ANNEXE : POINT DE VUE DU GOUVERNEMENT

L'annexe qui suit ne fait pas partie de l'analyse et des propositions de l'ECRI concernant la situation en Roumanie.

Conformément à sa procédure de monitoring par pays, l'ECRI a ouvert un dialogue confidentiel avec les autorités de Roumanie sur une première version du rapport. Un certain nombre des remarques des autorités ont été prises en compte et ont été intégrées à la version finale du rapport (qui, sauf indication contraire, ne tient compte que de développements jusqu'au 6 décembre 2018, date de l'examen de la première version).

Les autorités ont demandé à ce que le point de vue suivant soit reproduit en annexe du rapport de l'ECRI.

Comments of the Romanian Government on ECRI's revised draft of the fifth report concerning Romania

The present document encloses Romania's comments on ECRI's revised draft of the fifth report concerning Romania.

For purposes of enhanced clarity, our comments follow the structure of the draft report and, implicitly, the ideas expressed in the summary[1] of the report.

I. Common topics

1. Legislation against racism and racial discrimination

- **Criminal law**

As concerns **paragraphs 2,3 and 4** of the report, we underline the following :

The criteria provided in Art. 77 letter h) of the Criminal Code are exemplificative. The rest of the criteria, other than those explicitly mentioned (*race, nationality, ethnicity, language, religion, gender, sexual orientation, political opinion or affiliation, wealth, social origin, age, disability, chronic non contagious disease or HIV/ AIDS infection*), are covered by the wording: "on any other similar circumstances, considered by the perpetrator as causes of one's inferiority as compared to other persons".

Having regard to the aforementioned, RO has already regulated, in an extensive way, the general aggravating circumstance in criminal matters, which means that the text shall be applicable any time a criminal offence is committed based on the grounds in Art.77 let. h) of the Criminal Code.

Hence, according to the information already mentioned above, since the Romanian legislation has explicit provisions on any grounds of discrimination (the grounds are provided as examples), RO is of the view that the amendment of the Criminal Code is not necessary.

As regards the incrimination of public insults and defamation[2], we would like to reiterate the point of view the Ministry of Justice expressed when drafting the fourth country report, as well as during the meeting on April 17th, 2018.

Hence, RO decriminalized insult and defamation following certain ECHR judgments against Romania with respect to freedom of expression, where the violation of Article 10 of the Convention was found.

Moreover, the Council of Europe itself recommends to States to make recourse to criminalization as *ultima ratio*. To this end, please see paragraph 106 of the White paper on prison overcrowding:

"106. Particular care should be exercised when considering whether certain acts should be criminalized or whether they pose issues mostly of an ethical nature. A given behaviour may be ethically highly questionable in a given society but it may not necessarily need to carry a criminal sanction and even less so prison sentence. It is important to note that decriminalisation does not necessarily mean to declare certain behaviour legal or moral

[1] A special remark is to be given to the following paragraph of the summary: "The responses of the Romanian authorities (…) proper qualification of such crimes" The affirmations have no support within the report, where the opposite idea is presented (see for example Paragraph 62 and the explanation provided as regards paragraphs 48 and 49 of the draft report). The National Institute of Magistracy and the Superior Council of Magistracy provided ECRI team extensive information on these aspects with the occasion of the contact visit in April 2018.

[2] The comments concern also **paragraphs 42 and 56**

but it means proposing responses which lay fully or partially outside the criminal justice system. A given act may still be considered illegal and immoral but other measures and sanctions may be more suitable to address it. Further, it has to be remembered that in all legal systems not all illegal acts are criminalised but other measures or interventions may be provided instead to rectify the situation."

We would like to underline that, as the Council of Europe states in paragraph 106 of the aforementioned *White paper on prison overcrowding*, the decriminalization does not equals to considering such behaviours lawful or moral. But alternative solutions can be found to have them sanctioned without bringing them into the criminal justice system.

When drafting Law no. 286/2009 on the Criminal Code, the insult and defamation did not appear as a necessity from the perspective of the European Court of Human Rights case law. According to the latter, the freedom of expression is essential in a democratic society, which has to be a pluralist one, as well as democratic, with the consequence that the freedom of expression is guaranteed not only to opinions and ideas generally accepted or regarded as indifferent by society, but also for minority opinions that hinder, shock, dissatisfy or trouble the rest.

