of the four penitentiaries for minors and youth have been transformed into detention centres. One penitentiary for minors and youth has still not been reorganised.
136. Of concern to the Commissioner are reports indicating that these transformations have been mostly formal, while actual conditions in the detention places, often characterised by overcrowding, lack of meaningful activities, and exposure to verbal and physical violence from staff,⁵⁸ remained largely the same. In a recent report concerning a detention centre several problems were noted, including inadequate sleeping arrangements, poor, hygiene conditions, and lack of access to quality health care. Only half of the detained minors were enrolled in education programs and the number of teachers and of social assistants working with the children in the centre was insufficient. Although the detained minors stated that violence was used against them in the centre, none of them reported these incidents, as they did not believe that their complaints would be taken into consideration.⁵⁹
137. The Commissioner notes with interest the reform process started by Romania in the past years, aimed at creating specialised tribunals dealing with juvenile justice. The Commissioner was informed that the Law for the organisation of the judiciary No. 304/2004 provided for the setting up of tribunals for families and minors by 1 January 2008. However, at the beginning of 2008 only one such pilot tribunal had been set up, in Braşov county, while in the majority of the other counties, panels or sections “for families and minors” were organised within the regular courts.
138. The authorities informed the Commissioner that the plan to create tribunals for minors was abandoned following an assessment of the activity of the above-mentioned pilot tribunal and specialised panels, which revealed that the number of cases concerning children was low and did not warrant the implementation of the reform as initially envisaged. However, pursuant to the changes brought about recently by the new regulations in civil law, specialised tribunals for protection measures (“tutela”) and family will be set up to deal with, *inter alia*, cases concerning minors.
139. Lastly, the Superior Council of Magistrates has organised extensive training sessions for judges and prosecutors concerning the application of the new codes, and provides systematic training for judges and prosecutors in the field of the protection of the human rights of the child. The Commissioner learned with satisfaction that judges and prosecutors dealing with cases in which children participate are appointed from those who have completed the training organised by the Superior Council of Magistrates.

CONCLUSIONS AND RECOMMENDATIONS

140. The Commissioner draws the Romanian authorities’ attention to the Council of Europe Committee of Ministers [Guidelines of 2010 on child friendly justice](#) and encourages them to draw inspiration from them and to give them effect. As stressed by these guidelines, child-friendly justice means “justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity”.⁶⁰
141. The abolition, in February 2014, of the penalty of imprisonment for minors, and its replacement with alternative, educative measures, are in principle in line with the above guidelines and are welcome. However, the Commissioner regrets the lack of preparation of the authorities for the implementation of some of the new measures and notes with concern the continued presence of children in prisons or in prison-like conditions. The Commissioner urges the authorities to do their utmost to bring their practice in line with the new legislation and ensure that children are no longer held in prisons or prison-like conditions.

⁵⁸ See also concluding observations of the Committee on the Rights of the Child: Romania, 2009; Committee for the Prevention of Torture (CPT), “[Report](#) on the visit to Romania from 5 to 16 September 2010”, 24 November 2011; People’s Advocate (Ombudsman), in collaboration with UNICEF Romania, “Special report on the rights of children deprived of freedom in Romania”, June 2014.

⁵⁹ APADOR-CH (Romanian Helsinki Committee), “Report on the visit to the detention centre for minors of Craiova”, 13 March 2014.

⁶⁰ See also the Commissioner’s Issue Paper, “[Children and juvenile justice: Proposals for improvements](#)”, 2009.

142. The Commissioner is concerned that detained children are excluded in practice from their right to education, contrary to the 2010 Guidelines of the Committee of Ministers, the Convention on the Rights of the Child and the ECHR, and urges the authorities to take urgent measures to ensure their access to education.
143. It is recalled that the authorities have an obligation, under Article 19 of the Convention on the Rights of the Child, to take all appropriate measures to protect the child from all forms of violence. The Commissioner urges the authorities to ensure that children have independent support to be able to make complaints against any violence committed against them in places where they are deprived of their liberty. In this context, the Commissioner wishes to stress again the importance of setting up a National Preventive Mechanism under OPCAT in the shortest time possible.
144. Lastly, the Commissioner encourages the authorities' efforts in the organisation of the juvenile justice system and urges them to continue the systematic training of all staff involved in the administration of juvenile justice, to ensure a harmonised approach to issues concerning minors.

