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## **EUROPEAN SOCIAL CHARTER**

14<sup>th</sup> National Report on the implementation  
of the European Social Charter

submitted by

## **THE GOVERNMENT OF ROMANIA**

- Article 7, 8, 16, 17, 19  
for the period 01/01/2010 – 31/12/2013
- Complementary information on Articles 11§2,  
12§1, 13§1 and 13§3 (Conclusions 2013)

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Report registered by the Secretariat on  
29 June 2015

**CYCLE 2015**



THE 14TH NATIONAL REPORT  
ON THE APPLICATION  
OF THE REVISED EUROPEAN SOCIAL CHARTER

*PRESENTED BY*  
**THE ROMANIAN GOVERNMENT**

**for the period January 1st. 2010 - December 31st. 2013**

regarding the Group 4 of articles of the Revised European Social Charter,  
"Children, family and migrants": 7, 8, 16, 17, 19 (para. 7 and 8) and 27 (para. 2)

In accordance with the provisions of Article C of the Revised European Social Charter and Article 21 of European Social Charter, regarding the adopted measures for the application of the accepted provisions of the Revised European Social Charter, ratified on May 7th, 1999

**Article 7 - The right of children and young persons to protection**

**Paragraph 1**

Concerning the previous reports, we specify as follows:

- Art.280 of the Labor Code became Art.265 after the republishing of the Labor Code, in the Official Gazette of Romania, Part I, no.225 of March 31<sup>st</sup>, 2011, providing a new numbering to the texts.
- Art.265 has been amended by point 3 of Art.127, Heading II of LAW no.187 of October 24th, 2012 and states in para. (1)l:

"The employment of a minor, by non-observance of the legal age conditions or by the use of the respective for providing certain activities with the infringement of the legal provisions regarding the minors' labor regime, represents an offense and it is punished with imprisonment from 3 months to 2 years or by fine".

In accordance with Art.5 of the **Government Decision No. 600/2007** regarding the protection of youth at the place of employment, as further amended and completed:

“(1) The employment of children<sup>1</sup> is forbidden.

(2) By waiver from the provisions of para. (1), the children of at least 16 years of age, subject to a full schedule mandatory<sup>2</sup> education may conclude, under legal conditions, an individual labor contract as employee for carrying out easy activities<sup>2</sup>.

(3) The child subject to a full schedule compulsory/mandatory education may conclude an individual labor contract also at the age of 15, with the legal consent of the parents or legal representatives, in order to carry out activities appropriate with its physical development, skills and knowledge, if thus not endangering its health, development and professional training."

The employment of persons less than 15 years of age is forbidden.

During January 1<sup>st</sup>, 2010 - December 31<sup>st</sup>, 2013, the territorial labor inspectorates submitted to the criminal prosecution bodies 139 referrals (**for** 2010 – 30 referrals, **for** 2012 - 72 referrals and for 2013 - 37 referrals) regarding the non-observance of the legal age employment conditions for minors or their use in carrying out of certain activities by infringement of the legal provisions on their labor regime.

Regarding the specific question referred to by CEDS on Art.7 Para.1, specific actions that were taken subsequently to the offenses uncovered by the Labor Inspection, we specify that the Labor Inspection is liable to refer to the criminal prosecution bodies the noticed non-observance situations of Art.265 Para.(1) of the Labor Code and does not benefit from statistical data regarding the measures taken by the authorized institutions.

With respect to the non-compliance decision, by (i) the fact that the youth employed as domestic staff are not covered by the labor legislation and (ii) that the prohibition of employment of persons under 15 years of age is not warranted into practice due to the inefficient application of legislation, we are able to provide the following information:

For the natural entities who conclude a labor contract with the workers who develop activities, the national legislation provisions in the labor area are applied (Labor Code). Thus, the workers who carry out domestic activities benefit from all the rights provided by the national legislation in the labor area, including the right to labor safety and health.

Regarding the youth employed in the formal field with individual labor contract, the provisions of Government Decision no. 600/2007 regarding the youth protection at the place of employment are applied, as further amended and completed, which represent the transposition in the

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<sup>1</sup> **The child** is defined by G.D. 600/2007 as any person who didn't reach 15 years of age or any young person of at least 15 years and at most 18 years of age, that still makes the subject to compulsory education based on a full schedule, established by law;

<sup>2</sup> The easy (activities) works are defined by G.D. 600/2007 as all the activities that, by the way of their supposed tasks and specific conditions whereby these are performed, cannot prejudice the safety, health or development of the child or youth and are not likely to prejudice the school frequency, participation in orientation or professional training programs, approved by the management of the education unit, or their ability to benefit from the received training;

national law of the Council Directive 94/33/EC of June 22<sup>nd</sup>, 1994, regarding the protection of youth at the place of employment.

Easy work is defined by the national legislation as representing all the activities that, by the way of their supposed tasks and specific conditions whereby these are performed, cannot prejudice the safety, health or development of the child or youth and are not likely to prejudice the school frequency, participation in orientation or professional training programs, approved by the management of the education unit, or their ability to benefit from the received training.

The provisions of this normative act are complementary with the provisions of the **Government Decision no. 867/2009** regarding the prohibition of hazardous work for children (republished) as further amended and completed. The Government Decision no. 867/2009 ensures a comprehensive approach of the child's labour by correlating the main enforceable legal provisions regarding the activity area corresponding to the child's labour, as follows:

- it defines the intolerable or hazardous labor forms, the serious forms of child labor, in accordance with the Convention ILO no. 182, ratified by Romania by Law no. 203/2000;
- it defines the formal<sup>3</sup> and informal<sup>4</sup> sector;
- it provides a full list with all hazardous/intolerable activities forbidden for persons under 18 years of age, as well as the sanctions imposed on the parents or other persons, who involve children in this kind of activities.

There are no specific provisions regarding the easy work for children less than 15 years of age. A normative act project is currently under debate, regarding the regulation of childrens activities in cultural, artistic, sportive, advertising and modeling fields.

Furthermore, Art.265 Para.(1) of the Labor Code specifies that the employment of a minor by non-observance of the conditions related to his/her age or use for certain activities, by infringement of the legal provisions regarding the minors' labor regime, constitutes an offense and is punished with imprisonment from 3 months to 2 years or by a fine.

## Paragraph 2

Romania transposed into the national legislation the provisions of Directive 94/33/CE regarding the youth's protection at the place of employment by the **Government Decision no. 600/2007** regarding the youth's protection at the place of employment, as further amended and completed.

The provisions of this decision have as purpose the youth's<sup>5</sup> protection against economic exploitation, or any labor susceptible to prejudice their safety, health or their physical, psychological, moral or social development or to endanger their education, and it applies to any person of up to 18 years of age, who concluded an individual labor contract, in accordance with the legislation in force. These places of employment are established by a Government Decision.

Beginning with August 14<sup>th</sup>, 2009, **Decision no. 867 of July 29<sup>th</sup>, 2009** regarding the prohibition of hazardous work for the children came into force. The mentioned normative act regulates the legal framework regarding the definition, prohibition and elimination of hazardous work for children, who, by their nature or the conditions of performance, may injure the health, safety or morality of the child.

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<sup>3</sup> **Formal field** is defined by G.D. 867/2009 as being the field whereby the activity or labor provided by a child for the legal or natural entities is made according to a contracting form regulated by law, appropriately to his/her age;

<sup>4</sup> **Informal field** is defined by G.D. 867/2009 as being the field whereby the activity provided by a child for the natural entities is made without a contracting form regulated by law, such as: the domestic activities in their own household or in other households, agriculture activities, activities in the street: washing the windows at the crossroads; renting a parking place; distribution of flyers/magazines and likely, markets, train stations and ports, traditional activities: melting of un-ferrous metals, manufacturing of bricks and others;

<sup>5</sup> **youth** is defined by G.D. 600/2007 as being any person of at least 15 years and at most 18 years of age;

Concerning the youth employed in the formal field through an individual labor contract, the provisions of the Government Decision no. 600/2007, regarding the youth protection at the place of employment are applied, a normative act that is completed by the provisions of the Decision no. 867/2009.

Regarding the specific question with respect to the supply of statistical data on infringement cases uncovered within the Control Campaign on professional risks whereto the workers belonging to specific risk sensitive groups are exposed (including youth), developed during 2008-2009, we specify:

- no. of controlled units -1268
- no. of controlled units 1268
- no. of workers in the controlled units - 908473 whereof 12495 young persons of 15 to 18 years old were working by day and 8 young persons of 15 to 18 years old were carrying out work by night.

In the controlled units the youth were carrying out prohibited activities as follows:

- industrial sacrifice of animals
- with a breakdown, caving, falling from the height risk
- with a machines conditioned rhythm, and being remunerated (payed) depending on results
- with use of tubes, basins, tanks, recipients, bins that contain chemical agents
- in the menageries of animals
- with exposure to chemicals

For the noticed non-compliances, 32 contravention penalties were applied.

### **Paragraph 3**

According to Art. 5 of the Government Decision no. 600/2007 regarding the youth protection at the place of employment, as further amended and completed:

“(1) The employment of children<sup>6</sup> is forbidden.

(2) By waiver from the provisions of Para. (1), the children of at least 16 years of age, subjected to a full program mandatory schooling, may conclude, as stated by law, an individual labor contract as employee for carrying out easy work<sup>7</sup>.

(3) The child who is subjected to full program mandatory education may conclude an individual labor contract also on reaching 15 years of age, with the consent of his/her parents or legal representatives, for carrying out certain activities appropriate to his/her physical development, skills and knowledge, unless his/her health, development and professional training are not endangered.”

### **Paragraph 4**

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<sup>6</sup> **Child** is defined by G.D. 600/2007 as any person who didn't reach 15 years of age or any young person of at least 15 years and at most 18 years of age, that still makes the subject to compulsory education based on a full schedule, established by law;

<sup>7</sup> **Easy works** is defined by G.D. 600/2007 as all the activities that, by the way of their supposed tasks and specific conditions whereby these are performed, cannot prejudice the safety, health or development of the child or youth and are not likely to prejudice the school frequency, participation in orientation or professional training programs, approved by the management of the education unit, or their ability to benefit from the received training;

According to the provisions of Government Decisions no. 600/2007 regarding the youth protection at the place of employment, as further amended and completed:

“Art.10 (1) In the case of youth, the duration of labor time is maximum 6 hours/day and 30 hours/week.

(2) In the case the youth gathers several positions based on individual labor contracts, the carried out labor time is summed up and cannot exceede, in total, the duration established by Art. (1).

Art. 11 - The youth cannot provide additional work.

Art. 13 - The youth benefit from a mealtime (lunch break) of at least 30 consecutive minutes, if the duration of the daily labor time is longer than 4 and a half hours.

Art. 14 - (1) Between two work days, the youth benefit from a minimum break of 12 consecutive hours.

(2) Between two work days, the children employed according to Art.5 Para.(2) and (3), benefit from a minimum break of 14 consecutive hours.

(3) The youth benefit from a weekly resting time of two consecutive days, generally on Saturday and Sunday.

Art. 15 - (1) The youth benefit from an additional holiday of at least 3 work days.

(2) In the cases falling under Art.5 Para.(2) and (3), the employers have to make sure that the time free of any labor is included, as possible, within the school holidays of children who are subjected to a full program mandatory schooling, as imposed by the national legislation."

Between January 1<sup>t</sup>, 2010 – December 31<sup>st</sup>, 2013, the territorial labor inspectorates have submitted to the criminal prosecution bodies 139 intimations (for 2010 - 30 intimations, for 2011 - no information available, for 2012 - 72 intimations and for 2013 - 37 intimations) or their use in carrying out of certain activities by infringement of the legal provisions on their labor regime. No information is available on the number of intimations submitted to the criminal prosecution bodies for the non-observance of legal conditions regarding the duration of labor time for minors.

If the the employers do not observe the legal provisions regarding the labour regime of youth (working hours, overtime, night work, additional holiday etc.), the labor inspectors impose mandatory measures, based on Art. 19 Letter i) of Law No. 108/1999, republished, further amended and completed, or apply contravention penalties in accordance with the provisions in force, based on Art. 19 Letter o) of Law No. 108/1999 republished, further amended and completed. No statistical information is available on the youth's labor regime.

## **Paragraph 5**

Art. 9 Para. (5) of Law No. 279/2005 republished, regarding the apprenticeship at the place of employment, states that the monthly basic wage, established by the apprenticeship contract, is at least equal to the minimum gross basic wage in force per country, for 8 working hours daily, an average of 40 hours weekly, respectively.

„ART. 9

(2) The apprentice may be subjected to a period of testing, which cannot exceede 30 work days.

(3) The professional training by apprenticeship at the place of employment includes the theoretical and the practical training, in accordance with the legal provisions in force and, as the case may be, with the special laws that regulate that type of occupation.

(4) The time necessary for the apprentice's theoretical training is included in the normal working hours.

(5) The basic monthly wage, established by the apprenticeship contract, is at least equal to the minimum gross basic wage in force per country, for 8 working hours daily, and an average of 40 hours weekly, respectively.

(6) The duration of labor time is 8 hours daily and 40 hours weekly, and in the case of youth of up to 18 years of age, the duration of labor time is 6 hours daily and 30 hours weekly.”

The infringement of the provisions of Art.9 Para.(5) of Law No. 279/2009, republished, constitutes an offense and is sanctioned by a fine of 10,000 lei. (Art. 23 of Law no. 279/2005 republished).

Furthermore, **Law No. 335** of December 10<sup>th</sup>, 2013 regarding the time of probation for the upper education graduates provides as follows:

Art. 1 (2) The time of probation is of 6 months, except for the professions with special regulations.

"Art. 4

(1) The trainee, during the time of probation, undertakes to provide labor for and under the authority of an employer, natural or legal entity, against a remuneration called wage, based on an individual labor contract and on the probation contract.

(2) The use of trainees to the provision of other activities and/or performance of other charges besides those mentioned by the job description and by the training contract is forbidden.

Art. 18

The monthly basic wage of the trainee, established by the individual labor contract, is negotiated by the parties, for a program of 8 working hours daily, an average of 40 hours weekly, respectively, as stated by the law, completed by the provisions of the applicable collective labor contract.

Art. 23

The trainee has the following rights:

- a) to benefit from the trainer's coordination and support;
- b) to be established a schedule of activities appropriate to the job, whereof difficulty and complexity level gradually increase during the probation period;
- c) to benefit from an objective assessment;
- d) to be provided with the necessary time for the individual training, in order to strengthen the skills and acquire the practical habits necessary to practice that activity;
- e) to be provided, by the employer's care, with access to the information sources, useful to his perfection and which will allow him to strengthen his knowledge;
- f) to participate in the training forms organized for the trainees;
- g) to receive the assessment report and the training certificate/record;
- h) to appeal the assessment paper of the evaluation commission, if applicable.

## Paragraph 6

With respect to the non-inclusion of domestic workers within the categories covered by the regulations in the labor health and safety field, during 2014 year, several lawful evolutions, by the adoption of Law no. 18/2014 for the amendment and completion of Law no. 52/2011 regarding the performance of occasional activities developed by daily workers.