Therefore, neither Article 8, nor Article 10 of the European Convention of Human Rights oblige the states to criminalize the deeds that, as a consequence of the freedom of expression, would hinder private life, including honour and reputation. Hence, there are no provisions on insult and defamation in the new Criminal Code.

The issues on sanction insult and defamation and the preservation of the repealing thereof, were discussed also during the proceedings in front of the Committee of Ministers of the Council of Europe regarding the execution of the European Court of Human Rights judgments – see the Resolution - CM/ResDH(2011)73 Execution of the judgments of the European Court of Human Rights in five cases against Romania concerning criminal convictions of journalists for insult and/or defamation[3], where the legislatives steps made by Romania had been noticed: the repealing of the imprisonment penalty for insult and defamation – by G.E.O. 58/2002 – and the decriminalization thereof by Law no. 278/2006 for the amendment of the Criminal Code.

The Resolution 1577 (2007) of the Parliamentary Assembly towards Decriminalization of Defamation[4] should also be mentioned. By the aforementioned resolution, the Parliamentary Assembly of the Council of Europe appreciated the efforts of the member states in this field and underlined the efforts of the OSCE in decriminalizing the defamation.

The Romanian Civil Code provides the right of each person to life, health, physical and mental integrity, dignity, image, respect for private life, as well as any other rights recognized by the law (Art. 58). The right to freedom of expression, private life, dignity and image as well as the limits for exercising thereof are subsequently detailed (Art. 70- 76).

[3] https://wcd.coe.int/ViewDoc.jsp?id=1799109&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679#P3601_217247

[4] http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=17588&Language=EN

Also, the new Civil Code introduced an efficient mechanism for the protection of the social value under discussion and the means of redress if the latter is hindered (see Art. 252 - 257). According to Art. 69, "at the request of the person concerned, the court may take all necessary measures to prevent or bring to an end any unlawful harm to the integrity of the human body, as well as to order redress, under the conditions provided under Art. 252-256, of the material and moral damage suffered."

Having regard to the aforementioned, RO is of the view that paragraph 3 of the draft report should be revised.

As far as the sanctioning of the criminal offence in art. 206 of the Criminal Code (threat) is concerned, if the latter is committed on one of the grounds of discrimination, art. 77 let. h) of the Criminal Code shall apply. With respect to the grounds of the discrimination, please see the above commentary as regards paragraphs 1 and 2 of the draft report.

- **Civil and administrative law**

Paragraph 16

G.O. no. 137/2000 on the prevention and punishment of all forms of discrimination provides for the following:

"*Art. 2*
(1) According to this ordinance, discrimination shall mean any difference, exclusion, restriction or preference, based on race, nationality, ethnic origin, language, religion, social status, beliefs, sex, sexual orientation, age, disablement, non-infectious chronic diseases, HIV infection, affiliation to a deprived category, as well as any other criterion that has as purpose or effect the restriction, removal of recognition, use or exercise, under equal terms, of the human rights and fundamental freedoms or of the lawful rights, in the public, economic, social and cultural filed or in any other branches of public life."

With respect to the dissolution of non-profit organizations that promote racism, G.O. no. 26/2000 on associations and foundations, regulates the general framework on non-profit legal entities (associations, foundations, federations). Art. 56 para. (1) let. a) and b) of the aforementioned legislative act explicitly provides that the association shall be dissolved by court decision, upon request from any interested person when the purpose or the activity of the association has become illicit or contrary to the public order or when the purpose is accomplished by illicit means or by means contrary to the public order.

The aforementioned provisions shall apply accordingly to foundations also. (See Art. 59 of G.O. no. 26/2000).

- **Equality bodies**

Paragraph 21

This paragraph needs to be revised as regards the following aspects:

- As concerns the affirmation regarding the lack of financial resources, the 2019 budget approved for the People's Advocate institution diminishes the financial problem.
- As regards the overlapping of attributions – there are several reports were Romania explained its system regarding the promotion and protection of human rights (for example the recent 2018 UPR examination). There is no indication in the draft report as to the source of the conclusion of the "overlapping jurisdiction" between NCCD and Ombudsman in practice. For clarification, the Ombudsman/ People's Advocate

institution ensures the defense of the rights and freedoms of individuals in relation with the authorities. From this point of view, the institution has also a role as regards the prohibition of discrimination of individuals in their relation with the public authorities (it can initiate inquiries and give recommendations in order to put an end to discriminatory situations from the authorities' side). The Ombudsman may send special reports to the Parliament in situations where the national legislation is lacunar, including from the non-discrimination point of view. On the other side, the NCCD may apply administrative sanctions both towards private and public sectors in cases where discrimination occurs. Therefore, the distinction is clear: the role of the People's Advocate institution is to make legislative proposals as concerns anti-discrimination legislation, to investigate and to put an end to all discriminatory actions of the public authorities, while NCCD has a sanctioning role for all kind of discriminatory situations that already took place.