2.4 LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE PROTECTION OF THE HUMAN RIGHTS OF THE CHILD

145. Romania became a party to the UN Convention on the Rights of the Child in 1990 and ratified the Optional Protocols thereto on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography. In 2011 Romania also ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.
146. During his visit the Commissioner noted with satisfaction that the Human Rights Committees of the Parliament, the Ministry of Labour and the Ministry of Interior support the ratification, by Romania, of the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) and wishes to emphasise the importance of this treaty for the protection of the human rights of the child.
147. The Commissioner notes that in the past ten years the authorities have made significant efforts to harmonise domestic legislation with the UN Convention on the Rights of the Child. The Commissioner learned with interest that through the recently-adopted Law no. 257/2013 for the protection and promotion of the rights of the child, the principle of the best interest of the child gained significant visibility in domestic legislation.
148. The Romanian authorities also adopted a national strategy for the protection and promotion of the rights of the child for the period 2008-2013 and several sectoral plans concerning child labour, abused and neglected children, sexual exploitation and trafficking in children.
149. The authorities are currently preparing a National Strategy for the Promotion and Protection of the Rights of the Child for the period 2014-2020. The Commissioner learnt with satisfaction that the draft strategy is based on a comprehensive assessment of the most challenging outstanding issues concerning child protection, and that the operational plan for the implementation of the strategy sets a large number of specific objectives and measures concerning these challenges. However, the Commissioner was informed that, in the absence of adequate government data concerning all areas addressed, the strategy relies heavily on partial data collected by NGOs.
150. Concerning the institutional framework, the Commissioner notes that pursuant to an administrative reform, as of 2005, child protection services have been transferred to a large extent to county and municipal authorities. The Commissioner noted the concerns expressed by representatives of civil society that the decentralisation process has led to a diminished accountability of the authorities with respect to the protection of the human rights of the child. Moreover, decentralisation has led to discrepancies in the implementation of standards in different localities and counties, leading to inconsistencies in the treatment of children. In addition, partly as a consequence of austerity measures imposing a freezing of employment in public institutions and authorities, the number of employees in the child protection system has dropped by 27% between 2007 and 2013.⁶¹

⁶¹ Draft Child Protection Strategy 2014-2020.

151. A further issue of concern was the dissolution, in June 2010, of the National Authority for the Protection of the Family and of the Human Rights of the Child, which was reorganised as a directorate under the Ministry of Labour. The Commissioner notes the views expressed by representatives of civil society that the dismantling of this central agency has left Romania without an independent monitoring body concerning the implementation of state obligations under the Convention on the Rights of the Child.
152. In this context, the Commissioner welcomes the re-establishment, as of April 2014, of the National Authority for the Protection of the Rights of the Child and Adoption and urges the Romanian government to allocate adequate resources to ensure its effective functioning.
153. The Commissioner notes that the Ombudsman can receive and consider complaints directly from children, and that one of the four Deputy Ombudspersons is charged with, *inter alia*, matters concerning the protection of the human rights of the child. The Commissioner has been informed that proposals for the creation of a separate institution functioning as Children’s Ombudsman have been rejected by the authorities. While noting that it is for the Romanian authorities to determine the form of this institution, the Commissioner stresses that such an institution should be able to monitor, promote and protect children’s rights independently and effectively.⁶²

CONCLUSIONS AND RECOMMENDATIONS

154. The Commissioner notes with satisfaction that the principle of the best interests of the child is incorporated in Romania’s legislation and calls on the authorities to take measures to ensure that this principle is reflected as a primary consideration in all legislative and policy matters affecting children.
155. The Commissioner urges the authorities to ensure that the principle of the best interests of the child is prioritised in all areas covered by the Strategy for the Promotion and Protection of the Human Rights of the Child 2014-2020. The authorities are called on to ensure the broad participation of civil society in the drafting of the strategy.
156. The authorities are called on to systematically collect data concerning children. The Commissioner calls on the authorities to ensure that decentralised administration does not become a source of inconsistencies in the treatment of children and urges them to strengthen local authorities’ accountability in all matters related to the protection of the human rights of the child.
157. The authorities should allocate adequate resources for the effective functioning of the National Authority for the Protection of the Rights of the Child and Adoption and strengthen the capacities of the Office of the Ombudsman, including in respect of the mandate of the Deputy Ombudsman in charge of children’s rights.
158. Lastly, the Commissioner emphasises the importance of the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) for the protection of the human rights of the child and encourages the Romanian authorities to accede to this convention.

⁶² See also UN Committee for the Rights of the Child, General comment no. 2: “The role of independent national human rights institutions in the protection and the promotion of the rights of the child”.

3 HUMAN RIGHTS OF ROMA

159. According to the 2011 census, 621 600 persons living in Romania declared themselves as Roma, representing 3.3% of the country's population of slightly over 20 million. Observers estimate the actual number of Roma to be between 1.8 and 2.5 million, representing 8.6 to 10% of the population. This places Romania as the second country in the Council of Europe area, after Turkey, in respect of the estimated size of its Roma population.
160. The results of surveys carried out by the United Nations Development Programme (UNDP), the World Bank and the European Commission, as well as by FRA⁶³ showed that in 2011 over 70% of Roma in Romania lived below the poverty line, and only around 35% were employed. Less than 30% of Roma aged 18 and above stated that they were or will be entitled to private or state pension. In the same year, 19% of Roma men and 29% of Roma women had no formal education.⁶⁴
161. Following Romania's accession to the European Union, up to 10% of Roma, representing a share comparable to the national rates of emigration,⁶⁵ migrated to western European countries in search of a better life, and were faced with various forms of discrimination in the host countries.⁶⁶
162. Despite some positive measures taken by the authorities to strengthen the fight against racism, the Commissioner shares the concerns expressed by the European Commission against Racism and Intolerance (ECRI) in its recent report on Romania, regarding the hostility of public opinion surrounding Roma and the recurring incidents of inter-ethnic conflict and violence affecting Roma.⁶⁷
163. In the following subsections the Commissioner addresses some issues concerning: institutionalised anti-Gypsyism, housing, education, health and employment-related issues; violence against Roma; and aspects of the legal and institutional framework for the protection of the human rights of Roma. Various issues concerning Roma children are covered in Section 2, concerning the human rights of the child, as well as in subsection 3.1 below.