This way, the previously mentioned issues were improved, Art. 5 para. (3) of Law no. 52/2011 regarding the provision of certain occasional activities developed by daily workers, as further amended and completed, stressing the fact that "the beneficiary has the following liabilities in the labor safety and health field:

- a) to provide the labor safety and health of the daily workers;

- c) to require the daily workers the assignment on their own responsibility, by signature, that their state of health allows them to develop the activities provided by the beneficiary;
- d) to make available to the daily workers, the adequate labor equipments, which don't endanger their safety and health;
- e) to provide, for free, the individual protective equipment appropriate to the activity developed by the daily workers;
- f) to immediately communicate the territorial labor inspectorate on the area where it took place, any event whereby the daily workers have been involved;
- g) to register the labor accidents suffered by the daily workers during the activity; the registration method is established by the application methodological norms of this law".

## Paragraph 7

In accordance with the provisions of Art. 145 of law no. 53/2003 **Labor Code**, (republished) as further amended and completed, the minimum term of the annual leave is 20 business days.

Art. 147 of the Labor code, republished, provides as follows:

(1) The employees working under difficult, hazardous or harming conditions, blind persons, other persons with a handicap and youngs under 18 benefit from an additional rest holiday of at least 3 business days.

(2) The number of business days corresponding to the additional rest holiday for the categories of employees provided by para. (1) is established by the applicable collective labor contract and will be at least 3 business days.

Also, Art. 15 of the **Government Decision no. 600/2007** regarding the youth protection at the place of employment, as further amended and completed:

(1)"The youth benefit from an additional rest holiday of at least 3 business days."

The other legal provisions regarding the rest holiday are applied in the same extent to the youth, too.

The annual paid holiday rest is warranted to all the employees. The annual holiday right cannot make the object of any transfer, renouncement or limitation. (Art. 144 para. (1) and (2) of the Labor code, republished).

## Paragraph 8

In accordance with the provisions of Art. 12 of the Government Decision no. 600/2007, regarding the youth protection at the place of employment, as further amended and completed:

„(1) The youth cannot work at night.

(2) The children employed under the conditions provided by Art. 5 para. (2) and (3) cannot provide any work between 20:00 and 6:00."

At the same time, Art. 265 para. (1) specifies that the employment of a minor, by non-observance of the legal conditions of age or his/her use for the provision of certain activities by the infringement of the legal provisions regarding the minors' labor regime represents an infringement and is punished by imprisonment from 3 months to 2 years by an amend.

## Paragraph 9

In accordance with the provisions of Art. 6 of **Government Decision no. 600/2007** regarding the youth protection at the place of employment, as further amended and completed:

„(1) The employer is liable to take the necessary measures for the ensurance of youth' safety and health protection, taking into account, especially, the specific risks provided by Art. 9.

(2) The employer must observe the measures provided by para. (1), based on the assessment of the existing risks for youth and related to their work.

(3) The assessment provided by para. (2) must be issued before the youth start the work and on any significant change of the labor conditions and must approve, mainly, the following:

- a) the labor equipment and the organization of the place of employment and job;
- b) the kind, level and period of exposure to physical, biological and chemical agents;
- c) the organization, category and the use method of the labor equipments, especially of the agents provided by letter b), machines, machineries and devices, as well as their handling;
- d) the establishment of labor procedures and of the labor development and their interaction, the labor organization, respectively;
- e) the professional preparation and the training level granted to youth.

(4) In case the assessment provided by para. (2) demonstrates a risk to the youth' physical or mental or development health, the employer is obliged to ensure the assessment and surveillance of youth' health, at regular intervals, for free and appropriately, in accordance with the regulations in force<sup>8</sup>."

**The Government Decision no. 355/2006** on the workers' health surveillance establishes the minimum requirements for the workers' health surveillance towards the safety and health risks equally applied to the young workers and apprentices.

The prophylactic medical services whereby the health surveillance is ensured is equally applied to the young workers and apprentices, too.

The young workers are subject to periodical medical controls, whereof periodicity is established by the Annex no. 1 of GD no. 355/2006.

The periodical medical examination is mandatorily issued for all the workers. The rate of periodical medical examination is established by the records provided in the annex no. 1 to GD no. 355/2006 and may only be amended on the labor medicine specialist physician's proposal, by the employer's information.

The issuance conditions of periodical medical control are established by the records of the annex no. 1 of GD no. 355/2006, namely:

- the range of time when the periodical medical control must be issued;
- the content of full clinical examination (with a special care on certain apparatuses and systems);
- the clinical and para-clinical complementary exams to issue depending on the professional bad factor whereto the relevant employee is subjected, his profession/position or place of employment.

The periodical medical control (including the clinical or para-clinical medical exams) may be issued at shorter terms, too, than those mentioned by the records, if provided by the collective labor contract or by other provisions in this respect, by the employer's and employees' representatives' consent and on the specification of the labor medicine physician.

In accordance with the provisions of Art. 39 para. 4 of **Law no. 319/2006** of labor safety and health, the admission of workers to the place of employment without the issuance of medical control on employment or of the periodical medical control represents an offense and is sanctioned by an amend.

## Paragraph 10

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<sup>8</sup> The Government Decision no. 355 / 2007 regarding the surveillance of the workers' health

The monitoring, assessment and research of multiple dimensions of the trafficking of human beings is one of the main responsibilities of ANITP, with a permanence character, fulfilled by the operation of the Monitoring and Assessment Integrate System of the Trafficking of Human Beings' Victims (SIMEV). By SIMEX, ANITP monitors the statement of the trafficking of human beings' victims, both following the social-demographic indicators and the relevant indicators regarding the traffic exploitation tracks and forms.

In 2010, 307 victim minors of the trafficking of human beings have been identified, the number representing 26.5% of the total of victims identified during this year. From the total of 307 minor victims, 270 were girls and 37 boys. During 2011, 319 minor victims have been registered, 289 girls and 30 boys, their rate in the total of identified victims being 30.5%. The number of minors identified during 2011 as trafficking victims, was 370 (35.5% of the total of identified victims), whereby 327 were girls and 43 boys. For the 2013, the data regarding the identified trafficking of human beings' victims shows 300 minor victims, 278 girls and 22 boys, with a rate of about 33.5% of the total.

The most vulnerable minors are those of 14 – 17 years old. Over 90% of the minors identified in 2010, 2011, 2012 and 88.6% of the minors identified in 2013 fall within this category of age.

The distribution by exploitation methods of the minor victims identified during 2010 – 2013 period put the sexual exploitation on the first place with 240 victims in 2010, 255 in the 2011, 279 in 2012 and 237 in the 2013. During this period, 54 cases of minors' trafficking have been entirely registered, for the purpose of exploitation by coercion to pornographic shows. The most of such cases were in 2011, when 30 victims had been identified. Other exploitation forms, like the labor exploitation, coercion to the practice of begging and to the commitment of robberies affected a lower number of children of the total of identified victims.

The most of the victims identified during the reference term (217 in 2010, 224 in 2011, 303 in 2012 and 235 in 2013) have been exploited on the Romanian territory.

Relevant legislative amendments:

In 2012, the National strategy against the trafficking of human beings for the 2012-2016 period was approved by GD no. 1142.

The strategy has as purpose the lowering of impact and dimensions of the trafficking of human beings, at the national level, by the prioritization and efficacy of activities in the fight against it.

The National strategy implementation against the trafficking of human beings for the period 2012 – 2016 will allow the fulfillment of the following general goals:

1. The acceleration of prevention and participation activities of the civil society to their development
2. The improvement of the protection quality and support granted to the trafficking of human being' victims for the social reintegration
3. The improvement of the investigation institutional ability of the trafficking of human being offenses, especially of the minors' trafficking cases, as well as the pursuance of delinquent profit by the criminal prosecution institutions
4. The development of the data gathering and analysis ability regarding the trafficking of human being.
5. The optimization and expansion of the inter-institutional and international cooperation process for the implementation support of national strategy against the trafficking of persons.

For the ensurance of the fulfillment of goals, together with the approval of the National strategy, a medium term national Plan was approved, too, 2012-2014, respectively, whereby the concrete activities, the responsible institutions and the accomplishment terms are defined.

The two documents also include several specific measures related to children, whereby the following may be specified: lowering of the risk factors that lead to victimization (by the development of lowering activities of school abandon among children and youth and the

identification, at the level of each local community of children with a trafficking risk and provision of support forms provided by law), ensurance of the victim children' protection and support of the minor trafficking for the social reintegration, development of instruments intended to the online communication environment monitoring and detection of the child pornography producing by informatics systems, adoption of a data exchange mechanism in the field.

Regarding the situation of the **street children**, the National Authority for the Protection of the Rights of the Child underlines that even though the Romanian authorities are still concerned about this subject, the official data based on the official reports made by the local competent authorities differs very much from the numbers reported by the NGOs working with this category of children.

Since the data reported by the NGOs is mainly based on subjective estimations, which were never confirmed by official reports, NAPRCA express its reserve in regard to the number of "2,000 street children in Bucharest and 5,000 in the whole country".

Regarding the number of "intervention services" dedicated to this category of children and the financing allocated by the local authorities, we should mention that the financing of this kind of services is made by the local authorities confronted with this problem based on the real needs and situation existing within their area of competence.

Such a situation might lead to different kinds of approach being counties where such services are developed due to the high number of beneficiaries and places where the capacity of the set up facilities is limited and related only to providing access to vital items, such as clothing, hygiene products (...), due to the specific of the situation existing within that particular area.

In the same time, being aware of the persistence of this problem, the authorities have also prepared, within the new strategy on child protection, another set of measures directly addressed to this category of children. Nevertheless the authorities within the child protection field intend to approach these measures from a multi-institutional point of view, being aware that the situation of these children cannot be handled only by taking into consideration their basic needs, so other authorities are expected to be involved and cooperate in order to ensure a long time protection plan for these children and their families.

In respect to the different type of data collection, as mentioned within the report we should underline again the fact that the Romanian central authority for the protection of the rights of the child only collects information regarding the cases that were instrumented or monitored by them. In this context, being given that in the case of these children their situation should make the subject of specialized services offered by the competent child protection authorities, any person or institution encountering such a case should communicate it to the local General Directorate for Social Assistance and Child Protection.

## **Article 8 –Right of workers to the maternity protection**

### **Paragraph 1**

In accordance with the provisions of the Government Emergency Ordinance no.158/2005 regarding leaves and health social insurance indemnities:

„Art. 23

(1) The insured persons are entitled to holidays for pregnancy and after birth period, during 126 calendar days, during which they benefit from maternity indemnity.

Art. 24

(1) The pregnancy leave is granted for 63 days before giving birth, and the after birth holiday – during 63 days after giving birth.

(2) The pregnancy and maternity leaves may compensate one by each other, depending on the physician's recommendation and on the beneficiary's option, so that the minimum mandatory period of the after birth leave is 42 calendar days."

## Paragraph 2

In accordance with the provisions of Art. 21 of the Government Emergency Ordinance no. **96/2003** regarding maternity protection at the places of employment, as further amended:

"(1) The employer is forbidden to decide the ceasing of labor or job reports in the case of:

- a) the employee provided by Art. 2 letters c) - e)<sup>9</sup>, for the reasons in a direct report to her condition;
- b) the employee who is under maternal risk leave;
- c) the employee who is in the maternity leave;
- d) the employee who is in the maternity leave for the child up to 2 years old or, in the case of the child with a handicap, up to 3 years old;
- e) the employee who is in leave for a sick child, up to 7 years old, or, in case of the child with a handicap, up to 18 years old.

(2) The interdiction provided by para. (1) letter b) is expanded, once, up to 6 months after the employee's return to the unit.

(3) The provisions of para. (1) are not applied in case of dismissal for the reasons that incur consequently to the judicial reorganization or the employer's bankruptcy, under the lawful conditions."

## Paragraph 3

In accordance with the provisions of Art. 17 of the Government Emergency Ordinance no. 96/2003 regarding maternity protection at the places of employment, as further amended:

„(1) The employers are liable to grant the breast feeding employees, during the business hours, two breaks for breast feeding of one hour each one, until the child is one year old. The time necessary for one return travel from the place where the child is, is included, too, in these breaks.

(2) On mother's request, the breaks for breast feeding will be replaced by the reducing the normal period of her labor time by two hours daily.

(3) The breaks and reducing the normal period of labor time, granted for breast feeding, are included in the labor time and don't diminish the waging revenues and are fully borne by the employer's wage fund.

(4) Provided that the employer ensures within the unit, special rooms for breast feeding, these will be in accordance with the hygiene conditions and the sanitary norms in force".

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<sup>9</sup> art. 2(GEO 96/2003)

...

c) **pregnant employee** is the woman who announces in writing the employer on her pregnancy physiological state and attaches a medical document released by the general physician or by the specialist physician who certifies her this state;

d) **employee who have recently given birth** is the woman who resumed her activity after the issuance of after maternity leaveholiday and requires the employer in writing the protection measures provided by law, attaching a medical document released by the general physician, but not later than 6 months from the date when she gave birth;

e) **employee who is breast feeding** is the woman who, on the resuming the activity after the leave or after birth, breast feeds her child and announces the employer in writing about the foreseen beginning and end of the breast feeding period, attaching medical documents released by the general physician in this respect;

## Paragraph 4

In accordance with the provisions of Art. 19 of the Government Emergency Ordinance no. 96/2003 regarding maternity protection at the places of employment, as further amended:

- „(1) The employees provided by Art. 2 letters c) - e)<sup>9</sup> cannot be coerced to develop night work.
- (2) Provided that the health of employees mentioned at para. (1) is affected by the night work, the employer is obliged, based on the employee's written request, to transfer her to a daily place of employment, mentioning the monthly gross basic wage.
- (3) The employee's request is accompanied by a medical document that specifies the term whereby her health is affected by the night work.
- (4) Unless, for objectively justified reasons, the transfer is possible, the employee will benefit from the maternity leave and risk indemnity, In accordance with Art. 10 and 11.”

## Paragraph 5

In accordance with the provisions of Art. 14 of the Government Emergency Ordinance no. 96/2003 regarding maternity protection at the places of employment, as further amended:

“The employees provided by Art. 2 letters c) and e)<sup>9</sup> cannot be coerced by the employer to perform activities wherefore the assessment stressed the exposure risk to agents or conditions of work provided by letters A and B of the annex no. 2<sup>10</sup>.”

In accordance with the provisions of Art. 20 of the Government Emergency Ordinance no. 96/2003 regarding maternity protection at the places of employment, as further amended:

- „(1) The employees provided by Art. 2 letters c) - e)<sup>9</sup> cannot provide unsanitary work or hard to bear.
- (2) Provided that an employee who is currently working under unsanitary conditions falls within the provisions of Art. 2 letters c) - e)<sup>9</sup>, the employer undertakes that, based upon the employee's written request, to transfer her to another place of employment, with the mention of monthly gross basic wage.
- (3) The name and listing of works with an unsanitary or hard to bear character referred to by para. (1) are established by the application norms of this emergency ordinance.
- (4) The provisions of Art. 19 para. (3) and (4) are appropriately applied”.

In accordance with the provisions of Art. 26 of the Government Decision no. **537/2004** for the approval of the Application methodological norms of the provisions of the Government emergency Ordinance no. 96/2003 regarding maternity protection at the places of employment:

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<sup>10</sup> annex no. 2, OUG 96/2003

minimal LIST of agents, procedures and conditions of work, referred to by Art. 14

A. Pregnant employees provided by Art. 2 letter c)<sup>9</sup>

1. Agents:

a) Physical agents:

- activity in the hyper-baric environment, as for example in the precincts under pressure and in the underwater divings.

b) Biological agents:

- toxoplasm;

- rubella virus,

unless proven that the pregnant employee is sufficiently protected against these agents by immunization.

c) Chemical agents: - plumb and its derivatives, in the extent that they may be absorbed by human body.