2. Hate speech

- **Political and other forms of public discourse**

Paragraph 25:

In the spirit of an accurate presentation of facts, we believe it should have been mentioned that NCCD sanctioned the Romanian Prime Minister following his statement.

To be very clear on the real meaning of the statement (in spite of unfortunate language chosen) it should be stressed that the Romanian Prime Minister drew the attention on the responsibility the local and central authorities have in relation to compliance with the law and the constitutional legal order in RO, since provocative demarches, deliberately ignoring the RO constitutional legal order are detrimental to peaceful coexistence and to building of a climate of peace and tolerance.

As to the so-called Szekler flag, we would like to point out the following clarifications to be included in the text:

- "Ţinutul secuiesc" or the so called Székely Land is not an administrative-territorial unit according to the Romanian legislation and, thus, one cannot speak about *a right* of this region to use its symbols in public;
- The Romanian legislation regulating the hoist of flags and local symbols clearly state that in public spaces only logos and signs of the local authorities issued according to the law can be used next to the State symbols. Other kind of symbols, including the symbols of the national minorities, can be used in private spaces, as well as in public during specific events for the minorities (this is a right stipulated in a normative act).
- Moreover, the High Court of Cassation and Justice of Romania delivered on October 15, 2014 a final judgment where it upheld the solution pronounced by the first instance: it has been found that the use of the flag of "ţinutul secuiesc" was discriminatory, given the lack of representation of the different ethnic communities living in Harghita county. The citizens belonging to all these ethnic minorities have the right to be represented through specific symbols to be displayed on the county flag; under these circumstances, both the adoption and the use of a flag having a mono-ethnic character do not serve the interest of the communities which it should all represent;

With respect to footnotes no. 23 regarding the reference to the US Department of State (2016) report, RO would like to emphasize that it submitted comments to that report, in order to bring clarity on some of the aspects included in the report.

Paragraph 27:

With regard to the aspects mentioned in relation to the referendum on changing the definition of marriage, Romania considers important to equally including a reference to the result of this referendum since, in our view, it is also important in assessing the attitude of the society towards LGBT. It also indicates the impact the speeches referred to in this para had on the wide public opinion.

- **Hate speech on the internet and in the media**

Paragraph 29:

The action of the two Hungarian extremists who attempted to detonate an explosive device on the Romanian National Day was by itself an act based on reasons of hate against ethnic Romanians. Moreover, the extremist movement they belonged to was well-known for promoting virulent hostile, xenophobic, racist and Nazis propaganda. For these reasons, that movement was forbidden in Romania by court decision.

- **Hate speech in sports**

Paragraph 32:

In the spirit of an accurate presentation of facts, the sanction issued by NCCD following the football match between the teams Sepsi and Dinamo București in Bucharest in 2017, included the fine as well as *the publication for a month of its decision in mass media and on the websites of Romanian Football Federation, Dinamo Football Club and the Association Politehnica Iasi*.

Paragraph 42:

See the information above on the general regulation in the Criminal Code referring to the aggravating circumstance in art.77 letter h) of the Criminal Code.

3. Racist and homo/transphobic violence

- **Data**

Paragraphs 48, 49

From the point of view of the Ministry of Justice, the data collected by OSCE-ODIHR is limited to **certain** types of offences, and not to all hate crimes. Hence, the criminal offences committed under art. 369 CC, certain criminal offences under GEO 31/2002 etc. are not considered by ODIHR. Therefore, the data collected by ODIHR cannot be considered a stand-alone reference for a fair and complete overview of hate crimes data collection in Romania.