3.1 INSTITUTIONALISED ANTI-GYPSYISM, HOUSING, EDUCATION, HEALTH AND EMPLOYMENT OF ROMA IN ROMANIA

164. The history of Roma has been very painful since their arrival in the area of Romania, documented as of the second half of the 14th century, characterised by an initial period of slavery, and later, during World War II, by massive deportations. In the post-war period Roma were considered by the successive governments as a socially disadvantaged group, rather than a national minority. The situation remained unchanged until the fall of the communist regime in 1989.⁶⁸
165. The Commissioner welcomes the positive measures taken by the authorities to fight widespread anti-Gypsyism, including the implementation of anti-racism awareness-raising campaigns and the recruiting of members of the Roma community in police academies and law enforcement agencies. Particularly positive is the fact that 189 Roma are currently employed in the Ministry of Interior and are assigned to matters concerning Roma communities.
166. However, the Commissioner is concerned that, in contrast with these initiatives, stigmatising, anti-Roma rhetoric continues to occur in public and political discourse. References to Roma as an ethnic group engaged in criminal behaviour and lacking the capacity to integrate have been made at the highest political level, including the

⁶³ FRA/UNDP/EC, "[The situation of Roma in 11 EU Member States](#)", 2012.

⁶⁴ FRA, "[Analysis of FRA Roma survey results by gender](#)", 2013.

⁶⁵ Soros Foundation Romania, Country report: "[Roma situation in Romania, 2011 - Between social inclusion and migration](#)", 2012.

⁶⁶ See study commissioned by the Commissioner and the OSCE High Commissioner on National Minorities, "[Recent Migration of Roma in Europe](#)", 2nd edition, 2010.

⁶⁷ ECRI "[Report on Romania \(fourth monitoring cycle\)](#)", CRI(2014)19, 3 June 2014.

⁶⁸ Council of Europe, "[Factsheets on Roma History](#)", see factsheet 2.2, "Wallachia and Moldavia", and factsheet 5.5., "Deportations from Romania".

president of the country.⁶⁹ In 2013 a local government official, journalists and extremist groups have used social media for advocating the sterilisation of Roma women.

167. The Commissioner is concerned that no effective mechanism is in place for sanctioning politicians and political parties who promote racist ideas. The authorities should condemn firmly and unequivocally all instances of hate speech. Also, political parties and the parliament should adopt self-regulatory measures to effectively counter and sanction intolerance and hate speech.
168. Of equal concern to the Commissioner are the recurring attempts made by representatives of some authorities in recent years, with the support of the Romanian Academy and without consultation with Roma representatives, to change the use of the term "Roma" to "țigan", which is generally considered as carrying a pejorative undertone.⁷⁰ Initiatives aimed at this change were made by Romanian politicians both in the Romanian and in the European Parliament, on the grounds that the term "Rom/Roma" creates confusion at international level between Roma and Romanians.
169. It is encouraging that these initiatives do not enjoy wide support within the government. However, the Commissioner is worried that some of the campaigns for these initiatives were supported by the media. As a positive development, the Commissioner notes that in 2012 the Romanian dictionary issued by the Romanian Academy was amended to accurately reflect the pejorative connotation of the term "țigan" and of other terms referring to Roma.
170. The Commissioner regrets that in general there is little public reaction or condemnation by the government when anti-Roma statements are made by state or non-state actors, with the CNCD appearing to be the only institution which has a clearly positive record in taking a firm stand on such cases.⁷¹
171. One of the major human rights issues affecting Roma in Romania is their right of access to adequate housing, and their forced evictions. One of the most publicised cases was the relocation in 2010 of some 270 Roma from the centre of Cluj Napoca to Pata Rât, an industrial area close to the city's garbage dump. In another case dating from 2012, the authorities of Baia Mare relocated some 90 Roma families to a former copper factory.⁷² In early October 2013, 101 Roma, including 55 children, were left homeless after their homes were demolished by authorities in Eforie Sud, by the Black Sea. After a few days some of them were offered shelter in an abandoned building, with no windows or electricity. In Baia Mare (2011) and Tărlungeni (2012) walls have been erected or used by the municipalities to separate Roma from the majority population.
172. The Commissioner notes that in the Pata Rât case, the Cluj Tribunal found last January that the eviction had been illegal and ordered the city authorities to pay damages to the applicants and provide them with adequate housing. Also, in September 2013 the High Court of Cassation and Justice of Romania upheld the CNCD's decision of 2011 in which it had found that the erecting of the wall, by the Baia Mare municipality, separating residences inhabited mostly by ethnic Roma citizens from the main street of the city, constituted discrimination. However, despite the formal success achieved in these cases, the Commissioner was informed that the situation on the ground has not changed.
173. Recent reports by NGOs⁷³ have highlighted that the lack of safeguards against forced eviction and residential segregation puts people without tenure in a very vulnerable situation. There is no requirement in Romanian law of genuine consultation prior to an eviction, and authorities are not required to serve adequate and reasonable

⁶⁹ In February 2014 CNCD imposed on the president a fine of 600 Lei (approximately €135) for having stated, in November 2010, that "very few [itinerant Roma] want to work and many of them have a tradition of living off what they steal".