2. Labor conditions:

**Mining underground activities**

B. Breast feeding employees, provided by Art. 2 letter e)<sup>9</sup>

1. Agents:

Chemical agents: - pumb and its derivatives, in the extent that they may be absorbed by human body.

2. Labor conditions:

**Mining underground activities**

“Within the meaning of Art. 20 of the emergency ordinance, labors under unsanitary or hard to bear conditions are as follows:

- a) collection, transport and storage of domestic, human and animal dejections;
- b) sanitation of the sanitary groups;
- c) digging of ditches;
- d) loading or unloading by the shovel of different products;
- e) raising of higher weights than 10 kg;
- f) labor under extreme temperatures, defined in accordance with the provisions of the Government emergency Ordinance no. 99/2000 regarding the measures that may be applied during the periods with extreme temperatures, for the employed persons, approved by Law no. 436/2001.”

**Article 16** - Family right to social, legal and economic protection

### ***Social protection of the families***

#### ***Dwellings for the families***

**Law no. 116/2002 regarding the prevention and fighting against the social marginalization**, as further amended and completed, specifies in Art. 13 that the access to a dwelling is only facilitated to ***the persons of up to 35 years old***, under the impossibility of purchasing a dwelling by their own, the phrase being both applied to women and men, and within the same meaning, ***the Dwelling law no. 114/1996***, republished, as further amended and completed, provides by Art. 43: “The social dwellings are distributed by the local public administration authorities that manage them based upon the yearly established criteria by them, under the conditions of the provisions of this chapter, and the following categories of persons may benefit from them, on the priority order established In accordance with law: the persons and families removed or who are to be removed from the dwellings assigned to the ex owners, ***the youth who are up to 35 years old***, the youth resulted by social protection institutions and reached 18 years old, the 1st and 2nd degree invalids, persons with a handicap, pensioners, war veterans and widows, beneficiaries of the provisions of Reward law to the martyr heroes and fighters who contributed to the victory of Romanian revolution of December 1989, as well as the persons who lost their lives or had to suffer upon the anti-communist working uprising at Brasov, of November, 1987”, and this case, the phrase “youth” both referring to men and women.

#### ***Legal protection of the families***

##### ***Husbands’ rights and liabilities***

In accordance with art. 258 of Law **no. 287/2009 regarding Civil Code, republished**, “The family is based on the freely agreed marriage of husbands, their equality, as well as on the right and debt of parents to ensure the growing and education of their children. The family has the right of protection from the society and state. The state is liable to support, by economic and social measure, the marriage, as well as the development and strengthening of family. In respect of this code, by husbands, we understand the man and wife bound by marriage.”

Besides the general definition of family, included in the Civil code, there are other definitions, too, included in special normative acts, with applicability for the relevant normative act and whereby the area of family notion is expanded, for the purpose of granting certain protection measures specific to the family and the people living without concluding the legal marriage forms.

As for example, Art. 5 of GEO no. **51/2008 regarding the judicial public aid in civil matter**, provides as follows: “In respect of this emergency ordinance, it is understood by family the husband/wife, children or other heirs on straight line, up to 18 years, but not older than 26 years old, if they continue the education and are still under the applicant's allowance. In respect of this

*emergency ordinance, a family member is considered, too, the person who has the residence or the common residence and is dwelling with the applicant, the applicant's children, as well as with the children or other heirs of her on straight line, up to 18 years old, but not older than 26, if they are still continuing their education and are under the applicant's allowance."*

Other series of normative acts with incidence on the social assistance field define the term of "family" as:

**Social assistance law no. 292/2011** provides by Art. 22 para. 1 – 5:

„(1) By *family* it is understood the husband and wife or the husband, wife and their unmarried children, who have their domicile or common residence registered in the identity documents and dwelling together.

(2) The family is considered, too, the brothers without children, who are dwelling together and have their common domicile or residence, distinct from the parents' domicile or residence.

(3) The unmarried man and woman, with their children and of each of them, who are living and dwelling together are assigned to the term of family, if this is mentioned by the social inquiry.

(4) *Enlarged family* means the child, his parents and relatives up to, including, the 4th degree.

(5) The term of *single-parent family* means the family made of the single person and the child/children under allowance, who live together with him."

**Law no. 416/2001** regarding the minimum income guaranteed establishes by Art. 1 – 4:

(1) With respect to this law, the term of *family* means the husband and wife or the husband, wife and their unmarried children, who live and dwell together.

(2) The family is considered, too, the person who lives and dwells with the children under his allowance and is under either of the following situations:

a) is not married; b) is widow; c) is divorced; d) whereof husband/wife is declared disappeared by court decision; e) did not reach 18 years old and is under either of the situations provided by letter a)–d).

(3) The family is considered too, the brothers without children, who dwell together and don't have their domicile or common residence with parents.

(4) In respect of para. (1) the term of *family* represents the unmarried man and woman, with their children and of each of them, under their allowance, who are living and dwelling together.

### **Legal provisions regarding the partition and children' custody in case of divorce**

Law no. 287/2009 regarding Civil Code, republished, provides, by Art. 373-403, the types of procedures whereby the dissolution of marriage may be solved: *the administrative procedure and the notary procedure* (applicable to divorces by the husband's and wife's consent) and the *judicial procedure* (applicable when the husbands directly referred to the court or when the administrative or notary divorce was rejected)

With respect to the divorce effects regarding the relations between the parents and their minor children, the rule is, *after the divorce, the parental authority is commonly assigned to both parents* (art. 397)

*If there are consistent reasons, taking into account the child's higher interest, the court decides that the parental authority is only exercised by one of the parents. The other parent keeps the right to survey the growing and education method of the child, as well as the right to agree his adoption* (art. 398)

*Exceptionally, by the parents, jointly or by either of them, (art. 399) the tutelary court may decide the minor's placement to a relative or to another family or person, by their consent, or in a protection institution. They exercise the rights and charges assigned to the parents, regarding the child. The court decides whether the rights concerning the child's assets are exercised.*

The parents may agree on the child's dwelling after the divorce. *In default of the parents' agreement or if it is contrary to the higher interest of the child, the tutelary court establishes,*

*with the divorce pronouncement, the dwelling of the minor at the parent whom he/she constantly lives with.*

*If until the divorce, the child was living with both parents, the court establishes to him the dwelling at one of them, taking into account his higher interest.*

*Exceptionally, and only if it is for the child's higher interest, the court may establish his/her dwelling at the grandparents or another relatives of persons, by their consent, or at a protection institution. They exercise the child's surveillance and fulfill all the common acts regarding his/her health, growing and education. (Art. 400)*

*The parent or, as the case may be, the parents separated from their child have the right of keeping personal relations with him/her. In case of dispute between the parents, the tutelary court decides regarding the exercising methods of this right. The child's hearing is mandatory. (art. 401)*

*The tutelary court, by the divorce decision, establishes each parent's contribution to the allowance, education, teaching and training of children. (art. 402)*

*In the case of change of circumstances, the tutelary court may change the measures regarding the rights and charges of divorced parents towards their minor children, on the request of either of parents or of another family member, of the child, of the protection institution, of the specialized public court for the child's protection or of the procurator. (art. 403)*

### **Mediation services**

Based upon the Law no.192/2006, as further amended and completed<sup>11</sup>, the mediator profession is a freelancer profession. Any person who follows the prevention or extinguish of a mediator dispute accesses the mediation.

The mediation activity is equally accomplished for all the persons, without any difference of race, color, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, fortune or social origin (art. 3)

The mediation represents a public activity. [art. 4 para.(1)]

*The judicial and arbitral institutions, as well as other authorities with jurisdictional charges inform the parties on the possibility and advantages of using the mediation procedure and guide them to appeal this way for the resolution of their disputes. (art.6)*

Currently, the list of certified mediators includes 8.456 mediators, with an uniform distribution in the counties. There are 1856 mediators in Bucharest, in BV – 312, CJ – 360, CT – 392; on the opposite side: CV – 24, CS – 77, HR – 49.

*In accordance with art. 60<sup>1</sup> of Law no. 192/2006, in the disputes that may make, In accordance with law, the object of mediation or of an alternate resolution form of disputes, the interested parties and/or party, as the case may be, are held to make the proof that they took part to the information meeting regarding the mediation advantages, under the following fields: (...) in the field of family law, in the circumstances (...): a) continuance of marriage; b) partition of common assets; c) the exercise of parental rights; d) establishment of the children' residence; e) the parents' contribution to the children' allowance; f) any other disputes that occur in the relationships between husbands regarding the rights they may decide In accordance with law.*

Art. 64 of the same law provides, too, that *the mediation agreements concluded by the parties, in the causes/disputes that have as object the exercise of parental rights, the parents' contribution to the children' allowance and the establishment of children' domicile, take the form of an expedient decision.*

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<sup>11</sup> Law no. 192/2006 was amended and completed by: Law no. 370/2009, The Government Ordinance no. 13/2010, Law no. 202/2010, Law no. 76/2012, Law no. 115/2012, The Government emergency Ordinance no. 90/2012, The Government emergency Ordinance no. 4/2013, Law no. 214/2013, The Government emergency Ordinance no. 80/2013, Law no. 255/2013, Decision of the Constitutional Court no. 266/2014

*The mediator will survey that the mediation result is not contrary to the child's higher interest, will encourage his/her parents to focus mainly on the child's needs, and the assignment of parental liability, the separation in fact or the divorce does not impede his/her growing and development. (Art. 65)*

*Before the conclusion of the mediation contract or, as the case may be, during the procedure, the mediator will make all the due diligence, to check whether there is an abusive or violent relationship between the parties, and the effects of such a situation are likely to influence the mediation and will decide if, in such circumstances, the resolution by mediation is adequate.*

*If, during the mediation, the mediator is informed about certain facts that endanger the child's normal growth or development or seriously prejudice his/her higher interest, is liable to notify the competent authority. (Art. 66).*

### **Domestic violence fighting measures against women**

For the translation of issuance of the recommendations expressed by the European Committee for the Social Rights, the Romanian Government continued the efforts of improvement of the legislation regulating the violence field in the family, the situation of the violence's victims in the family, concomitantly with the protection and support service ensurance for the victims of violence in the family.

The normative framework in force warrants the safety of the violence's victim in the family (domestic violence) by the following means:

♦ **frame-laws:** Civil Code, Code of Civil Procedure, Criminal Code, Criminal Procedure Code – relevant for the action ways of the victim by the provisions regarding *the divorce, children's custody, partition*, but also *the removal of aggressor for the victim's safety* by a criminal lawsuit.

Regarding this issue, Art. 199 Criminal code – *Violence in the family* provides that: *If the facts provided by Art. 188, Art. 189 and Art. 193-195 are committed on a family member, the special maximum of punishment provided by law is adjusted by a quarter. In the case of offenses provided by Art. 193 and Art. 196 committed on a family member, the criminal action may be implemented ex officio, too. The reconciliation removes the criminal liability.*<sup>12</sup>

Also, Art. 197 of the Criminal code incriminates the fact of bad treatments applied to the minor. Therefore, the serious endanger, by any kind of measures or treatments, of the minor's physical, intellectual or moral development, by the parents or by any person, under whose care is the minor, is punished by imprisonment from 3 to 7 years and the prohibition of exercising certain rights.

With respect to the offenses against family, was introduced, too, a new incrimination – the prohibition of access to the general mandatory education (art. 380).

The fact of the parent or of the person whom a minor was entrusted, In accordance with law, and who, unjustified, withdraws or prohibits him by any means to follow the general mandatory education is punished by imprisonment from 3 months to one year or by an amend.

The text does not aim yet the circumstances where this abandon is determined by a poor material condition, case whereby the state must intervene by another means, but the situations whereby the parent abusively acts, withdrawing the minor from the education or prohibiting him to follow it, although he had all the necessary conditions for it.

For the purpose of protection of domestic violence's victims against the further contacts with the delinquent, he may be prohibited: the right of communicating with the victim or her family, or to get closer to them and the right to get closer to the dwelling, place of employment, school or other places where the victim develops social activities, either as complementary punishment (Art. 66 of the Criminal code), after the accomplishment of the main punishment, or as a liability imposed on the delay of punishment application (art. 85 of the Criminal code) or of the conditional release (Art. 101 of the Criminal code).

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<sup>12</sup> Domestic violence includes, therefore, serious or attenuated forms of certain offenses against life or body injury.

Also, among the complementary punishments and accessory punishments that may be applied together with the person's condemnation is the prohibition of the right of being tutor or curator, as well as the prohibition of exercising the parental rights (art. 65, 66 of the Criminal code).

In accordance with the new Criminal code, by family member, it is understood (Art. 177 new Criminal code):

a) the ascendants and descendants, brothers and sisters, their children, as well as the persons became by adoption, In accordance with law, such relatives;

b) husband;

c) the persons who established similar relations to those of the husbands or of the parents and children, provided that they are living together.

The provisions of the criminal law regarding the family member, within the provided limits are applied, in case of adoption, to the adopted person or his/her descendants, too, related to the usual relatives.

♦ **specific legislation:**

In accordance with **The Government Decision no. 1084/2010**, as well as with **The Government Decision no. 967/2010** regarding the amendment and completion of the Government Decision no. 1434/2004 regarding the charges and Frame – regulation of organization and operation of the General Directorates of Social Assistance and Child's Protection (DGASPC), the positions and charges were granted to the DGASPC in the family support and domestic violence prevention and fighting against field.

In the 2011, it was published **the Government Decision no. 49/2011** whereby the Frame methodology regarding the prevention and intervention in the multi-disciplinary and network team was approved, in the circumstances of child's violence and domestic violence. The frame methodology is a unitary and integral work tool, which grants the specialists of the public competent authorities or of the non-governmental organizations working with such theme, the possibility of an overall and harmonized coordination of the intervention methods.

The normative act enforces the planning of the specialized and support services, as well as of other necessary interventions for the rehabilitation of adults and/or children, victims of the domestic violence, including the services or interventions against the family and the supposed aggressor.

With respect to the amendments and completions of national legislation regulating the domestic violence field a very important stage was marked by the adoption of **Law no. 25 of March 9<sup>th</sup>, 2012**, whereby the **Law no. 217/20003** for the prevention and fighting against the domestic violence was amended and completed.

The domestic violence is one of the most serious problems the Romanian society faces, a reason why several concrete measures were introduced, reflected by the completion of the internal normative framework, which allowed the public institutions at the local level to develop their new structures with charges specific to the domestic violence.

The amendments mainly aimed the following matters:

- the express specification of the principles governing the protection and promotion field of the domestic violence victims' interests;
- the expansion of the coverage area of "domestic violence" concept, so that to correspond to the definition standards, imposed by the international legal instruments;
- the expansion of the inter-cooperation situations, which are covered by the "family member" concept, related to the regulation field;
- the liabilities of the central and local public administration authorities of taking the necessary measures for the prevention of domestic violence and for the prevention of repeated infringement situations of the basic rights of domestic violence victims;

- the establishment of the inter-field team in the prevention and fighting against domestic violence field, at the level of each county, each district, respectively, of Bucharest Municipality;
- the establishment of a protection tool, called “protection order”

With respect to the issuance competence of the protection order, it belongs to the court whereof area the victim is resident.

The measures that may be decided by the court are different and diversified, going from the interdiction on the aggressor to get closer to the victim, until his removal from the common dwelling, even if he is the direct owner.