From the point of view of the General Prosecutor's Office:

- The actual equivalent of a hate crime in the Romanian criminal law is an offence (usually including violence against a person or a group of persons) motivated by bias against a certain category of people, which means that only offences perpetrated in the conditions of Art. 77 lett.h Criminal Code fall under that definition;
- Hate speech is not a form of hate crime, as the draft report notes wrongfully in Paragraph 49, the two concept are different. There is no such an approach to consider hate speech as hate crime in any international mandatory documents or soft law, such as guidelines, good practices etc. Even the present draft report treats hate speech topic under a different chapter (no.2, from Par. 23 to 47). Romanian Criminal Code as well as other similar codes and legislation from Member States of the Council of Europe regulate hate

speech in a distinct offence category, namely incitement to hatred and discrimination, set out by Art. 369 Criminal Code, as the draft report also mentions in Paragraph 23;

- The General Prosecutor's Office (GPO) have presented all the statistical data collected on the topic of hate crimes (Art. 77, lett. h Criminal Code), in writing, before the visit of ECRI team in April 2018 and also during debates that took place in Bucharest, on the premises of the Ministry of Foreign Affairs;
- The discrepancies between the data reported by the police, the GPO and the Superior Council of Magistracy regarding hate crimes could very well be explained by the fact that the data reported by each of the above-mentioned bodies refers to different type of cases (for ex., the Superior Council of Magistracy have included in the data provided offences that do not enter in the usual definition of hate crimes, while the police and the GPO applied a narrower definition) and to different stages of criminal trial (for the police – reporting of hate crimes and criminal investigation; for the GPO – prosecution and indictment/closing of cases; for the courts – only cases that are indicted and prosecuted before them);
- "Recording of racist incidents" – there is no such legal concept; criminal law operates with "offences";
- GPO did not collect any specific data on "racism" until 2018. Only by Order of the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice no. 297/2017, disaggregated data concerning the application of Art. 77 lett. H Criminal Code started to be collected. Thus, such data are available only from the second semester of 2018. It illustrates the attention given by GPO to the topic and the good faith in applying best practices promoted by ECRI, FRA and OSCE-ODIHR.

Paragraph 53

In the relevant period of time (1.01.2015 – 6.12.2018) the European Court on Human Rights (ECtHR) concluded on the violation of articles 2 or 3 under their material or procedural limb in 23 cases; these 23 cases concerned ill-treatment and inquiries that took place as a rule before the authorities took general measures to prevent death or ill-treatment in the State agents' custody and to effectively investigate such allegations; in 2016, through Final Resolution CM/ResDH(2016)150 the CoE's Committee of Ministers closed the supervision of the group of cases on ill-treatment from State Agents and non-effective investigations into these acts and closed, through the above mentioned Resolution or subsequently, 15 of the 23 cases.

- **Homo-/transphobic violence**
  Paragraph 54

The case of M.C. and A.C. is the only case having been decided on the issue of discrimination on sexual orientation and concerned ill treatment from third parties the applicants suffered; the conclusions of the Court on the existence of a violation are limited to the procedural limb of article 3 after examining an inquiry already finalised in 2012. Therefore, the conclusions on the up-to-date "hostile atmosphere towards LGBT persons in Romania which renders them targets of violence" by reference only to the Court's case-law, consisting of one case, qualified as "striking" is not supported.

- **Measures taken by the authorities**
  Paragraph 64

Romania would like to underline that the affirmation in footnote 87 according to which *only the minorities that are represented in the Council of National Minorities are regarded as national minority and afforded protection* exceeds the framework of the discussion under ECRI's mandate.

Moreover, such an affirmation is not accurate since in Romania there are 20 national minorities which historically live on the territory of Romania, the ethnic, cultural, religious and linguistic rights of each of their members being protected in accordance with the international obligations assumed by Romania.

Paragraph 69

Regarding the creation of "*a mechanism that guarantees the accountability of local authorities to the central authorities*" we underline the following:

- The Constitution and the Law no. 215/2001 on public local administration, republished, confide the right and the capacity of the public local administration to solve and manage, taking into account the interest of the local communities represented, all public affairs, according to the law;
- The process of decentralization occurred according to several principles: a). the subsidiarity principle – meaning that the public local authority, the closest to the citizen and with necessary administrative capacity will be competent; b). the principle of ensuring the necessary resources in order to manifest the delegated competences; c). the principle of responsibility of the local authorities as regards their competences, meaning the obligation to ensure the appropriate standards in public services; d). the principle of ensuring a steady process of decentralization, based on objective criteria, which would not impede on the financial local autonomy; e). equity principle implying the free and equal access of all citizens to public services; f). the principle of budgetary constraint meaning the prohibition of special transfers or subventions from the central authorities in order to cover the financial deficit at local level;
- Thus, the public local authorities are not to be held responsible by the central administration;
- There is a permanent dialogue between the public local authorities and their associated structures, on one side and central administration on the other side, in order to identify the best solution for improving the situation of marginalized persons, including those belonging to Roma community.