⁷⁰ See also Advisory Committee on Framework Convention for the Protection of National Minorities, [Third Opinion on Romania](#), 5 October 2012.

⁷¹ NGOs' submissions to the 15th session (January/February 2013) of the Universal Periodic Review (Summary of Stakeholders' Information), available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/ROSession15.aspx>.

⁷² Amnesty International, "[Pushed to the margins](#)", June 2013; European Roma Rights Centre and Romani Criss, "[Written comments](#) for consideration by the Human Rights Committee at its 110th session (10-28 March 2013)".

⁷³ Amnesty International, "[Submission](#) to the Pre-session Working Group of the UN Committee on Economic, Social and Cultural Rights, 53rd meeting", 3 April 2014.

notice prior to evictions concerning persons living in informal settlements. In addition, domestic legislation, including Housing Law no. 114/1996, does not explicitly prohibit resettlement if adequate alternatives are not provided. Moreover, although Government ordinance No. 137/2000 concerning the prevention and sanctioning of all forms of discrimination prohibits discrimination in access to housing and the removal of a person or group of persons from a neighbourhood or a residence, on the grounds of their ethnicity or race, it does not specifically prohibit racial segregation in housing.

174. Many Roma communities continue to deal with the impact of forced evictions and residential segregation, which often leads to their inability to secure identification documents and to access health care, schools and the labour market.
175. As concerns access to education by Roma, the Commissioner was informed by his interlocutors that although segregation in schools was banned by a ministerial order of 2007, there is a continuing practice of segregating Roma children within the class or the school. Such cases have not been reflected in official statistics, although their publication is mandatory under the law. In addition, Roma children are reportedly often under pressure from their teachers who encourage them not to come to school, particularly in situations where parents of non-Roma children object to their presence in the school.
176. Although segregation and a hostile environment are important factors pushing Roma children to abandon school, the Commissioner notes the consensus amongst his interlocutors that extreme poverty is the main reason for early drop-out. In relation to this the Commissioner was informed by the Ministry of Education that while children of all ethnicities are affected, the reported drop-out for Roma children is 36%, much higher than the average national drop-out rate of 16 to 18%.
177. The Commissioner was also informed that in practice drop-out is declared only after three years of absence from school, a delay which in most cases makes reintegration in education impossible. The Commissioner's interlocutors highlighted the need to change the definition of drop-out, in order to ensure the early identification of cases. Children belonging to migrating families, who are only intermittently present in Romania, as well as children of very poor families, are those most affected by the risk of unidentified drop-outs. The Commissioner learned that no measures have been taken by the authorities to readmit these children to school and to ensure the continuity of their education.
178. During his visit to the neighbourhood of Ferentari, in Sector 5 of Bucharest, the Commissioner spoke with the representatives of an NGO providing extra-curricular activities and after-school support to Roma and non-Roma children of the neighbourhood. As a result of this programme, which included both preventive and remedial activities, many children who had dropped out of school had been readmitted.
179. Other problems highlighted by the Commissioner's interlocutors included the low attendance of pre-school or kindergarten by Roma children, as well as the lack of support for children who do not attend these forms of education to catch up with their peers in school.
180. Lastly, the Commissioner was informed that in 2013 only about half of the 989 trained school mediators were actually employed in the education system. The number of employed mediators has decreased over the past two years, due to the financial crisis.
181. Concerning the right of Roma to health protection, the Commissioner was informed that the access of Roma to health services is affected mostly by the lack of health insurance and the lack of medical services in particular in the poor rural areas.
182. Romania was the first country to establish the Roma health mediator programme now applied in 24 European countries. Initiated in 1996 as a pilot project by the NGO Romani Criss, health mediation was adopted in 2002 by the Ministry of Health as a formal policy. While in 2008 there were more than 600 active health mediators, at present only 225 of them are employed.⁷⁴ The Commissioner was informed, however, that the health mediator programme has been relaunched and 120 mediators have been trained since 2011. NGOs considered that the

⁷⁴ World Health Organisation Regional Office for Europe, ["Roma health mediation in Romania: case study"](#), 2013.

transfer of health mediators under the supervision of local authorities, in the context of the decentralisation of social services, has been the most challenging aspect in the sustainability of this programme.

183. As regards access to employment, the Commissioner's interlocutors considered that the elimination of vocational (arts and crafts) schools in 2009 has led to the massive drop-out of Roma students from the education system and had a dramatic impact on their employment opportunities. The main barriers to the employment of Roma, only 35% of whom are employed, include the lack of identification documents, the low educational background, difficulties in accessing the work place due to distance from the home (in the case of isolated communities), and the deeply ingrained prejudices of employers against Roma.
184. With regard to these barriers, the Commissioner welcomes the measures taken by the authorities, in co-operation with NGOs, to enhance the social inclusion of Roma, including through the registration in 2013 of almost 5 000 Roma children and the issuing of identification documents to more than 30 000 adults.