The holder of the issuance request of such an order is the victim herself. The request may be personally introduced or by legal representative and is free of the judicial stamp fee, measure whereby it is desired the avoidance of circumstances where the request cannot be introduced because of the lack of financial resources, whereby the violence victim is.

Alternatively, the request may be introduced in the name of the victim and by:

- a) the procurator;
- b) the representative of the competent authority or structure, at the administrative-territorial unit level, with charges in the domestic violence victims’ protection field;
- c) the representative of either of the social service providers in the prevention and fighting against the domestic violence field, certified in accordance with law, by the victim’s consent (as for example, the non-governmental organizations).

The issuance request of a protection order is emergently judged, in the council chamber, the procurator’s participation being mandatory. The parties’ summon is made in accordance with the rules regarding the summon under urgent causes. The person who requires the protection order may be assisted or represented by an attorney, on request. In exchange, in the case of person against whom the protection order is required, the legal assistance is mandatory.

In case of special emergency (when the risks regarding the aggression victim’s integrity/life are imminent), the court may issue the protection order even the same day, pronouncing based on the request and submitted documents, without the parties’ conclusions.

Therefore, in accordance with art. 27 of Law no. 217/2003, republished, the period of measures decided by the protection order is expressly established by the judge. Yet, anyway, the period whereof the measures were taken, might not surpass 6 months from the date of issuance of the order. Even if, provided that the period of decided measures is not expressly specified, these produce effects for 6 months since the date of issuance of the order.

For its implementation, the protection order is immediately communicated to the Romanian Police structures, whereof territory it is the victim’s and aggressor’s dwelling. The order is immediately implemented, by or, as the case may be, under the police surveillance.

Art. 31 para. (3) of Law no. 217/2003 provides that, for the implementation of the protection order, the policeman may enter in the family dwelling and in any appendix of it, by the protected person’s consent or, in default, of another family member.

During the entire period whereof the order had been issued, the police institutions are liable to survey the way that the decision is observed and to notify the criminal prosecution body in case of circumvention from the accomplishment.

Provided that such a conduct intervenes, and the decided measures are infringed, the non-observance offense of law court will be ascertained and the punishment by imprisonment from one month to one year is applied (art. 32 of Law no. 217/2003, republished).

On the expiry of the period of protection measures, the protected person may require a new protection order, if there are indications that, in default of the protection measures, his/her life, physical or psychical integrity or freedom would be endangered.

Accordingly, the person against whom a measure was decided, by the protection order during the maximum period, may require the revocation of order or the replacement of decided measure.

The revocation may be decided if the following conditions are jointly met: a) the aggressor observed the imposed interdictions or liabilities; b) the aggressor had followed psychological advisory, psycho-therapy, detoxification treatment or any other advisory or therapy form that was established under his charge or was recommended to him or observed the safety measures, if such measures were taken, in accordance with law; c) if there are solid reasons that the aggressor doesn't present any more a real danger for the violence victim or for her family.

The resolution request is solved by the summon of parties and of the police unit that implemented the protection order whereof revocation is required. The procurator's participation is mandatory in this case, too.

If, together with the resolution of request, the court finds any of the situations that needs the establishment of a special protection measure of the child, will immediately notify the local public authority with charges regarding child's protection. The special protection measures referred by the cited text are provided by Art. 55 of Law no. 272/2004 regarding the child's protection and promotion of rights, as further amended and completed.

With the support of the Ministry of Labor, Family, Social Protection and Elderly, the Transcena Association, in partnership with 8 non-governmental organizations with similar programs in the domestic violence field developed the project "Advocacy campaign for the urgent implementation of the amendments of Law no. 217/2003, republished, especially of the protection order", financed by Open Society Foundation.

A national information campaign has been developed within the project, on the protection order and two national studies have been issued, regarding the implementation of protection orders and social services for the domestic violence victims.

For the first time in Romania, the way that the lawful provisions regarding the protection order and the efficiency of this tool in the increase of the victims' safety were implemented. In Romania, during May 12<sup>th</sup> 2012 – September 30<sup>th</sup>, 2013, 2453 issuance requests of a protection order against a family aggressor had been issued, a little more than 40% being allowed. The most of the requests had been registered in Bucharest City, and the less in Caras Severin county. Although the protection order should be judged with expedience, the study stressed that the national average period for the resolution of a request is 33 days, while the victim is still in danger. The second study regarding the statement of services underlines the lack of a permanent training program of specialists, as well as an inappropriate financing, as assignment both by types of expenses, and as budget level.

In 2012, was adopted **the Government Decision no.1156/2012**, regarding the approval of the National strategy for the prevention and fighting against the domestic violence phenomenon for the 2013 – 2017 period and of the Operating plan for its implementation.

The conclusion of this public policy document was the result of a close cooperation between MMFPSPV and the other ministries with charges on the prevention and fighting against the domestic violence (Ministry of Interior, Ministry of National Education, Ministry of Justice, etc.) but also with the representatives of active non-governmental organizations in the field.

Considering the domestic violence as priority, with respect to the promotion of the relational models based on sex equality, the concrete references to the measures and actions due to grant women, children and aging people, who confront the domestic violence an appropriate protection, represent an absolutely necessary and expected intercession by the relevant specialists, as well as by the persons under domestic violence situations.

This way, in the contents of the National strategy, several operating goals aiming as follows, are defined: the prevention and lowering of the domestic violence phenomenon, protection of the domestic violence victims and making the aggressors responsible by an integrated institutional

framework, the promotion of inter-sector cooperation for the removal of the domestic violence and the partnership support with the civil society.

In terms of concrete measures, adopted by the Romanian authorities with respect to the domestic violence phenomenon, the development of an information campaign must be mentioned, as well as the establishment of a service network referred to domestic violence victims. This way, by the Loan Agreement no. 4825 RO between Romania and the International Bank for Reconstruction and Development (IBRD), ratified by Law no. 40/2006, MMFPSPV by the Program for the domestic violence victims, Part of the Social Inclusion Project had developed, during November 2012 – January 2013, the campaign of awareness and sensitivity of public regarding the fighting against and prevention of domestic violence “You must not be indifferent to domestic violence” with the following components: organization of 2 national conferences at the beginning and at the end of campaign in Bucharest; the organization of 7 regional conferences on specific topics related to the prevention and fighting against the domestic violence; issuance of an inquiry, whereof goal consisted in the research of public attitude and the public information degree regarding the domestic violence phenomenon, assessment of the information degree of the involved institutional actors, as well as of the social services and existent protective mechanisms for the victims and family aggressors; organization of 35 street events – caravan type on three different routes and issuance of 2 spots, TV and radio. At the same time, 4 centers were established, for the hosting of domestic violence: district 3 of Bucharest City and in Suceava, Dambovitza and Iasi counties.

Also, during 2010-2012, it was developed the National interest program 2 (PIN 2) “Intervention in the Domestic violence Situations” approved by GD no. 1007/2010. Within this program, two projects had been approved, implemented by the General Directorates of Social Assistance and Child Protection (DGASPC) of the Vaslui and Alba counties, whereby the specialized services were established and the information campaigns were developed:

➤ within DGASPC Vaslui, it was established the Department for the emergency intervention and a phone line for the information on emergency cases Vaslui (with an area component at Barlad), whereby 90 violence victims on the child and/or domestic violence victims benefitted, and 50 families where the violence phenomena have been expressed, were oriented to the relevant competent institutions or services. At the same time, 20 information campaigns developed and 2 press conferences, whereby 500 brochures, 200 posters and 3000 flyers have been distributed;

➤ At the DGASPC Alba level, the Child’s Phone and the Domestic violence Victims’ Phone Department was established, where a mobile intervention team was established, too, developing at the same time a green tel. phone line for the notification of domestic violence cases. Consequently to the project implementation, 37 children and 14 adults of Alba county, domestic violence victims, benefitted from the mobile team services, and 34 persons (children or adults) benefitted from the phone advisory services granted to the specialists. Within the project, DGASPC Alba concluded partnerships with all the local institutions involved in the prevention and fighting against the domestic violence field, for the development of a professional networks that support the victims.

According to statistic data corresponding to the reporting period<sup>13</sup> the following conclusions regarding the offenses provided by Law no. 217/2003 concerning domestic violence result:

- 2305 sentenced persons (557 in the 2011, 942 in 2012 and 806 in 2013);
- 1139 women victims (243 in the 2011, 446 in 2012, and 450 in 2013);
- 296 allowed issuance requests of a protection order (67 in 2012 and 229 in the 2013).

## ***Economical protection of families***

### ***Family provisions***

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<sup>13</sup> For the 2010 year, no relevant data is found in the databases administered by the Ministry of Justice.

### **Law no. 277/2010 on family support allowance provides that:**

(1) The family consisting of husband, wife and children under their allowance, who live together, hereinafter referred to as *family* benefit from the allowance for the family support.

(2) The single person and the children under her allowance and who are living with her benefit from allowance, too, being further referred to as *single-parent family*.

(3) The family is also considered, in accordance with the provisions of para. (1) the unmarried man and woman, with their children and the children of each one of them, who live and dwell together, if this is consigned by the social inquiry.

In accordance with the **Social assistance law no. 292/2011**, all the Romanian citizens who live on the Romanian territory, have their domicile or residence in Romania, the citizens of the European Union member states, of the European Economic Area and the citizens of the Swiss Confederation, as well as the foreigners and stateless persons, who have their domicile or residence in Romania have the right to social assistance, under the conditions of Romanian legislation, as well as of the European Union regulations and of the agreements and treaties where to Romania takes part.

With respect to the minimum income guaranteed, the beneficiaries are also the families or single persons, citizens of another states or stateless, who have their residence or, as the case may be, their domicile in Romania, under the Romanian legislation conditions.

With respect to the **Government emergency Ordinance no. 111/2010**, the holiday and the monthly indemnity for the children allowance is granted provided that the applicant jointly accomplishes the following conditions:

- a) he/she is Romanian citizen, foreigner or stateless person;
- b) he/she has, In accordance with law, the domicile or residence on the Romanian territory;
- c) he/she lives in Romania with his/her child/children, wherefore requires the rights and takes care of their growing and care.

In accordance with **Law no. 277/2010**, the families whereof members are Romanian citizens having their domicile or residence in Romania, as well as the citizens of other states or stateless who have their domicile or as the case may be, residence in Romania, under the Romanian legislation conditions, benefit from **allowance for the family support**.

## **Article 17 - The right of children and adolescents to social, legal and economic protection**

### **Paragraph 1**

#### ***Restriction of the parental rights***

Art. 508 of Law no. 287/2009 regarding the Civil Code: The termination of parental rights may be pronounced by the tutelary court, on the request of the public administration authorities, with charges in the child's protection field, *if the parent endangers his child's life, health or development, by bad treatments applied to him, by the alcohol or drugs consumption, by the abusive behavior, by the serious negligence in the fulfillment of parental liabilities or by serious infringement of the child's higher interest. The request is emergently judged, by summon of parents and based upon the psycho-social inquiry.* The procurator's presence is mandatory.

The termination of parental rights is complete and is extended over all the children born at the date of decision. However, the court may decide the disqualification only regarding certain parental rights or certain children, but only if, this way, the children growing, education, learning and training are not endangered (art. 509)

The termination of parental rights does not exempt the parent of his liability to give allowance to his child. (art. 510)

Provided that, after the termination of parental rights, the child is on the position of being deprived of both parents' care, the trusteeship is established. (art. 511)

The court gives back to the parent the exercise of parental rights, if the circumstances that led to the disqualification of their exercise ceased and if the parent does not endanger anymore the child's life, health and development. Until the resolution request, the court may host the parent to have personal relationships with his child, if this is for the child's higher interest. (art. 512)

The court decision, whereby it decides the termination of parental rights may be attacked by main appeal within 30 days from the communication of the decision, In accordance with Art. 468 para. (1) of the Code of Civil Procedure. In accordance with Art. 471 para. (1) of the Code of Civil Procedure, the appeal and, if any, the appeal reasons are submitted to the court whereof decision is attacked, under the sanction of nullity.

In accordance with Art. 483 para. (2) of the Code of Civil Procedure and art. XVIII para. (2) of Law no. 2/2013 regarding certain measures for the respite of law courts, as well as for the preparation for implementation of Law no. 134/2010 regarding Code of Civil Procedure, the decisions made on call in this respect are not subjected to the recall, the decision pronounced by the court in the appeal being definitive and executive, In accordance with Art. 633 pct. 1 and 634 para. (1) pct. 4 of the Code of Civil Procedure.

### ***The young delinquents***

The new Criminal Code, applicable since the 1st of February 2014, has brought significant changes concerning the criminal liability of the underage who perpetrate offences. With regard to the limits of the criminal liability, they remain unchanged, but the sanctions applicable to minors were amended. Thus, In accordance with the new Criminal Code, the minors are no longer receiving corrections, but only *educational measures*, which come in two types: non-custodial and custodial. The custodial educational measures can be ordered in court when the minor has also committed an offence for which and they received an educative measure that was executed or of which execution started before the perpetration of the offence for which they are tried or when the committed act is of a major gravity, the penalty provided by the law for the perpetrated offence being 7 years or longer or imprisonment for life.

With regard to the period of admission in specialized institutions, when the penalty provided for the committed act is imprisonment for 20 years or longer or life detention, *the minor will be sanctioned with the educational measures of admission in a detention centre for a period of 5 - 15 years* (art. 125 para. (2) Criminal Code).

The new Criminal Code also brings an expansion of the scope of the non-custodial educational measures, which can be applied to the minor who is criminally liable, sanctions of which purpose is their re-education and social integration.

The non-custodial educational measures are, in their order of gravity: the civic training stage, supervision, consignment on end of the week, daily assistance.

The educational measure of the civic training stage consists in obliging the minor to attend a program with a maximum period of 4 months, to help them understand the legal and social consequences they expose to if they commit offences and to make them accountable with regard to their future conduct.

The organization, assurance of minor's attendance and supervision, during the civil training class, are made under the coordination of the probation service, without affecting the minor's school or professional schedule.

Consignment on week-end consists in the minor's obligation not to leave the house in Saturdays and Sundays, on a period between 4 and 12 weeks, besides the case where, during this period, they are required to attend certain programs or to perform certain activities ordered by the court. The supervision is made under the coordination of the probation service.

The supervision consists in controlling and guiding the minor within their daily schedule, on a period between two and six months, under the coordination of the probation service, to ensure

attendance to school classes or professional training and to prevent them to perform certain activities or to contact certain individuals who might impact their rehabilitation process.

Daily assistance consists in the minor's obligation to comply with a schedule established by the probation service, which also contains the time table and the conditions of the activities, as also the interdictions imposed to the minor on a period between 3 and 6 months.

The contents of the obligations which the court may order against the minor concomitantly with one of the non-custodial educational measures will be adapted depending on the person and conduct of the minor and on the specific of the committed offence.

These can be, as for example: they attend a school or professional training class, not exceeding, without the consent of the probation service, the territorial limit established by the court, not taking part to certain places or in certain sportive, cultural manifestations or in other public gathering, established by the court, not coming close and communicate with the victim or the family members, with the participants to the offence or with other individuals established by the court, to go to the probation service at the dates set by them, to subject to the control, treatment or health care measures.

Regarding the procedural matters, the new Criminal Procedure Code also includes special regulations on minor's protection within the criminal trial, containing as the criminal code in force a distinct chapter meant for the special procedures in cases with underage indictées.