As regards the mentioning in the report that "*the Strategy does not have a clear budget*" and subsequent phrases we underline that, at the level of the Ministry of Regional Development and Public Administration, there is a pilot program ongoing: "*Social houses for Roma communities*". This program is provided by the Strategy, is dedicated to Roma communities and is entirely financed by the state budget. The program will be evaluated after the finalization of all social hoses projected.

Paragraphs 76, 77 and 78:

As far as eviction is concerned, the following should be mentioned:

The common law regulation in the civil procedural matters - the New Civil Procedure Code (Law no. 134/2010, as further amended; hereafter the NCPC) - provides for a new special procedure: the eviction from the real property used or occupied without a right.

The abovementioned special procedure of eviction may envisage, on one side, the former tenant who used the real property on the basis of a title and, on the other side, the third party who occupies the real property without a right, therefore, the common denominator being the use/the occupation without a right of the real property whose eviction is being requested. The notions of tenant and occupant are defined by the NCPC: e.g., the occupant is defined as being any person, other than the owner or the tenant, who occupies de facto

the real property with or without the permission or the accommodation of the owner [art. 1.034 para. (2) letter e) NCPC].
Thus, the scope of the procedure refers to various situations which may arise in practice: on one hand, cases in which the person who is to be evicted occupied the real property in a legitimate manner, on the basis of a title which gave him a right to use the real property (but whose right ceased); on the other hand, hypothesis in which the person who is to be evicted occupies the real property without any right.
The special procedure of eviction is a jurisdictional procedure. As far as the tenants are concerned, the New Civil Code, in art. 1831 para (1), sets out the rule according to which their eviction is carried out only following a court decision.

In order to offer the possibility for the envisaged persons to voluntarily leave the occupied real property, the judicial eviction is preceded by a preliminary procedure consisting in the notification of the former tenant/occupant.

Among the particularities of the special procedure of eviction, the following are worth mentioning:

- The eviction request is usually tried with the summoning of the parties; only in an exceptional hypothesis, in the consideration of the particularity of the request, it is tried without summoning, in the case in which the eviction of the real property for not paying the rent is requested on the basis of a contract which represents, for the payment, an enforceable title, according to the law (art. 1.042 para (1) in fine NCPC];
- The eviction decision may be subject to appeal [art. 1.042 para (5) NCPC], ordinary means of appeal, of common law, which may be lodged in relation to any discontentment regarding the first instance decision, whether it is de jure or de facto, ensuring this way, two trials on the merits, thus, the double degree of jurisdiction;
- Against the eviction decision, the interested persons may challenge the execution, according to the law (art. 1.044 NCPC);
- The institution of suspension of the execution of the eviction decision is more restrictive, in the consideration of the particular legal situation of the person who is to be evicted: the person who occupies the respective real property without a right.

In the consideration of the different legal situation of those who are to be evicted by means of the special procedure, the legislator established a differentiated legal status, the following being worth mentioning, as examples:

- While the notification of the former tenant in view of leaving and rendering free the real property is carried out in an extended period [see, for example, art. 1.038 para (1) NCPC], the occupant must evacuate the real property in 5 days from the communication of the eviction notification [art. 1.039 NCPC];
- Bearing in mind humanitarian and social protection reasons, art. 896 NCPC – but also the former 5781 of the old Civil procedure code (following its amendment through Law no. 202/2010 concerning certain measures for the acceleration of the solutions of trials) – have established the interdiction of eviction from the real property used as houses between December 1st and March 1st of the following year; on the other hand, this protective measure is not applicable: if the creditor proves that, according to the locative legislative provisions, he and his family do not have an appropriate house or if the debtor and his family have another appropriate house where they could move at once; in the case of evicting the persons who occupy a house, in an abusive manner, de facto, and without any right, and neither to those who were evicted for endangering the cohabitation relations or seriously disturbing the public peace;
- also, taking into consideration the different legal situation of the evicted persons (irrespectively of the followed procedural path – special or of common law), the legislator set out a series of protective measures of these persons [concerning the situation of the evicted tenants/who are to be evicted from the real estate nationalized by the Romanian