CONCLUSIONS AND RECOMMENDATIONS

185. The Commissioner is concerned about the high incidence of anti-Roma rhetoric in public and political discourse that has continued for a long time in Romania. He recalls the [2012 Declaration of the Council of Europe Committee of Ministers on the rise of anti-gypsyism and racist violence against Roma in Europe](#) and urges the Romanian authorities, at all levels, and the media to refrain from using anti-Roma rhetoric, in particular during electoral campaigns, and to condemn vigorously, swiftly and in public, all acts of racist violence against Roma, including threats and intimidation, as well as hate speech directed against them.
186. Romanian political parties and the parliament are called on to adopt self-regulatory measures to effectively counter and sanction intolerant, xenophobic and racist speech used by politicians. The signature and implementation by Romanian political parties of the [Charter of European Political Parties for a Non-Racist Society](#) (1998), which encourages a responsible attitude towards problems of racism, whether it concerns the actual organisation of the parties, or their activities in the political arena, would also be a very positive measure in this context.
187. The Commissioner is concerned about the dire housing situation of Roma and urges the authorities to address this problem as a matter of priority, in line with the Council of Europe Committee of Ministers [Recommendation Rec\(2005\)4](#) on improving the housing conditions of the Roma and Travellers in Europe. The Commissioner calls on the authorities to take urgent measures to protect Roma from forced evictions. The Commissioner stresses the importance of ensuring that local authorities are made accountable for any segregation policies and actions.
188. The authorities are urged to deal effectively with the issue of the excessively high rate of Roma with no formal education and the high early drop-out rates of Roma children. The Commissioner recalls the Committee of Ministers [Recommendation Rec\(2009\)4](#) on the education of Roma and Travellers in Europe and encourages the Romanian authorities to develop integrated support measures aimed at preventing drop-out and ensuring the reintegration of children in the education system. Lastly, adequate funds should be allocated by the government in order to make better use of the Roma mediators, only half of whom are currently employed. In this context, useful guidance and inspiration are provided by the Committee of Ministers [Recommendation CM/Rec\(2012\)9](#) on mediation as an effective tool for promoting respect for the human rights and social inclusion of Roma.

3.2 VIOLENCE AGAINST ROMA

189. The Commissioner is concerned by the very slow pace of execution by Romania of some of the Court's judgments in the *Moldovan* group of cases,⁷⁵ of which the lead case dates back to 2005. The Commissioner recalls that the cases concern several violent anti-Roma incidents which took place between 1990 and 1993 in the villages of

⁷⁵ The group consists of the following cases: *Moldovan and others (No. 1) v. Romania*, judgment of 17 July 2005; *Moldovan and others (No. 2) v. Romania*, judgment of 12 July 2005; *Kalanyos and others v. Romania*, judgment of 26 April 2007; *Lăcătuș and others v. Romania*, judgment of 13 November 2011; *Gergely v. Romania*, judgment of 26 April 2007, and *Tănase and others v. Romania*, judgment of 26 May 2009.

Hădăreni (Mureş county), Plăieşii de Sus and Caşinul Nou (Harghita county) and Bolintin Deal (Giurgiu county), and which led to the deaths of several persons, including Roma, and the destruction of their homes.

190. The Commissioner emphasises the seriousness of these human rights violations, which led to the Court's finding that Romania has violated several provisions of the ECHR, and the Romanian government's undertaking to adopt a number of general measures in the concerned communities.
191. These general measures were aimed, *inter alia*, at raising awareness among the local population in order to promote good ethnic relations; stimulating the participation of Roma in local economic and social life; and rehabilitating the destroyed houses.
192. The Commissioner notes that while the authorities have invoked difficulties in funding these measures, the National Agency for Roma (a central public administration body under the authority of the Romanian government) and NGOs consider that the plan concerning the implementation of the measures for the Hădăreni community does not adequately address the *root causes* of violent inter-ethnic conflicts, and that its implementation is "extremely poor".⁷⁶ The Commissioner notes that the representatives of civil society dispute in particular the Romanian authorities' view that the inter-ethnic tensions in the concerned community have disappeared.
193. While NGOs have indeed brought to the Commissioner's attention that the scale of inter-ethnic conflict has subsided in recent years, he notes that similar incidents to those mentioned above have continued to occur. For example, the violence in the communes of Sânmartin and Sâncrăieni (Harghita county) in 2009 culminated in the destruction of homes and arsons and forced the Roma community of Sânmartin to flee into the woods and to live there for several months. The Commissioner was informed that the mediation efforts in these two localities did not bring about positive changes, and resulted, in fact, in the signing of protocols between the representatives of the two ethnic communities concerned, which imposed obligations only on the Roma communities.⁷⁷
194. The Commissioner was also informed about other incidents, which took place in the town of Racoş, in Braşov county, in 2011 and 2012. In this case, following conflicts between Roma and non-Roma residents of the town, the municipality hired a private security firm which conducted patrols, monitored and intimidated Roma people, and performed searches on passers-by.⁷⁸
195. As noted also by ECRI, these incidents demonstrate that significant efforts still need to be made by the Romanian authorities to effectively address the ethnic tensions between Roma and other ethnic groups. The Commissioner is concerned that the Romanian authorities appear to underestimate the incidence of racist hate crime in the country, which primarily affects Roma. During his visit the Commissioner was surprised to learn that despite continued reports on racist crimes by NGOs and the media, in 2013 the courts did not record any cases concerning such crimes. The Commissioner notes, however, that Romanian courts collect data on cases disaggregated, *inter alia*, by motive. He considers that in this situation the lack of recording of any racist crime is indicative of an inability or lack of expertise in the justice system that can lead to the identification of such crimes.
196. The Commissioner wishes to underline the view expressed by NGOs that Roma are confronted at present mainly with institutionalised racism combined with excessive use of force by law-enforcement authorities. Although such incidents are not frequently reported, they seem to be a current problem in Romania, with several of them resulting in deaths or serious injury.⁷⁹ In 2013, NGOs reported two cases of excessive use of force by the police during searches carried out in Roma homes in Reghin, Mureş county. In the previous year, on 31 May, 10 June and 28 July 2012, members of the police and gendarmerie in different parts of the country killed three Roma men during pursuits.⁸⁰