By keeping the rules established in the old regulation for minor's protection, such as the obligation for them to be assisted by attorney during the criminal trial, the reduction of the general terms concerning the enforcement of some preventive measures, the new Criminal Code provides, as a general rule, the possibility of the preventive custody of the minors only if the effects of such a measure on their personality and development would not be disproportionate as against the legitimate purpose followed by taking such measure.

The minors represent a special category for which the legislator has provided certain regulations meant to facilitate their social reintegration process, considering both the stage of mental development and the initial impact of incarceration in the Preventive Arrest and Detention Centers (CRAP) organized under the suborder of the General Inspectorate of the Romanian Police.

With regard to the national relevant laws, in force during the reporting period (**1 January 2010 – 31 December 2013**), it is necessary to disclose the dispositions contained at the time by the **Criminal Procedure Code**<sup>14</sup> and by the **Law no. 275/2006 on the execution of the penalties and measures ordered by the judicial bodies during the criminal proceedings**<sup>15</sup>.

Therefore, In accordance with art. 160<sup>e</sup> from the previous criminal procedure code „(1) *The preventive detection and arrest of the minor is made pursuant to the provisions of sections I, II and IV, with the waivers and completions from this section. (2) In establishing the applicable provisions with regard to the measure of preventive detection and arrest, there are considered the age of the accused or of the defendant from the date when a ruling is made on taking, extending or maintaining the preventive measure.*”

Also, In accordance with para (1) from Art. 160<sup>f</sup> from the previous criminal procedure code „(1) *The minors detained or arrested preventively are ensured, aside the rights provided by the law for preventive prisoners having exceeded the age of 18, with own rights and with a special regime of preventive detection, in relation to the specifics of their age, thus the custodial measures taken against the minors with the aim of a good performance of the criminal trial or to prevent them escaping the criminal investigation, trial or penalty execution, not to prejudice the physical, mental or moral development of the minor.*”

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<sup>14</sup> as of 12 November 1968, published in: the Official Bulletin no. 145 as of 12 November 1968, rescinded currently under Art. 108 of Law no. 255/2013 for the enforcement of the Law no. 135/2010 on the Criminal procedure code and for the amendment and completion of certain legislation containing criminal procedural dispositions.

<sup>15</sup> rescinded currently under art. 190 letter b) of the Law no. 254/2013 on the execution of the penalties and custodial measures ordered by the judicial bodies during the criminal proceedings.

In reference to the *maximum period of the preventive detention and arrest* of the minors, we show that under Art. 160<sup>9</sup> from the previous criminal procedure code: „(1) **Entirely exceptionally, the minor aged between 14 and 16 years**, who is criminally liable, can be **detained** by disposition from the prosecutor or from the criminal investigation body, with the notification and under the control of the prosecutor, for a period **not longer than 10 hours**, if there is indubitable data that the minor has committed an offence sanctioned by law with life detention or 10 years in prison or longer. **Detention** can only be extended if this is ruled, by motivated ordinance, by the prosecutor, with a maximum duration of 10 hours.” Also, in art. 160<sup>n</sup> from the former criminal procedure code, was stipulated that „(1) **the minor aged between 14 and 16** may only be **arrested preventively** if the penalty provided by the law for the act they are **accused of** is life detention or 10 years in prison or longer and another preventive measure is not sufficient. (2) The period **of arrest of the minor indictee aged between 14 and 16** is, during the criminal prosecution, **of maximum 15 days**, and the legality and grounds for preventive arrest are verified during the proceedings regularly, but not later than 30 days. The extension of this measure during the criminal prosecution or its maintenance during the proceedings can only be ordered in exceptional cases. **The preventive arrest** of the minor during the criminal prosecution may not exceed, in total, a reasonable **term and no longer than 60 days**, each of the extensions not exceeding 15 days. **In exceptional cases**, when the penalty provided by law is life detection or 20 years in prison or more, preventive arrest of the minor indictee aged 14 - 16 during the criminal prosecution can be extended **up to 180 days**. (3) **The minor indictee aged over 16** can be taken into custody during the criminal prosecution on a maximum period of **20 days**. The period of the preventive measure can be extended during the criminal prosecution, each time with 20 days, The provisional detention of the minor indictee during the criminal prosecution may not exceed, in total, **a reasonable term and no more than 90 days**. **In exceptional cases**, when the penalty provided by law is life detection or 10 years in prison or more, the provisional detention of the minor indictee aged during the criminal prosecution can be extended **up to 180 days**. The legality and the grounds for the provisional detention of the minor indictee aged over 16 during the trial is checked periodically, but not later than 40 days. (4) The period of **detention of the minor indictee is maximum 3 days**.”

With the aim of highlighting the statistic situation with the minors imprisoned in CRAP, during the reference period, the following are relevant:

- During the period **01.01.2010 – 31.12.2010**, CRAP imprisoned **787 minors**, out of which **748 males** and **39 females**. Out of the 748 male prisoners, 58 were aged 14-16 and 690 aged 16-18, and out of the female prisoners in 2010, 7 were aged 14-16 and 32 were aged 16-18.
- During the period **01.01.2011 – 31.12.2011**, imprisoned **859 minors**, out of which **827 males** and **32 females**. Out of the 827 male prisoners, 58 were aged 14-16 and 769 aged 16-18, and out of the female prisoners in 2011, 2 were aged 14-16 and 30 were aged 16-18.
- During the period **01.01.2012 – 31.12.2012**, CRAP imprisoned **907 minors**, out of which **883 males** and **24 females**. Out of the 883 male prisoners, 61 were aged 14-16 and 822 aged 16-18, and out of the female prisoners in 2012, 2 were aged 14-16 and 22 were aged 16-18.
- During the period **01.01.2013 – 31.12.2013**, CRAP imprisoned **966 minors**, out of which **936 males** and **30 females**. Out of the 936 male prisoners, 73 were aged 14-16 and 863 aged 16-18, and out of the female prisoners in 2013, 5 were aged 14-16 and 25 were aged 16-18.

In all the above cases, the minors were in the provisional detention centers for a limited time.

It should be noted that, after the effective date of the new criminal procedure code (Law no. 135/2010, in force starting with 1 February 2014), **it is determined a consistent decrease of the number of imprisoned minors**, forecasting that this decreasing trend will also be maintained in the following period, fact based on the new provisions instituted by para. (2) of Art. 243 from the new criminal procedure code, which stipulates that “*provisional detention can be ordered against a minor indictee, in exceptional cases, also if the effects that the custody would have over their personality and development are not disproportionate against the purpose sought by taking the measure*”. In June 2014, 364 individuals aged 14-18 were recorded in the custody of the penitentiary system. Among them, 291 have final conviction

sentences, 8 are convicted by first-instance decision and 47 are in provisional custody. At this time, 141 of them are admitted in the educatory centers from Buziaş and Târgu Ocna, and 208 are in custody in the detention centers from Craiova, Tichileşti and Târgu Mureş.

These coordinates provided the framework to promote the *Law no. 254/2013 on the execution of the penalties and custodial measures ordered by the judicial bodies during the criminal proceedings*, which brings on front the formation of some institutions specialized in rehabilitating the minors who committed offences: the educatory centers and the detention centers<sup>16</sup>. These should have available appropriate premises for accommodation, meal preparation and serving, schooling and professional training activities, social and psychological assistance, religious assistance, cultural, sportive, recreational activities, medical treatment and visiting facilities.

With regard to the infrastructure of the penitentiary system, required to take the minors into custody, we specify that, in accordance with the provisions of Art. 189 para. (1) of Law no. 254/2013: *At the effective date of this law, the penitentiaries for minors and the young and the re-education centers are organized in detention centers and educatory centers*. Thus, the re-education centers Buzias and Targu Ocna have transformed in educatory centers, whilst the minor and young penitentiaries Tichilesti and Craiova have become detention centers. These are completed with the Targu Mures Penitentiary - transformed in detention center, the formal profile regulation being made once with promoting the Organization and Administration Regulation of the National Administration of Penitentiaries, by subsequent legislation.

With reference to sanctioning the disciplinary misconduct committed by minors during the admission, under the new law [art. 174 para. (1) letter e)], they can be sanctioned with *separation from the collective for a period of maximum 4 hours per day, but not more than 5 consecutive days*, while the disciplinary penalty with isolation, for maximum 10 days, is opposable only to adults [art. 174 para. (2) letter b)].

For the minors who have perpetrated offences, the finality of the recuperative activities performed during the execution of the educational measure consists, with priority, in *forming/developing the socially-agreeable behavior and tertiary prevention of relapse*. The center of recuperative interventions, for minors who committed criminal acts, is school training (262 minors enrolled in school training activities in the educational year 2013-2014). In completing the enriching-educatory process, the specialized personnel from the detention establishments develop, in cooperation with the teachers providing schooling for the admitted individuals, extracurricular activities and psycho-sociologic support.

The specialized education and assistance include *educative, therapeutic, sportive, recreational, cultural activities*, planned depending on the time they spent in detention<sup>17</sup>. There are organized both structured educational programs and artistic activities of cultural dissemination, to which the admitted individuals attend at least once per week. Switching the focus from the custodial to the educatory side is also highlighted by the fact that the minors attend regularly in educative activities in community, next to teenagers of the same age.

It is relevant, given the recuperative interventions, for the minors to involve in *programs of general and specific psychological assistance* – particularly intervention programs meant to reduce aggressiveness. All the minors from custody benefit from *appropriate assistance on returning into the community*. This targets the facilitation of the process of returning in family or identifying some alternatives of social support (e.g. substitute family, accommodation, job, continuing the studies or professional training etc.) and orientation towards public institutions/non-governmental organizations competent in matters of social assistance and health care.

The direct activities with the minors in detention are performed by *special personnel*, in a sufficient number, considering the psycho-sociological skills, the relating capacities and the

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<sup>16</sup>Art. Art. 190 of Law no. 254/2013 rescinds the Decree of the State Council no. 545/1972 on the execution of the educatory measure of admission of the delinquent minors in a reeducation center, as published in the Official Bulletin of the Socialist Republic of Romania no. 162 as of 30 December 1972.

<sup>17</sup> Law no. 275/2006 par. (7) of Art. 82 (in force during the reference period): *„The individuals under provisional custody, on their request, may (...) perform educative, cultural, therapeutic activities, psychological counseling and social assistance, within the provisional custody centers or the provisional detention centers, with the approval of the judge in charge with the execution of the penalties.”*

availability to work in this population category being items of interest in selecting the personnel. The education and psychosocial personnel/ admitted individuals ratio, between the two *educatory centers*, at this date, *is about 1 educator (including the category of supervisor-educators)/ 2 individuals*. In the *detention centers* the ratio is about **1 educator / 12 individuals (minors and young)**.

Concerning the CEDS question on the separation of minors from adults, under art. 142 from the criminal procedure code, "During detention and custody, the minors are kept separate from the adults, and the women separate from men", matter which is also reiterated in the 4th thesis of Art. 160f „During detention of provisional custody, the minors are kept separate from the adults, in places specially developed for the minors in provisional custody.”

Pursuant to para. (2) of Art. 32 of Law no. 275/2006 "The minors and the young convicted to custodial penalties execute the penalty separate from the adult convicts in special detention premises".

Also, Art. 159 para. (2) of Law no. 254/2013 (beyond the reference period), the minors execute the custodial educational measure separate from the young and the individuals aged over 21).

Similarly, pursuant to Art. 161 para. (1) of the same law, *every admitted individual is entitled to education, In accordance with his needs and capacities, as also to an appropriate professional training.*

In context, it is worth noticed that at the level of each CRAP there is at least a room meant exclusively for accommodation of the minors. As an exception, we show that following the analysis made on the reference period, it has been determined that at the level of the 24 centers out of the total of 51 CRAP subordinated to the General Inspectorate of the Romanian Police, there have been recorded cases where, for brief periods of time, the minors were accommodated with adults, especially young (individuals under 21), in the purpose of ensuring an appropriate protection of the minors and preventing some negative events. These isolated cases were determined by over-crowding of the detention and provisional custody centers, the presence of a single minor in the center, demands from the judicial bodies to ensure a good development of the criminal proceedings, demands from the minors, and they were disposed both to decrease the negative effects of the custody on the physical, mental or moral development and to prevent the occurrence of some negative events by individual accommodation of the minors. In these cases, there were ordered specific measures to ensure a close supervision/ monitoring by the personnel from the center, by instituting some special supervision signs for the imprisoned minors, in order to apply immediate measures if an assessment on their situation would indicate the risk for acts of violence upon them (situation which was not recorded).

It is important to underline that during the imprisonment period in the detention and provisional custody centers subordinated to the General Inspectorate of the Romanian Police, in order to remedy the psychological, social and professional deficiencies, the minors are granted with psychological assistance.

In consideration of the CEDS request, included in the interpretative statement of the CSER articles, with express reference to Art. 17-1, concerning the fact that *the minors found on the national territory have access to shelter and medical assistance during the period they are under state jurisdiction*, we specify the following:

With regard to the category of the **non-accompanied minors** found on the Romanian territory, without being entitled to stay, Art. 131 from GEO no. 194/2002 contains provisions concerning the legal regime applicable to this category of individuals, to which respect:

- a) their identity and the way they entered the country is established;
- b) irrespective of the way they entered in Romania, they receive representation through a competent institution under the law, which ensures appropriate protection and care, including accommodation in special centers of protection for minors under the same conditions as for the Romanian minors;

c) measures to identify the parents are taken, irrespective of their place of residence, in the purpose of re-joining;

d) until the parents are identified, the minors of school age have access to the educational system.

The removal of a non-accompanied minor can be made, following a prior assessment made by the competent authorities, only if the minor is sent to the parents, when they are identified and do not have their residence on the Romanian territory, to the family members, with their agreement, to the assigned guardian or to some appropriate reception centers in the returning state. If the parents or other members of the family are not identified or if the minor is not accepted in the country of origin, the minor is granted with the right to temporary stay on the Romanian territory, with all the rights and obligations coming from such statute. With the aim of finding the appropriate solutions, the General Inspectorate for Immigration cooperates with other institutions, as also with national and international organizations specialized in the field of minors' protection.

## Paragraph 2

I. The strategic directions and the programs initiated by MEN and developed together with the partners with regard to increasing the participation of Roma children in schools refer to:

**Granting by MEN of some distinct places** for Roma children in admission to **high-schools** for various specialties (between 2700 and 3200 Roma students were admitted each year in the 9th grade on such places).