state, returned to the former owners following an administrative/judicial way, see, for example: Government Emergency Ordinance no. 40/1999 on the protection of tenants and establishing the rent for the spaces intended as houses; Government Emergency Ordinance no. 68/2006 on measures for the development of the activity in the field of construction of houses through programs at national level; Government Emergency Ordinance no. 74/2007 ensuring the fund of social housing intended for the tenants evicted or who are to be evicted from the houses returned to the former owners; concerning the situation of the persons or of the families whose economic situation does not allow them to have access to acquire a house or to rent a house in the conditions of the market, see, as example: Housing Law no. 114/1996; Law no. 152/1995 establishing the National Agency for Houses; even concerning the persons envisaged by the letter, see, as example: Government Decision no. 1237/2008 approving the Pilot program "Social housing for Roma community"].

To conclude, the judicial eviction of the aforementioned persons offers appropriate procedural safeguards in order to respect the fundamental right to a fair trial. On the other hand, through the finality of this judicial procedure, in last instance, the protection of the property right (public or private) itself is ensured, as guaranteed by the Constitution. At last, the social protection of the evicted persons is carried out through a large scale of measures, as already mentioned.

It is also to be mentioned that the case of *Fetme Memet* is pending, so the conclusion on the absence of safeguards and remedies is premature;

Paragraphs 79 and 80:

We provide some clarifications as regards the content of the Law no. 114/1996 on housing and the content of its methodological norms of application, adopted through Government Decision no.1275/2000, in order to revise these paragraphs accordingly.

According to article 42 of the Law no.114/1996, access to social houses (to rent them) is granted to families or persons having a net monthly revenue below average wage established at national level, as communicated by the National Institute for Statistics in the month following the request for a social house and before the month when the social house is attributed.

Article 43 of the Law no.114/1996 provides for a non-exhaustive list of categories of persons entitled to a social hose. The list is in a random order too. The same article states that the public local authorities ensure the repartition. The criteria for distribution are set by the public local authorities, according to article 21, par.1 of the methodological norms (which, we underline, were adopted through a legislative act, Government Ordinance). In this sense, we underline that the Law no. 114/1996 provides the benchmarks in establishing the criteria by the public local authorities, namely: a) locative conditions of the solicitors; b). number of children or dependents; c). health condition of the solicitors or of the members of their families; e). the date of the demand. The concrete criteria are set and monitored by committees established through a decision of the local council. All acts connected to the demands of social houses are published.

Moreover, the legislation in force provides for means of appeal, in case beneficiaries feel that their rights have been breached. According to article 21, par. 3 of the methodological norms, appeals against the decisions of the local council regarding the lists of distribution of social houses are judged by the courts, according to the law.

Paragraphs 91 and 92:

At present, there are three legislative initiatives on civil partnership under parliamentary debate: the legislative proposal on civil partnership (Bp. 144/2018) , forwarded by Ms. Oana-Mioara Bîzgan-Gayral, independent member of Chamber of Deputies, the legislative proposal on civil partnership (Bp. 570/2018), forwarded by a group of deputies and senators and the legislative proposal on civil partnership (Bp. 591/2018), forwarded by a deputy belonging to the ALDE party and an independent senator. The aforementioned legislative initiatives regulate, in essence, the requirements for the conclusion, termination and legal effects of the civil partnership – defined as "*a civil union between two adults persons, manifested through an agreement concluded in accordance with the provisions of the present law in order to organize their civil life together*" - both for same sex as well as opposite sex couples.

Paragraph 93:

The case-law of domestic courts is not contradictory, but evolving in line with the European Court's practice of recent date. It is only in 2017 that the ECtHR concluded that requiring gender surgery violates human rights, its previous case-law dealt with transsexuals and not transgender persons; moreover, the cases against Romania quoted in the corresponding footnote are pending and the issue of alleged lack of clear legislative regulation of gender reassignment is not yet decided by the Court.

Paragraph 97

Regarding the situation of LGBT pupils, the report cites one report only, of an NGO (footnote no.153) as a source of serious concern about the safety of these pupils in the school environments.