⁷⁶ ANR, "[Raport de evaluare a programului Hădăreni](#)" ("Evaluation report concerning the Hădăreni programme"), 2012.

⁷⁷ See also ECRI, *ibid.*, pp. 40-41.

⁷⁸ See European Roma Rights Centre, "[Romania country profile 2011-2012](#)", 2013.

⁷⁹ See also Concluding observations of the Committee on the Elimination of Racial Discrimination, Romania, 13 September 2010, available at: <http://www.ohchr.org/EN/countries/ENACARegion/Pages/ROIndex.aspx>.

⁸⁰ [Written comments](#) of the European Roma Rights Centre and Romani Criss concerning Romania to the UN Human Rights Committee for consideration at its 110th session (10-28 March 2014).

197. In this context, the Commissioner notes the Court's judgment in the case of *Stoica v. Romania*⁸¹ in which the Court found that the applicant's ill-treatment by the police had been motivated by his ethnic origin (Roma). In *Cobzaru v. Romania*,⁸² concerning the beating of a Roma man while in police custody, the Court found that the circumstances in the case disclosed no *prima facie* indication of racist motives behind the applicant's ill-treatment; however, the prosecuting authorities should have displayed special diligence in investigating possible racist motives at the origin of the violence inflicted on the applicant. Nevertheless, the authorities failed to investigate such motives and made racially biased remarks about the applicant's ethnic origin during the investigation. These cases are part of the *Barbu Anghelescu* group of 21 cases, concerning primarily ill-treatment inflicted on the applicants while they were under the responsibility of law enforcement officers, and the ineffectiveness of the investigations into the allegations of ill-treatment. The execution by Romania of the judgments delivered in this group of cases is under the supervision of the Council of Europe Committee of Ministers since 2005.
198. The Commissioner notes that in January 2013, the Romanian authorities submitted to the Committee of Ministers an action plan for the execution of the general measures in these judgments, including measures concerning the prevention of racially-motivated ill-treatment and the effectiveness of investigations into such incidents. These measures provide for the authorities to encourage the recruitment of officers of Roma origin within the ranks of the police, to improve the awareness-raising and in-service training of law enforcement officers in the field of minorities' rights and to reinforce co-operation between the police and NGOs involved in the protection of the Roma minority. The action plan also provides for the adoption of a law for setting up a National Preventive Mechanism under OPCAT.
199. In respect of these measures, the Committee of Ministers underlined the need for systematic action by all the authorities concerned, accompanied by appropriate monitoring of the impact of these measures, in line with a policy of "zero-tolerance" of acts contrary to Articles 2 and 3 ECHR. As regards the effectiveness of criminal investigations, the Department for the execution of judgments and decisions of the Court noted that the authorities have not reported convictions for acts prohibited by Articles 2 and 3 for the period 2003 – 2012.⁸³ In relation to these issues, the Commissioner notes that the Romanian authorities adopted a new Code of Ethics and Conduct for Police Officers in 2005, which specifically prohibits racial discrimination in the exercise of policing activities and lays down principles concerning the use of force by law enforcement officials. However, NGOs have expressed concerns that no significant steps have been taken by the authorities to ensure compliance with the principles established in the code of conduct and that the training measures do not seem to have any impact on the ground. Moreover, Romania does not have an independent body responsible for investigating complaints lodged against law enforcement officials. Such complaints are handled through internal disciplinary procedures within the police or by the Ministry of Interior.

CONCLUSIONS AND RECOMMENDATIONS

200. The Commissioner is concerned by the very slow pace of execution by Romania of some of the Court's judgments concerning violence, committed by citizens and law enforcement officers, against Roma. He wishes to underline that it is of the utmost importance for the rule of law in Romania that all judgments delivered by the Court be promptly, fully and effectively implemented. The authorities are urged to take all necessary measures to effectively address the outstanding issues in this matter.
201. Reported incidents demonstrate that significant efforts still need to be made by the Romanian authorities to effectively address the ethnic tensions between the Roma and other ethnic groups. The Commissioner is concerned that the Romanian authorities appear to underestimate the incidence of racist hate crime in the country, which primarily affects Roma.
202. The authorities need to pay particular attention to the recording of hate speech and hate crimes and to ensure that law enforcement officials and legal professionals are adequately and systematically trained to be able to recognise and effectively investigate and sanction crimes committed with a racist motive.