- **Granting by MEN of some distinct places** for young Roma individuals **in faculties** from within all the state universities (for admission in the university year 2010-2010, 611 places were granted, in 2012-2013 - 564 distinct places, for 2013-2014 - 594 places and for 2014-2016 there were granted 602 places for Roma students);

- **Continuing the initial, intensive training, within the Summer classes of language and the methods of teaching the Romani language, potential teachers of Roma language and history** - Each summer, starting with 1999 and until now, there were organized 1-2 summer camps for Roma language/ summer, with participation of 50-55 Roma students/ series (organized by MEN and UNICEF, in total over 1200 potential teachers of Roma language and history; out of them, 440-590 work *permanently* in education as teachers of Roma language and history, as educators and trainers, as Roma inspectors, continuing, in time, their training on university level in the teaching profile, at the University of Bucharest - the Department of Remote Open Education CREDIS, in the period 2000-2010, and in OBB Cluj Napoca - The Faculty of Psychology and Education Sciences, between 2008 and 2011);

- **With help from MEN, continuing the initial training, at university level, of the future Roma language teachers and specialists in the Roma linguistic field, within the Faculty of Foreign Language and Literature of the University from Bucharest** – in the academic years 2010-2011, 2011-2012, 2012-2013, there were enrolled 21 Roma students/ year (the department started with a first optional class of Romani language, introduced since 1992 and then, since 1997, it was extended as Romani language and literature department. Since then, there were admitted each year 15-21 Roma students in the Romani language and literature department);

- **Preserving the Roma language, history and culture in the teaching steps** (ensuring continuous teaching of **3-4 hours/ week of Romani mother tongue**, in the grades I-XII, respectively **1 hours/ week of Romani history and tradition**, in the 6th and 7th grades) in almost all the counties from Romania. Approximately 26,000 - 31,000 students from almost all the counties study each year classes of Roma language and history, or even **fully** in the Romani mother tongue (a number of approximately 900 Roma pre-scholars and students);

- **Continuous support from MEN, where required, for integral teaching in the Roma mother tongue, at the level of the pre-school education**, by bilingual approaches (Romani - Romanian, Romani - Hungarian). In the past five school years, a variable number between 18 and 22 kindergartens operate with teaching in Romani mother tongue;

- **Continuous support from MEN, where required, for integral teaching in Roma mother tongue, in the grades I-IV** (with 4 hours/ week mandatory of Romanian language and literature; almost 450 Roma students have chosen this type of education on primary level).
- **Continuing funding by MEN of some national school contests in the profile of Roma language and history** (of the national school Olympics of Roma language, 15th edition (in 2014, for 74 competitors in the national stage), of the national school competition of Roma history and tradition (7th edition, 2014), of the national school competition "Diversity" (annually, January - December: 290 individuals in the final stage, 900 individuals in the mass stage; in the school year 2012-2013, 6th edition). Supporting the contest of literary creation in Roma language "Stefan Fuli" (3rd edition, Craiova, 2014), becoming in 2013 a contest funded by MEN. Starting, since 2013, of the international Olympics of Roma language, funded by MEN - Oradea, June 2013 and in 2014, in Brasov, the second edition took place.
- **MEN continuing to fund and edit each year the necessary school manuals** for reaching the language, history and traditions of the Roma people, but also the educational and auxiliary materials for Roma language, intercultural education and diversity etc., together with the partners. In Romania, MEN disposed of the full set of manuals of Roma language and literature, Roma history and traditions, for the mandatory education (the grades I-X), **but also for university level**. In the school year 2010-2011, within the partnership MEN-UNICEF, it was edited the *Romani language and literature manual for the 10th grade* and, also, *The Guide of the school mediator (for Roma communities)*, and in 2013 four mathematics manuals in Roma for the study years I-IV).
- **MEN ensuring the positions and the related funding for the Roma language and history teachers, for the teachers who teach in Roma** In the school year 2012-2013, 443 teachers ensured the teaching of Roma language, Roma history and traditions or in Roma mother tongue, in over 300 school units;
- **MEN maintaining and financing the positions of Roma and non-Roma inspectors for the educational problems of the Roma people on ISJ level** (42 inspectors) and three positions on MEN level (generally, 1/2 to each position on county level).
- **MEN maintaining the network of Methodists for Roma language, history, tradition and schooling** (at the level of each county, between 2 and 6 Methodists, out of which at least one for Roma language, history and traditions, 146 Methodists on country level);
- **MEN continuing to train Roma school mediators**. Starting with 2003, MEN trained with PHARE funds 417 Roma school mediators, and with its partners in educational profile, the period 2007-2013, other 572 Roma school mediators were trained. In total, there were prepared 1001 school mediators, out of which, each year, 420-430 operate in the educational system. 259 of them, with 78 managers from the schools where they work and 32 inspectors for Roma education, benefited from an additional training from European perspective, ensured and funded by the European Council, within the ROMED Programme (6 training rounds, 3 in 2012, 2 in 2013 and one in 2014). Other 100 school mediators were trained by Romani Criss and MEN in 2013 from non-segregation and non-discrimination perspective of the Roma children in the educational system. **Continue funding** – preponderantly, from the amounts allocated by the school inspectorates, but also by some local and county councils – **the positions occupied in the school units by school mediators**. In the school year 2009-2010, 402 mediators operated, in 2010-2011 there was a number of 424 school mediators, in 2011-2012 - 435, in 2012-2013 404 mediators and in 2013-2014, 396 school mediators operated.
- **Training**, in the school years 2010-2011, 2011-2012 and 2012-2013, within the MEN - UNICEF partnership, 300 principals of school units dealing with the phenomena and school absence and school leaving. The teachers from such schools have benefited, on their turn, from training from the perspective of the teaching methods, children rights and one component targeted the parental education.
- **Continue the organization - where applicable - by ISJs, school, city halls - of summer kindergartens preparatory to the 1st grade**, for Roma students who did not went to kindergarten.

- **The organization and financing of courses by MEN** for *school recovery*, such as **"The second chance"** (between 2005 and 2011, each year, around 5000-7000 teenagers, young and adults, out of which 60% Roma, followed this program, until the school year 2011-2012), with transferring the program, from 2011-2012 at the level of the local school units, as school after school, In accordance with LEN no. 1/2011;
- **Annual structuring of a database on the school participation of the Roma in education.**
- **Continuing the cooperation with partners in structuring, funding and running together of some educational programs** (from structural funds, with institutional partners and partners from the civil society).

II. Other strategic directions of action/ activities, programs/ projects considered permanently by MEN for Roma education, with results to be visible in time, are:

**1. Efficient, current monitoring of compliance with the MECT Order no. 1540/ 19 July 2007** *on prohibiting the school segregation of Roma children and the approval of the Methodology for prevention and removal of the school segregation of the Roma children* (published in The Official Bulletin no. 692/11.X.2007). Each year, strict compliance is required with the order on prohibiting the segregation (given class structuring from the beginning, preparatory grade, 1st grade, 5th grade, 9th grade) and compliance with the de-segregation plans (of the potential segregated groups/ classes/ schools).

**2. Efficient, current monitoring of compliance with the Order no. 3774/22.04.2008** *on the approval of the school schedule for the optional object „Intercultural education”*(curriculum to the school decision for gymnasium education) and of the reviewed school schedule for the optional object "Human rights" (curriculum to the school decision for high school ), as also with the MECT Order no. 1529/18 July 2007 *on the development of diversity in the national curriculum* (published in the Official Bulletin no. 670/1.X.2007). As an effect, the amendment of the school schedules will be accelerated, implicitly - at their core - of the manuals, so that the diversity (historical, ethnical, religious, gender, physical etc.) will be reflected in the school manuals. As a result, Order no. 1529/2007 lead to the change in the curriculum or related manuals, so that diversity (historical, ethnical, religious, gender, physical etc.) to be reflected in textbooks. However, based on the provisions of this Order there were developed two curricula for intercultural education, already mentioned, plus the history curriculum for national minorities in Romania, namely: the syllabus for Intercultural Education curriculum - secondary education and high-school, and the syllabus for the course on national minorities' history in Romania (high-school level).

### **Access and participation in education**

By analyzing the situation of school participation in Romania, the Ministry of National Education is preoccupied by the access and participation to education of the main vulnerable educational groups:

- the population from the rural area and from the areas disadvantaged in social and economic terms;
- the Roma population;
- the children with special education needs;
- other vulnerable groups (institutionalized children, migrants, street children, HIV-positive children).

To encourage the school participation and to reduce the losses, the Ministry of National Education developed **a system of regulations** focused on specific matters, aside the legislative framework guaranteeing the right to education, elaborated **national plans and strategies of social inclusion** and it enforced **intervention programmes** for the various target groups.

We further show some of the measures that were and are still on the agenda of the Ministry of National Education:

## **1. Direct intervention measures upon the causes and effects of the phenomenon related to scholar non-attendance**

- *Actions for the eradication of illiteracy or actions related to the prevention of scholar illiteracy and to the provision of the continuation of children's and young persons' of scholar age tuition within the pre-university level;*
- Introduction within the regulatory framework of the programme called „*The second chance*” at the level of the mandatory learning programme (starting from 2004);
- Promotion, at national level, of a program for the education of parents having children aged between 3 and 12 years old in order to improve their parental skills and to prevent scholar and family abandon familial (starting from 1998) and of a program of „Education of future parents” (starting from 2004 in 8 pilot counties; at local level the request was extended on an annual basis) ;
- Generalization of the preschool group in order to ensure an optimum preparation for school and for the children's future life during the pre-scholastic period and in order to prevent failure and scholar abandon during the scholar years within the mandatory learning programme (2003) and the introduction, starting with the school year 2012-2013 of the preschool group (children aged between 6-7 years old) in the mandatory learning programme. The inclusion of students was done on the basis of the Methodology concerning the enrollment of children in the preparatory degree and in the first degree, as approved by the Minister of Education. This level of study benefits of framework education plans and of distinct curricula also approved by order of the Minister of Education. Given the specificity of the preparatory degree, the Ministry of Education and Scientific Research has purchased furniture and teaching materials for this level of age and, at the same time, trained the didactical staff that will conduct the classes. This measure was intended to remove the disturbances created by the kindergartens' teaching infrastructure and to improve pupils' adaptation in schools by creating an educational environment able to stimulate children's interest in education.
- The design and the development of a *Strategy regarding the importance of the early education*, in order to increase the quality of the national education system and to ensure the right of each child to education and maximum development of its potential (the proposal of posting on the website of the Ministry of National Education in 2010).
- Allowing secondary education graduates who do not continue their studies in high school to complete, up to age 18, at least one training program that allows the acquiring of suitable qualification in line with the National Qualifications Framework;
- Providing employment opportunities in the labor market following completion of pre-university studies, by acknowledgement of professional skills through formal, informal or non-formal education, following their passing of a training certification exam;
- Initiate and conduct educational programs designed to prevent school failure, aiming at increasing the competitiveness of the current generation of students by increasing access and participation in education, increasing motivation for learning and long-term staying in education through the development of integrated services, digital education during transition to secondary school and increasing the adaptability of school, associated with the prevention of school failure by preschool children enrolled in the preparatory group by creating/ testing/ piloting digital teaching tools and an alternative methodology to prepare school debut.

**2. Measures which envisage the flexibility of the structure of the school year depending on the local climate conditions, relief and the specifics of the occupations in the respective area and measures which envisage the flexibility of the organisation of the learning process through different types of learning forms, such as low frequency learning programmes, summer schools etc.**

**3. Measures for the stimulation of the participation into the educational process of the Roma children and young people:**

- Granting of an enhanced number of subvention positions within the academic level of education, especially assigned for the Roma candidates, as well as granting certain positions for these persons upon the admittance into the high school learning system;
- Development of classes / groups within the normal schools and pedagogic colleges for the formation of the future Roma or other ethnic groups teachers /institutors , which will be working in classes of Roma, the system has started since 1990/1991 and still goes on in present as well; the object of these measures envisage the stimulation of the formation of the didactic personnel which speaks the Roma language;
- The denomination of Roma/for Roma scholar inspectors in each of the county scholar inspectorate;
- Introduction of the scholar mediators in Romanian Occupational Codes COR (2001), as auxiliary didactic personnel;
- Development of the section of Roma language and literature within the Faculty of Foreign Languages and Literatures of the University of Bucharest, starting from the university year 1998/1999, which also operates in present;
- Development of initiation/completion courses dedicated to the Roma language dedicated to the Roma and/or non-Roma didactic personnel, qualified and not qualified (annual, starting with 2001);
- Development of programmes, manuals, and auxiliary materials for the Roma language and for the traditions and history of the Roma minorities (annual).

#### **4. Measures for social protection in order to facilitate the access to education of children / youngsters:**

- the free character of education, free education material base, medical and psychological assistance to students in pre-university education and free textbooks during compulsory education system;
- provision of services and institutional facilities by granting social scholarships and other forms of support for the pupils within the state pre-academic educational system which come from families which are disadvantaged from a social and economic point of view, from areas which are underprivileged or which are affected by unemployment. Continuing the National Social Support Program "Money for school", the „200 EURO Programme” and the implementation of the National Social Support Program "Professional Scholarship";
- providing of scholar materials for the pupils coming from families with low incomes;
- reimbursement of transport costs for pupils attending schools at a distance greater than 50 km. from the place of residence or providing free of charge transport services, school minibuses purchased by the Ministry of Education and distributed by the County School Inspectorates depending on the number of students who do not study in their place of residence;
- providing a free of charge daily meal/ snack to the pupils in the primary cycle of education and in the pre-scholastic educational system with normal program (*Law No. 16/2003 on the approval of the Emergency Government Ordinance No. 96/2002 with respect to the provision of bakery and milling products for the pupils in the I-IV grades and, subsequently to the pupils in the pre-scholar educational system*);
- social protection of the children and pupils with special educational needs by means of adequate institutions, classes/groups for pre-scholars and pupils with special needs.
- in the pre-university education system, children with special educational needs enjoy special educational facilities adapted to the type and degree of deficiency, as follows
  - a light or medium disabled children can be integrated into the mainstream education;
  - a child with special educational needs receive individualized educational intervention programs, specific complementary therapies aimed at reducing difficulties in learning,

development and social integration, as well as school counseling, counseling for parents, adapted curriculum, syllabi and assessment programmes. They benefit from financial support from the County Council under the subordination of which is the special school they attend.

5. Intervention programmes with external financial support

- **The project for the *rural educational system (2003-2009)*;**
- **The program for the *rehabilitation of school buildings (1998-2002 – phase I; 2003-2009 – phase II)*;**
- **The PHARE programme called *Access to the education system for the disadvantaged groups (from 2002 until 2010)*;**
- The TVET Phare multiannual programme (2001-2009);
- The Programme called The inclusive early education and the Programme called Reform of the early education (2007-2012);
- The FSE Projects of the Ministry of National Education, especially the ones with respect to the Priority Axis 1 – *Professional education and formation for the support of the economic increase and of the society's development based on knowledge* and the Priority Axis 2 – *Correlation during the overall lifetime with the labour market (2008 – 2013)*.

An important component of these programmes was related to the formation of the didactic personnel focused on the following: interactive teaching methods, multi-culturality, inclusive education, communication etc.

Also, starting from the school year 2005/2006 a series of measures were started as a support for the County Scholar Inspectorates and, implicitly, for the educational institution, with respect to the implementation of the measures included in the *Strategy for the de-centralisation of the pre-academic educational system* (especially the ones which envisage the transfer of administrative and financial competency from the central level to the local public administration), identification and development of new educational spaces, adequate equipment of the existent educational spaces, and of the newly created one, as well as the formation of the educational personnel, especially in the sensitive fields of the educational process: inclusive education, remedial education, early education, multi-cultural education, democratic education for citizens, gen type education etc.

It should also be noticed that the actual involvement of the educational partners within the community with respect to the school problems has increased, one of the most important partners being represented by the local public authorities, which had a more and more increased contribution to the design and adequate organisation of the school groups and even the identification or construction of new spaces.

In the end, we would like to add the fact that the *decrease of scholar abandon*, as well as the reduction of the *early leaving from the education and formation system* have always been in the attention of the Ministry of Education, and, as a result, in the past five years, a series of programmatic documents were developed which envisage the solving of these problems of the system, respectively:

- ✓ **THE PROGRAM CALLED “THE SECOND CHANCE”** – as a support programme, which is addressed to youngsters which have abandoned the mandatory educational program

The programme called *The Second Chance* provides the possibility to continue the studies, without being necessary to interrupt the professional or familiar activity, to all those which have exceeded the legal scholarship age and which did not manage to take part in the mandatory training and to finalise the educational studies at this level.