⁸¹ Judgment of 4 March 2008.

⁸² Judgment of 26 July 2007.

⁸³ Department for the execution of judgments and decisions of the European Court of Human Rights, [Memorandum](#), CM/Inf/DH (2013)8, 12 February 2013.

203. The Commissioner stresses that public confidence in law enforcement authorities is closely related to their attitude and behaviour towards the public, in particular their respect for human dignity and human rights and fundamental freedoms, as enshrined in the ECHR. The Commissioner strongly believes that it is essential for the authorities to ensure that all instances of abuse of trust or ill-treatment by law enforcement officials are firmly condemned, adequately investigated and sanctioned by the competent authorities, in order to prevent recurrence and enhance the key role played by law enforcement authorities in safeguarding the rule of law.
204. The authorities are encouraged to pursue reforms in the law enforcement sector, ensuring that in this process the principles of the rule of law and respect for human rights are fully upheld. The authorities' attention is drawn to the Council of Europe Committee of Ministers [Guidelines on eradicating impunity for serious human rights violations](#) (2011) and the Commissioner stresses the need to elaborate policies and practice to prevent and combat any *institutional culture* within law enforcement authorities which promotes impunity. Measures in this context should include a policy of zero-tolerance towards serious human rights violations and the establishment or reinforcement of appropriate training and control mechanisms. The Romanian authorities are urged to take all necessary measures to ensure that all allegations of ill-treatment by law enforcement officers are promptly and effectively investigated, and that those who commit these violations are brought to justice.
205. Lastly, the Commissioner finds it crucial that the authorities establish as a priority a fully independent and well-functioning complaints mechanism covering all law enforcement officials. Such a body should be set up taking into account the five principles of effective complaints investigation: (a) *independence*: there should be no institutional or hierarchical connections between the investigators and the official complained against and there should be practical independence; (b) *adequacy*: the investigation should be capable of gathering evidence to determine whether the behaviour of the law enforcement body complained of was unlawful and to identify and punish those responsible; (c) *promptness*: the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law; (d) *public scrutiny*: procedures and decision-making should be open and transparent in order to ensure accountability; and (e) *victim involvement*: the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests. Moreover, the Commissioner reiterates that the Council of Europe can provide useful examples from other member states and guidance in building up such a body.⁸⁴

3.3 LEGAL AND INSTITUTIONAL FRAMEWORK CONCERNING ANTI-DISCRIMINATION AND ROMA

206. The Commissioner notes with satisfaction that Romania has adopted a wide array of legal provisions for preventing and combating hate crime and hate speech. Emergency ordinance No. 31/2002 prohibits organisations and symbols of a fascist, racist or xenophobic nature and the glorification of those found guilty of committing crimes against peace and humanity. The Law on audio-visual media No. 504/2002 prohibits the broadcasting of programmes containing any form of incitement to hatred on grounds of race, religion, or nationality, while the Code on audio-visual content prohibits the broadcasting of any discriminatory content based, *inter alia*, on race, ethnicity, nationality or religion, as well as the commendatory presentation of authoritarian regimes, including the Nazi regime, of the abuses committed under such regimes and the denigration of their victims. Parties' statutes and programmes must not include messages that incite war, discrimination or hatred of a national, racist, or religious nature.
207. The new Criminal Code which entered into force in February 2014 prohibits public incitement, by any means, of hatred and discrimination against "a category of persons". Motivation related to race, nationality, ethnicity, language, wealth or social origin, where these are considered by the perpetrator as "causing a person's inferiority as compared to others", is an aggravating circumstance for all offences provided under the code. In addition, public incitement to racial or ethnic hatred, as well as public conduct aimed at creating an intimidating, hostile, degrading, humiliating or offending environment or at violating the dignity of a person or group of persons on account of, *inter alia*, their race, nationality, or ethnicity are prohibited under Government ordinance No. 137/2000 concerning the prevention and sanctioning all forms of discrimination.

⁸⁴ See the Commissioner's [Opinion](#) concerning Independent and Effective Determination of Complaints against the Police, 2009.

208. The Commissioner welcomes these provisions, as well as the amendments to Government ordinance 137/2000 which establish the principle of sharing the burden of proof before the courts and the CNCD. However, the Commissioner notes the concerns expressed by the CNCD regarding the poor implementation of hate speech legislation, in particular in the context of political discourse.
209. It is also noted that CNCD has adopted a Strategy for Implementing Measures for Preventing and Combating Discrimination 2007-2013. The strategy laid down specific objectives concerning, *inter alia*, the fight against discrimination, including racial discrimination, and the development of an inclusive society. CNCD has implemented in particular the activities related to the training of judges, prosecutors, civil servants and teachers. The Commissioner was informed that a new anti-discrimination strategy for 2014-2020 is currently under preparation.
210. As regards in particular Roma, the Commissioner notes that Romania has adopted the 2001 Strategy for Improving the Situation of Roma ("2001 Strategy"), under which several objectives have been attained in the field of employment, education, and health, in particular the effective employment of school and health mediators.
211. At present, Romania participates in the EU Decade of Roma Inclusion 2005-2015 and has adopted a "[Strategy for the Inclusion of Romanian citizens belonging to the Roma Minority 2012-2020](#)" ("Roma inclusion strategy"), replacing the 2001 Strategy, as well as four action plans covering education, health, employment and housing.
212. The Commissioner notes that since the adoption of the strategy, numerous NGOs have repeatedly highlighted its lack of an evidentiary basis and the lack of a baseline study that could enable decision-makers to ground policy measures in accurate data. The Commissioner notes the reports concerning the failure by the authorities to systematically collect data on the situation of Roma, mostly on the grounds that this would be against personal data protection legislation.
213. As concerns the implementation of the Roma inclusion strategy, the Commissioner has been informed by his interlocutors that in 2012 and 2013, with the exception of the area of education, no consistent action was taken for the implementation of the strategy. Several international actors, as well as NGOs, identified the limited funding from national budgets and the low absorption of EU structural funds as major challenges to the implementation of the national strategy.
214. Another significant barrier in the implementation of the Roma inclusion strategy is raised by the lack of accountability of local authorities to the central ones. The Commissioner was informed that pursuant to the administrative decentralisation reform in Romania, several action areas under the Roma inclusion strategy fall within the exclusive competence of local authorities. However, the local authorities have often been reluctant to allocate funds for projects aimed exclusively at Roma, fearing that they would cause tensions within their constituencies.⁸⁵ The local authorities themselves have justified their funding choices through the necessity to respect the priority of "mandatory and urgent services".
215. As regards the objectives related to the inclusion of Roma in the education system, the Commissioner notes with satisfaction that as of 1992, the government has provided a special quota system for Roma students applying for university. Later the government extended this policy to include Roma students entering upper secondary education. According to the Ministry of Education, more than 3 000 Roma have been admitted to high schools based on this measure. The number of Roma enrolled in special seats at universities in 2012-2013 was 564, while in 2013–2014 the number is 594.⁸⁶
216. The Commissioner also notes that in 2012–2013, 21 Roma students were studying Romani language and literature in order to become Romani language teachers. In the same year, 443 teachers either taught Romani language, history and traditions or taught all subjects in the Romani language in more than 300 schools. The Commissioner is

⁸⁵ See also ECRI, *ibid.*, pp. 31-33.

⁸⁶ Resource Center for Roma Communities Foundation, Soros Foundation Romania, Civil Society Development Foundation, Roma Center for Health Policies – Sastipen, "[Updated civil society monitoring report](#) on the implementation of the National Roma Integration Strategy and Decade Action Plan in 2012 and 2013 in Romania", 2013.

also satisfied that each county school inspectorate has an inspector for Roma education and between two to six specialists in Romani language teaching.

217. The Commissioner welcomes the use of the Romani language, as well as the teaching of Roma history in schools. In this context, it is noted that in 2007 the government set up the Commission for the Study of Roma Slavery, with the purpose of carrying out interdisciplinary study on the matter leading to a report and recommendations for the promotion of the history and culture of Roma. In 2011, the government declared the day of 20 February as Roma emancipation commemoration day.
218. The National Agency for Roma (*Agenția Națională pentru Romi*, "ANR") is tasked with coordinating public policies for Roma and acts as secretariat of an interministerial committee for the implementation of the Roma inclusion strategy. ANR is chaired by a secretary of state appointed by the Prime Minister. The Commissioner notes the concerns expressed by representatives of civil society that ANR's responsibilities partly overlap with those of other government bodies and that its interministerial co-ordination capabilities are limited. The Commissioner also notes ANR's position concerning its current role in the implementation of the Roma inclusion strategy, namely, that it only provides expertise and policy advice in this respect. The Commissioner is concerned at the progressive reduction of ANR's funding and the drop in the number of staff employed by ANR from 52, in 2005, to 22 in 2014.

CONCLUSIONS AND RECOMMENDATIONS

219. The Commissioner notes with satisfaction the improvements in the general anti-discrimination framework and the new legal provisions making racist motivation an aggravating circumstance for all offences provided under the Criminal Code. The authorities are encouraged to take all legislative and other measures to ensure that hate speech is not tolerated and perpetrators are brought to justice, in line with the Council of Europe Committee of Ministers [Recommendation No. R \(97\) 20 on "hate speech"](#).
220. The Commissioner recalls the commitments expressed by the member states of the Council of Europe in the 2010 [Strasbourg Declaration on Roma](#), and stresses that policies aimed at Roma inclusion must constitute political priorities. The Commissioner welcomes the Roma inclusion strategy adopted by the Romanian authorities and urges them to provide adequate funding to ensure its further implementation.
221. The Commissioner reiterates the importance of introducing a system for collecting ethnic data, with due respect for the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. The study "['Ethnic' statistics and data protection in the Council of Europe countries](#)" published by ECRI in 2007 provides useful guidance in this sense.
222. Lastly, the Romanian authorities are called on to step up their efforts to ensure the active and systematic participation of local authorities in the implementation of the Roma inclusion strategy, in line with [Resolution 333 \(2011\)](#) adopted by the Council of Europe Congress of Local and Regional Authorities. The Commissioner stresses that local resistance to change cannot justify the continued social exclusion and marginalisation of Roma.