The programme is structured on two levels:

- *The Second Chance* – primary education

- *The Second Chance* – inferior secondary education (includes also a component for the professional preparation, for the second level of clarification).

For the ones which want to enroll in the programme there is no upper age limit or a minimum necessary level of knowledge. Also, the amenity of the programme consists in the facilities provided by the programme, such as:

- The assessment and the recognition of the competencies previously collected;
  - The possibility of a biannual registration;
  - The teaching language is the Romanian language, but the educational system can be organised in any of the national minorities language, where there are requirements in this respect;
  - The flexibility of the courses programme;
  - Modular curricula (the educational study disciplines are organised on mandatory and optional modules);
  - The content of the lessons is adapted to the interests and the age particularities of the course attendees and has an immediate practical applicability;
  - Educational materials especially conceived for this type of *The Second Chance* programme;
  - Interactive working methods, adapted to the adults education;
  - Working with small groups of course attendants (minimum 8 – maximum 15) ;
  - Counselling of the course attendants during the entire development of the programme.
- ✓ *The Strategic Plan of the Ministry of National Education (2007-2009)* – with six strategic direction, out of which, the provision of the equal and enhanced access to education during the entire lifetime takes an important place and envisages the objectives regarding: the modernisation of the educational system in the rural environment, the stimulation of the early education development, the implementation of the European System of Transferable Credits, the provision of access to education for the disadvantaged groups, the development of permanent education from an institutional perspective, the stimulation of the adaptation of the educational offers to the requirements on the labour market etc.;
  - ✓ The Report of the Presidential Commission for the analysis and development of policies in the education and research fields *Romania Education, Romania research (2007)* – with a series of solutions proposed with respect to a new organisation of the educational cycles, construction of a coherent system for early education, the implementation of a flexible curricula focused on the competencies which are necessary for the personal development and economy of knowledge, stimulation of permanent education etc.
  - ✓ *The Action Plan of the Ministry of National Education for the provision of access to education for the disadvantaged groups and the promotion of inclusive education (2009)* – with actions and targets grouped on five priority fields, respectively: de-segregation, quality in education, formation of didactic personnel, institutional development and inter-institutional development – developed within the 2006 PHARE Project called *Access to education for disadvantaged groups*.

In the context where studies and analysis confirm the fact that there is a connection between the decreased degree of literacy and the early education abandon, as well as a result of the development of many of the previously mentioned programs/projects, The Ministry of National Education considers that the approaches and the most effective initiatives for the increase of the literacy level and for the increase of the scholar participation within the disadvantaged categories (pupils, youngsters, adults), which are promoted and supported by the Ministry are the following:

- The introduction of the reading discipline as a mandatory activity at the level of primary educational level;
- Development of packages for educational resources, on levels of age, piloted at local level, correlated with the formation of teachers for the primary educational system in the field of the didactic of teaching writing-reading and the development of support guides for the teachers;
- The development of local partnerships (schools, libraries, museums, city halls, writers, media etc.);
- Organisation of campaigns which would encourage reading;
- The development of a local diagnosis of illiteracy, which would allow the identification of specific measures and good practices customised on the respective characteristics;
- Organisation of activities for the remediation of the reading - writing difficulties within the programme called *School after school*;
- Organisation of *The Second Chance* Programme for the ones who abandoned the mandatory education system (including for adults).

Currently, the Ministry of National Education develops the *Strategy regarding the decrease of the early abandon of the school education system*.

All these strategic documents, transformed in action plans developed at local level, carefully monitored by the responsible institutions, can produce, in time, the desired effects.

## **Article 19 – The right of migrant workers and their families to social protection and assistance**

### **Paragraph 7**

With respect to the right of the *workers who are lawfully on the territory of the states and which are parts of a less favourable treatment than the one granted to citizens for legal actions relating to the issues mentioned in this article 19 paragraph 7 of CSER*, we state this finds its correspondence in the common right norms and in special regulatory framework, the right of the migrant workers and their families to social protection and assistance being granted.

Art. 18, paragraph (1) of the Romanian Constitution, republished, stipulates the fact that *„Foreigners and stateless persons living in Romania shall enjoy general protection of persons and assets, as guaranteed by the Constitution and other laws”*. The correspondent of this constitutional guarantee is highlighted in art. 3 paragraph (1) of the GEO 194/2002 *on the Regime of Foreigners in Romania*, republished, with subsequent modifications and completions In accordance with which *„Foreigners with legal stay in Romania shall benefit from the general protection of persons and wealth, secured by the Constitution and other laws, as well as from the rights provided for in the international treaties to which Romania is a party”*.

With respect to the specific access right to justice, as a summary of the general protection of persons, we underline that In accordance with the provisions of art. 6 paragraph (1) of the Law no. **134/2010** of the Code of Civil Procedure, republished, with subsequent modifications and completions (which are in force starting with February 15<sup>th</sup> 2013) *„Any person has the right to be equitably judged, in an optimum and predictable timeframe, by an independent Court of Justice, which is impartial and established by law. In this respect, the Court of Justice must dispose all measured permitted by law and must ensure the judgmental trail development.”*

*Within the civil process, the person who cannot support the expenses incurred by the commencement and the support of a civil trial, without prejudicing his own maintenance or the*

*support of his family, cannot benefit from legal assistance, In accordance with the conditioned of the law with respect to legal public aid.*

Consequently, art. 90 and 91 of the *Code of Civil Procedure* (Section 5 called *Legal Assistance*) establish in a concrete manner the conditions for granting of such a right, without making any type of distinction with respect to the applicability regarding citizenship; in this respect we quote the provisions stated:

*„Art. 90 Conditions for granting*

*(1) The person who is unable to meet the expenses incurred by the triggering and sustaining a civil lawsuit, without jeopardizing his own welfare or that of his family may be qualified for legal assistance In accordance with the provisions of the law regarding the legal public aid.*

*(2) Le legal assistance comprises:*

*a) granting exemptions, discounts, payment rescheduling or deferrals for the legal fees provided by law;*

*b) defense and free of charge assistance by means of a lawyer assigned by the Bar;*

*c) any other modalities provided by law.*

*(3) The legal assistance could be granted anytime in the course of the trial, in total or in part.*

*(4) the legal persons can benefit from facilities such as discounts, payment rescheduling or deferrals for the legal fees due for actions and requests submitted to the legal court, under the conditions of the special law.*

*Art. 91 Special provisions*

*The provisions of the special regulations with respect to the exemption from the payment of taxes, tariffs, commissions or bonds for the requests, actions and any other measures taken in order to administrate the fiscal debts remain applicable.”*

In accordance with the legal requirements quoted it results that the scope of the litigations which are subject to the control of the court does not restrain to a certain domain. As a consequence, the causes which refer to labour conflicts, litigations regarding the residence, financial rights or other connected litigations are subject to the same procedure provisions.

Also, **GEO no. 51/2008** established that from a legal public aid on civil matter can benefit any natural person which have the residence or the ordinary residence in Romania or in another stet member of the European Union. [art. 2 para. (1)].

*The legal public aid is granted in the civil, commercial, administrative, work and social insurances clauses, as well as in other clauses, except the penal ones (art. 3).*

*The legal public aid can be granted in the following forms:*

*a) payment of the fee for the provision of the representation, legal assistance and as the case may be, of the defense, by means of an appointed attorney or a selected attorney, for the development or the charge of a right or lawful right in the court of justice or for the prevention of a litigation, hereinafter referred to as the assistance by means of a lawyer;*

*b) payment of the expert, traducer or interpret used during the trial, with the consent of the court of justice or of the authority with legal attributions, is this payment falls under the responsibility of the person who requires the legal public aid, In accordance with the provisions of the law;*

*c) the payment of the fee related to the legal executor;*

*d) exemptions, discounts, payment rescheduling or deferrals for the legal fees provided by the law, including the one dues during the forced execution phase (art. 6).*

**With respect to the penal trial, the New Code of Penal Procedure** grants to the main litigants the right to have a selected attorney, and if it does not appoint one, in the mandatory assistance cases, the right to be granted an attorney by default. In this respect, *the legal bodies have the obligation to provide the full and effective exercitation of the defense right by the parties and the main litigants during the entire development of the penal trial.*

The legal bodies have the obligation to inform the suspect or the defendant the right to be assisted by one or several attorneys during the entire criminal procedure development, of the preliminary chamber procedure and of the trial. In the cases provided by law, if the suspect or the defendant has not selected an attorney, the legal body has the obligation to take measures in order to appoint a publicly appointed lawyer.

In the same manner, when the legal body appreciates that because of certain reasons *the aggrieved person, the civil part or the civil responsible party could not build their own defense, it will dispose that all measures will be taken in order to appoint a publicly appointed lawyer. The legal assistance is mandatory when the offended person or the civil part is a person who does not have the capacity to exercise or who has a restricted exercising capacity.*

**Translation and interpretation within the penal procedures:** In accordance with the Criminal Procedure Code, during the penal trial, the defendant has the right to benefit free of charge of an interpret when he does not understand, when he does not express himself in a correct manner or when he cannot communicate in the Romanian language. (art. 83 of the Criminal Procedure Code).

The parties and the litigation subjects who do not speak or do not understand Romanian language or cannot express themselves, the possibility to be aware of the documents included in the file, the possibility to talk, as well as to conclude in the court of justice will be granted free of charge by means of an interpret. In cases in which the legal assistance is mandatory, the suspect or the defendant will be granted free of charge the possibility to communicate, by means of an interpret, with the attorney in order to prepare the hearing, to introduce a defense procedure or any other request which is connected to the solving of the cause (art. 12 of the Criminal Procedure Code).

Any time the heard person does not understand, does not speak or does not express himself correctly in Romanian, the hearing will be made by means of an interpret. The interpret can be assigned by the legal bodies or can be selected by the parties or by the defendant, from the list of the authorised interprets, In accordance with the provisions of the law (art. 105 of the Criminal Procedure Code).

With respect to the right to ensure an interpret within the civil procedure we emphasise that In accordance with the provisions of art. 18 paragraph (3) of the Code of Civil Procedure „foreign citizens and stateless persons who do not understand or do not speak Romanian have the right to take cognizance of all documents and materials within the file, to speak in court and to draw conclusions, by means of an authorized translator, unless the law provides otherwise.”.

## Paragraph 8

Regarding the provisions of art. 19 paragraph 8 of the CSER which confers to the contracting parties the obligation to *guarantee to the workers which legally reside on their territory that they will not be expelled unless they threaten the security of the state or are against the public order or the good behavior*”, we mention that In accordance with art. 94 of the GEO no. 194/2002 *against the foreigner who committed an offense on the Romanian territory the expulsion measure can be disposed In accordance with the provisions of the Criminal Code and of the Criminal Procedure Code*, the foreigner’s right of staying ending lawfully at the date at which the measure was disposed.

The competency for solving the requests with respect to expulsion is exclusively granted to the legal court of justice, as a guaranty of the fact that this measure is disposed only if the foreigner who has the right to reside in Romania constitutes a threat of the state security or is against public order or good behavior. The performance of offenses incriminated as such by the penal law is the only ground on which the court could dispose this measure.

It is not irrelevant to mention the fact that art. 95 of the quoted legal provision contains a reflection of the *non refoulement principle* so that *an foreigner may not be expelled in a state where there are justified fears that his life is in danger or that he would be subjected to torture,*

*inhuman or degrading treatment*. The acknowledgment of the existence of such a danger falls under the competency of the legal court, as a result of the communication performed by the General Inspectorate for Immigrations, In accordance with the provisions of art. 95 paragraph (4) of the GEO no. 194/2002.

With respect to the family **members of the migrating workers**, considering also the interpretative statement of CDES regarding the content of art. 19§8, we underline the following:

Art. 92 of the GEO no. 194/2002 mentions the situations in which the measures for final removal from the Romanian territory, as follows:

- a) *the foreigner is a minor, and his parents have the right to stay in Romania*
- b) *the foreigner is a parent of a minor who has Romanian citizenship, if the minor is in his care or if there is an obligation to allowance payment, obligation which is regularly fulfilled by the foreigner*
- c) *the foreigner is married to a Romanian citizen with the following exceptions;*
  - (i) *when a convenience marriage is identified;*
  - (ii) *when the couple does not have a marital relationship or an actual family relationship on the Romanian territory;*
- d) *the foreigner is married to another foreigner who has a long term residence permit on the Romanian territory, and the marriage is not a convenience marriage;*
- e) *the foreigner surpassed 80 years old;*
- f) *there are justified fears that his/her life is endangered or that he/she will be tortured, subjected to inhuman or degrading treatments, in the state where he is to be sent.*

The above mentioned persons are granted, or, as the case may be, extended the staying right in Romania by the General Inspectorate for Immigrations, for one of the purposes and conditions provided by chapter IV – Extension of the temporary staying right of GEO no. 194/2002, without being necessary anymore the prior procurement of a long staying visa. Without constituting in an absolute right, we specify that the *foreigners who present a danger to the public order, national safety or who suffer of an illness that endangers the public health and refuse to comply with the measures established by the medical authorities*, except for those mentioned at letter f) above, are not granted or, as the case may be, are not extended their staying right in Romania.

The suspension of the removal decision is provided by 92<sup>1</sup> of GEO no. 194/2002, as follows:

*“(1) The implementation of removal measures are suspended provided that the foreigner:*

- a) *is the parent of a minor who follows the courses of a state or private education institution, accredited or temporarily certified according to law, until the end of the school year;*
- b) *is married to a foreign citizen who has the permission of staying on the Romanian territory, granted under the conditions of this emergency ordinance or by the law courts, and the marriage is not for convenience, until the date when the permission of staying on the Romanian territory ceases;*
- c) *is under either of the circumstances provided by Art. 15 para. (1)<sup>18</sup>, until the date when the non-permission reasons of leaving Romania cease;*
- d) *has a health condition that makes impossible the implementation of removal measure, until its improvement.*

*(2) The persons provided by para. (1) may be provided the trusteeship of staying on the Romanian territory.*

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<sup>18</sup> Art.15 par. 1) letters a) and b) of GEO no. 194/2002:

„a) he is suspected or indicted in a criminal cause and the magistrate decides the establishment of the interdiction measure of leaving the city or country;

b) he was convicted by court decision, rest definitive and has to fulfill a freedom depriving punishment.”

*(3) The foreigner will be informed in writing about the removal suspension and the granting of tolerance on the Romanian territory.*

*(4) The foreigners who represent a danger to the public order, national safety or who suffer of a diseases that endangers the public health and refuse to comply with the measures established by the medical authorities, are an exception from the provisions of para. (1)."*

## **Article 27 - Right of workers with family responsibilities to the equal chances and treatment**

### **Paragraph 2**

The applicant who jointly accomplishes the following conditions has the right to holiday for the child's raise, in accordance with the Government Emergency Ordinance no. **111/2010**:

- a) is a Romanian citizen, foreign citizen or stateless;
- b) has, in accordance with law, the domicile or residence on the Romanian territory;
- c) lives in Romania with his child/children wherefore requires the rights and takes care of his/her raising and education.

Starting from January 1<sup>st</sup>, 2011, the persons who, during the previous year to the date of child's birth, issued for 12 months, revenues by wages, revenues by independent activities, revenues by agrarian activities subjected to the revenue interest may optionally benefit from the following rights:

- a) maternity leave of up to one, respectively 3 years old, in case of the child with handicap, as well as of a monthly allowance, established as 85% of the average of net revenues issued in the last 12 months, not being able to be lower than 1.2 ISR, nor higher than 6.8 ISR;
- b) holiday for the child's raise of up to 2 years, as well as of a monthly indemnity, established as 85% of the average of net revenues issued in the last 12 months, not being able to be lower than 2.4 ISR.

In accordance with art. 25 of the Government Emergency Ordinance no. **111/2010** regarding the leave and the monthly allowance for maternity leave, the employer is liable to approve the maternity leave. The employer is forbidden to decide the ceasing of labor or job relations if:

- a) the employer who is, as the case may be, in maternity leave of up to one year old or up to 2, respectively 3 years old, in the case of a child with handicap;
- b) the employee who is paying the insertion incentive.

The interdiction is extended, once, up to 6 months after the employee's definitive return to the unit. The interdiction does not apply in the case of dismissal for the reasons incurring as consequence of judicial reorganization or bankruptcy of the employer, under the lawful conditions.

## **Information required by the ECSR in the event of non-conformity for lack of information**

### **Article 11**

#### **Paragraph 2**

The Committee noted that counselling and screening for women and children were, but requested further information on the types of screening and counselling that were carried out.

**From the analysis carried out through the two types of certificates, of maternal death by direct causes – complications of pregnancy, childbirth and postpartum - (direct obstetrical risk and abortion) or indirect causes (indirect obstetrical risk and collateral causes), it results that in 2012 in Romania, 26 pregnant women died, in the post-abortion period (30 days) or in the postpartum period (42 days post-birth). Although, in accordance with the WHO definitions in force, the direct obstetrical risk deaths, indirect obstetrical risk and abortion are being included in the calculation of maternal mortality, not all countries include indirect obstetrical risk deaths in the calculation of maternal mortality. Therefore, the comparisons with other countries may be distorted.**

The only European information on the maternal mortality concerns the deaths caused by abortion, haemorrhage, toxæmia and puerperal infection. There are no indicators on maternal deaths by indirect causes (indirect obstetrical risk and collateral causes, namely accidents). Also, it is not known if in the maternal mortality indicator are also included the indirect maternal deaths. (from the report of the National Centre for Public Health Statistics and Information ).

**Infant mortality reemerges from 2005 through the demographic indicators with a positive course. After 2004, when its value slightly increased (16.8‰), since 2005 the downward trend has become obvious and the indicator steadily has descended from 15‰ live births to 13.9‰ (2006), 12.0‰ (2007), 11.0‰ (2008), 10.1‰ (2009) and below 10.0‰ in 2010 (9.8‰), 2011 (9.4‰) and in 2012, when descends to 9.0‰.**

The number of deaths under one year of age is steadily decreasing since 2004 from 3641 to 3052 in 2006 and falls below 3000 in 2007 when 2574 deaths under one year of age were registered. Since 2008 the deaths under one year of age drop from 2434 to 2078 in 2010. The positive course continues in 2011(1850) when the number of infant deaths falls below 2000 cases and reaches minimum in 2012 with 1812 deaths. (from the report of the National Centre for Public Health Statistics and Information).

### **Article 12**

#### **Paragraph 1**

**The Committee asked whether there is a reasonable initial period during which the worker may refuse an unsuitable employment offer without losing the entitlement to benefit.**

According to Article 42 of Law No.76/2002 on the unemployment insurance system and employment stimulation, the persons who upon applying for unemployment refuse a job suitable to his/her training or education or refuse to participate in employment stimulation and vocational training services provided by the agencies for employment do not benefit from unemployment indemnity.

Under Article 44 of the above law, the payment of the unemployment indemnity ceases upon unjustified refusal to take-up employment suitable to the person's training or education or upon unjustified refusal to participate in employment stimulation or vocational training services, or upon discontinuing participation in such services for reasons attributable to the person.

## **Article13**

### **Paragraph 1**

**The Committee noted that the information provided on the additional benefits to the guaranteed minimum income did not allow to deduce to what extent they complement the basic benefit.**

Families and single persons with net monthly incomes up to the minimum guaranteed income benefit from a 15% increase in the amount of the family social support, if at least one family member shows the proof of working under an individual employment contract, works as a civil servant or performs an activity, earning salary revenues.

For the amounts granted as social support one of the adult persons of working age of the beneficiary family is required to provide monthly, at the mayor's request, actions or works of local interest, without exceeding the normal working time and in compliance with the work safety and hygiene regulations.

The working hours set out shall be calculated proportionally according to the amount of the social support enjoyed by the family or the single person, with a hourly rate in accordance with the national minimum gross salary guaranteed in payment, based on the monthly average duration of working time.

The obligation to perform the actions or the works of local interest may be transferred to other family members, with the consent of the mayor, if the nominated person to carry out the actions or the works of local interest is in temporary work incapacity or totally or partially lost the working capacity.

The people of working age who do not have incomes from wages or other activities are taken into consideration in determining the number of family members to determine the level of household income only if they prove that they are registered within the territorial employment agency, for employment and did not refused a job or the participation in the employment boost and vocational training services provided by these agencies.

An exception to this obligation is represented by the families for which the social support resulting from the calculation is up to 50 lei/month; for these families the working hours are set out quarterly and are performed in the first month of payment.

Also, are exempt from the obligation to monthly perform, at the mayor's request, actions or works of local interest, the persons of working age who are in the following situations:

- a) ensuring the child-raising and care, in accordance with the law, of one or more children aged up to 7 years old and up to 18 years old for the children with severe disabilities, proven by a certificate issued by the Commission for Child Protection;
- b) providing the care of one or more people with severe disabilities or elderly dependent people who do not have a personal assistant or caregiver, under the law;
- c) participating in a vocational training program;
- d) employed.

**Concerning the available data concerning the cases where benefits have been suspended or where they have not been suspended despite the failure to perform community work:**

Among the reasons that led to the suspension of the payment are included:

- the file holder of the social support did not submit, every 3 months, at the city council, the declaration on own responsibility on the family composition and the incomes obtained by its members, accompanied by a certificate on the revenues subject to the income tax,
- the persons of working age from the beneficiary families, who did not earn incomes from wages or other activities, did not prove that they are registered within the territorial employment agency, for filling a job and did not refuse a job opportunity,
- none of the adult persons of working age from the beneficiary family has monthly performed, at the mayor's request, actions or works of local interest,
- the territorial social services agency found, based on the documents submitted by the mayor, that it was set out a mistakenly amount of the social support or that for a period of three months in a row, there were money orders returned.

The reasons that caused the termination of the social support were the following:

- the applicant refused to provide the necessary information for the preparation of the social inquiry,
- within the social inquiry was found that erroneous data was declared concerning the family composition or the earned revenue,
  - if the right to social support was suspended under the conditions mentioned above (relating to the performance of actions or works of local interest, filing the declaration and the certificate of income, the proof that the people of working age without income are registered with the territorial employment agency for filling a job and did not refused a job) and, within 3 months since the suspension of the payment, those obligations were not met.
- the beneficiaries no longer meet the conditions provided by the law on family income or assets.

**Concerning the question whether the suspension of the guaranteed minimum income does not affect the eligibility to the benefits granted to beneficiars of social aid:**

In case the payment suspension to the beneficiaries does not cease the right, it is suspended only for a limited period of time, namely until the file holder submits the evidence which reinstate him. The submission of the evidence resumes the payment of the rights as of the following month.

**Concerning the level of non-contributory pensions paid to a single elderly person without resources:**

For 2009, the level of the social allowance for pensioners was 300 lei; after April 1<sup>st</sup> 2009, and 350 lei starting with October 1<sup>st</sup>, 2009. Benefit of social allowance the retirees from the public pension system, residing in Romania, regardless the date of pension registration, if the level of the pension amount, due or paid, is below the level of the minimum guaranteed social pension.

Individuals who do not meet the necessary conditions to receive a pension, benefit from social support.

**Concerning to what extent the additional benefits complement the basic benefit:**

The beneficiary of minimum guaranteed income also automatically receives one of the additional granted supports (social protection during the cold season). The levels for heating support are set out to cover between 10 – 90 % of the home heating costs. For the district heating the beneficiary is covered for 100% of the cost of the Gcal.

### **Healthcare services:**

Regarding the provision of healthcare services, in accordance with Article 210 of the Law no. 95/2006 are set out the following: e) the minimum package of services – granted for the persons who are not insured and includes medical services only for medical-surgical emergencies and diseases with endemic-epidemic potential, including monitoring the pregnancy and nursing mothers, family planning services, laid down in the framework contract. Thus, the rights of the Romanian citizens belonging to Roma minority concerning the healthcare assistance are guaranteed to all citizens even if they are not regular payers of the contribution and there is no discrimination in granting the healthcare assistance in this regard.

### **Concerning whether the administrative courts can be seized without first seizing the Social Mediation Commission:**

According to art. 143 of the Law no. 292/2011, the regulations issued by the central and local public authorities on granting social assistance benefits and the provision of social services can be object of an appeal in court, based on the conditions stipulated by the Law of the administrative court no. 554/2004, with subsequent amendments and supplements.

Before addressing the competent administrative court, the person considered to be a victim concerning a right or a legitimate interest through a individual regulation must request the issuing public authority or the superior authority, if any, within 30 days from the date of the document, the withdrawal, in whole or in part, of the document.

If the social service beneficiary is deemed to be treated unjustly by the provision of the social services, as it was set in the terms of the contract for social services provision, may appeal to the competent court for hearing disputes related to the provision of social services.

### **Concerning whether non-EU nationals residing in Romania and lacking resources are also entitled to social and medical assistance:**

According to Law on Social Assistance no. 292/2011, all Romanian citizens who are on the territory of Romania, who have the domicile or reside in Romania, the citizens of the Member States of the European Union, of the European Economic Area and the citizens of the Swiss Confederation, and also the foreigners and the stateless people who have the domicile or reside in Romania have the right to social assistance, under the Romanian legislation, and also under the European Union regulations and of the agreements and treaties to which Romania is a party.

Regarding the minimum guaranteed income, beneficiaries are also the families and single persons, citizens of other countries or stateless persons, who reside or have the domicile in Romania, under the terms of the Romanian legislation.

Also, according to Law no. 122/2006 on asylum in Romania, during the asylum procedure the foreigner who applies for a form of protection have the right to benefit from social insurance,

measures of social assistance and healthcare social insurance, the necessary assistance for sustenance, if the person does not have the necessary materials, the amount granted for food, accommodation and other expenses, to receive free primary healthcare and proper treatment, emergency hospital care, and also medical assistance and free treatment in cases of severe and chronic diseases which are life-threatening, through the national system of emergency medical assistance and qualified first aid.

### Paragraph 3

**The Committee could not establish that people without resources or at risk of becoming so have effective access to adequate services offering advice and personal assistance to prevent, remove or to alleviate personal or family want.**

**Law no.116/2002 and also the Methodological guidelines** for the application of this law, establish as measures to support the marginalized persons in employment: professional counselling, mediation and employment of young people aged between 16-25 years old, through customized social accompaniment, provided by the specialized personnel of the National Agency for Employment.

The main tool which ensures the customized social accompaniment for the young people in need and at risk of professional exclusion is the **solidarity contract** between the young people falling in the provisions of the Law no.116/2002 and the county agencies for employment and the agency for employment in Bucharest. With this type of contract, the agencies undertake to provide for young people mediation and professional counselling services, to identify possible insertion employers and to inform them on the facilities granted by law for hiring young people at risk of professional exclusion.

In 2010, 1,005 people from disadvantaged groups have received mediation and professional counselling, 943 solidarity contracts were concluded and 392 insertion employers were identified.

The 943 solidarity contracts were concluded with the following categories of beneficiaries:

- 126 young people from orphanages and child reception centres of the specialized public services and private bodies authorized in the field of child protection (13.4 %);
  - 34 young people with dependent children (3.6 %);
  - 213 young married people with dependent children (22.6 %);
- 189 young married people without dependent children (20 %);
  - 381 people belonging to other categories of young people in need (40.4%).

In 2010 825 marginalized people were employed, out of which: 646 people employed with individual employment contract of fixed duration and 179 people employed with individual employment contract of indefinite duration.

The 825 individual employment contracts have been concluded with the following categories of people:

- 80 young people from orphanages and child reception centers of the specialized public services and private bodies authorized in the field of child protection (9.7 %);
- 33 young people with dependent children (4 %);

- 204 young married people with dependent children (24.7 %);
- 181 young married people without dependent children (21.9 %);
- 327 people belonging to other categories of young people in need (39.6%).

The structure on levels of education of the 825 people who have concluded individual employment contracts under the Law no. 116/2002, in 2010, is the following: 379 people have secondary education, unfinished or no education (45.9 %), 235 people have vocational studies (28.5 %), 179 people have secondary education (21.7%) and 32 people have higher education (3.9 %).

**The implementation of the Program for the employment of socially marginalized people had a direct impact on the employment of young people at risk of professional exclusion.** In this regard, considering the number of persons employed during 2010 (825 people), it appears that a number of 613 persons were employed by providing the mediation services which represents 74.30% of the total employed persons and a number of 212 persons were employed by providing professional counselling services, which represents 25.70% of the total employed persons.

The intervention of the National Agency for Employment, through the decentralized bodies, represents preventive and reactive actions of the risk of marginalization. The data presented demonstrate that the agencies face difficulties in integrating marginalized persons; one reason is that over 46% of the persons covered by solidarity contracts have secondary education, unfinished studies or even have no education.

The national program for the employment of socially marginalized persons is drawn taking into consideration the need to mitigate the social effects of restructuring in the economy, and also the persistence of the risk of social marginalization for some categories of persons facing difficulties in filling a job.

During 2010, the local councils facilitated the access to housing for 5,751 single persons and 4,379 marginalized families. Compared to the number of single marginalized persons, or the number of marginalized families, the access to housing was guaranteed for only 36.0% of the single marginalized persons and for 35.1% of the marginalized persons. The amount spent in this purpose was of 34,324,233 lei, representing 43.0% of the amount reported as required.

37,315 single persons and 32,108 marginalized families benefited from access to public services of strict necessity, being spent the amount of 23,638,628 lei. Although the assigned amount represented 67.5% of the necessary, regarding the number of beneficiaries the access of 92.6% of single marginalized persons has been provided and of 82.8% of marginalized families.

In the period under review, 38,471 single persons and 34,817 marginalized families benefited from other various measures taken by the local councils for the prevention and combating of exclusion, the amount spent being of 32,817,386 lei.

In total, in 2010 the amount spent for these measures reaches the value of 90,780,247 lei, representing though 59.8% of the estimated amount as being necessary.

Law no.116/2002 provides that the access to health care assistance for the persons who are entitled to receive the minimum guaranteed income is confirmed by the local councils and it is provided under the terms set by the legislation on social health insurances for insured persons, without paying the contribution for the social health insurance. Thus, in 2010, it was recorded a number of 482,711 insured persons from the families entitled to

receive the minimum guaranteed income. According to reports, 165,293 of them received healthcare assistance, representing 34.2% of the total.

Law no.116/2002 provides that persons of school age who come from families entitled to receive the minimum guaranteed income and have two or more children who enrolled in the compulsory education provided by the law, receive a scholarship. During 2010, a number of 58,571 students from marginalized families received scholarships, totalling 29,999,379 lei.

The graduates of compulsory education from the marginalized families, who continue their studies in the pre-university education units and in the higher education units, receive scholarships for continuing education. In 2010 were granted, in accordance with the provisions of the Law no.116/2002, scholarships for 61,327 pupils and 45 students, amounting to 29,997,496 lei.