Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)

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Comments submitted by Romania on GREVIO's final report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report)

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AGENȚIA NAȚIONALĂ
PENTRU EGALITATEA DE ȘANSE
ÎNTRE FEMEI ȘI BĂRBAȚI

Group of Experts on Action against Violence

against Women and Domestic Violence

(GREVIO)

Comments submitted by Romania on GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)

AGENȚIA NAȚIONALĂ
PENTRU EGALITATEA DE ȘANSE
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ROMANIA's Comments

On

GREVIO's Report

Ministry of Family, Youth and Equal Opportunities

National Agency for Equal Opportunities between Women and Men

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www.anes.gov.ro

Bucharest June 2022

C. Fundamental rights, equality and non-discrimination (Article 4)

2. Intersectional discrimination

Regarding the paragraphs 22 and 29 we would like to maintain the observation we have made on the previous form of the report.

Regarding the paragraph 21 (CNCD): N*ational Council for Combating Discrimination takes note of the fact that the final draft of the GREVIO Report at Section 2 Intersectional discrimination, point 21 keeps the same structure outlines in the previous draft stating that: „Although the concept of multiple discrimination is reflected in the legislation, related regulations/methodologies are lacking. There is also a reported lack of acknowledgment and understanding of the concept of multiple and intersectional discrimination within the courts and legal institutions. The National Council against Discrimination (CNCD) ruled on the first case of multiple discrimination against Roma women only in 2017".*

NCCD maintains the same comments formulated and communicated in December 20221.

With regard to the lack of methodologies regarding the concept of multiple discrimination, it should be noted that the anti-discrimination legislation, at national level, does not imply the existence of subsequent or additional methodologies of a normative nature in connection with operational or interpretative nature relating the prohibited forms of discrimination in the law, such as direct discrimination, indirect discrimination, the instruction to discriminate, harassment, victimization or other forms such as discrimination by association. The requirements in relation to the interpretation of forms of discrimination prohibited by European law and transposed at national level are mainly given by the case-law of the European Court of Human Rights, by the case-law of the European Court of Justice, of the High Court of Cassation and Justice reflected in the judgments of the National Council for Combating Discrimination or by the Courts of law.

With regard to the criticism related to the fact that the CNCD pronounced the first solution in a case of multiple discrimination against persons of Roma ethnicity only in 2017, it should be noted that the CNCD ruled on multiple discrimination since 2003. See in this respect the CNCD Report on the implementation of the EU Racial Directive in Romania 2005-2010, available in Romanian and English on the CNCD website. The report presents cases held by the CNCD in respect to multiple discrimination on grounds such as age, sex, and ethnicity.

In 2005, the CNCD addressed a complaint made by Romani CRISS regarding employment announcements representing multiple discrimination, on the basis of age and ethnicity. Romani CRISS complained about the online publication by S.C. Adrasim S. of job advertisements on a specialized website. Two job advertisements were published: "hiring experienced car mechanics, aged 30-40 years (excluded Roma)", respectively "confectioners, seamstresses, excluded Roma". CNCD found that the facts constitute direct discrimination and ordered the sanctioning with a fine in the amount of 2000 lei of the employing company and the sanctioning with a fine in the amount of 400 lei of the company that owned the specialized site.

Also, CNCD ruled in 2005 on a case relating to hiring announcements published in the local press. Among the conditions for entering the competition, it was necessary to know Hungarian language and the condition of permanent residence in the locality. CNCD noted that under the

law on local public administration, the knowledge of the mother tongue of national minorities by employees may be necessary in the case of those positions involving public relations. In the case of other positions such a condition shall not be imposed. The condition of residence was restrictive, being such as to limit the right to work. In this context, the restriction of participation in the competition on the basis of two conditions constitutes an aggravating circumstance, within the meaning of Art. 2 para.4 of O.G. no. 137/2000. CNCD found that the alleged facts constitute discrimination and ordered the sanctioning of the complained party in the amount of 500 lei.

Similarly, CNCD has ruled on cases of multiple discrimination on the basis of sex and age since 2003. See in this regard, the CNCD Report on the implementation of the EU Framework Directive in Romania 2003-2010, available in Romanian and English at https://www.cncd.ro/wp-content/uploads/2021/10/Raport-Directiva-78-engleza.pdf. Such cases are reported in the statistical data, tables on page 38, figure 13, page 39, figure 14, and cases are presented in section 3. Discrimination in the field of employment on the basis of sex and age, outlined in pages 50-51 , 53, 56-57.

*Regarding the paragraph 22, **the Ministry of Health** highlights the fact that at the level of the institutions structures there were implemented a series of awareness campaigns in this field, the most recent reproductive health campaign was carried out in February 2022 by the national institute of public health Bucharest, through the National Center for Health Assessment and Promotion of the structure of this institution, in accordance with the calendar implemented annually.*

D. Gender-sensitive policies

Regarding the para. 34 and 35 we would like to maintain the comments we have made on the previous report.

I. Integrated policies and data collection

A. Co-ordinating body (Article 10)

64. The co-ordinating body appointed by the Romanian authorities in accordance with Article 10 of the convention is the NAEO**,** which exercises state authority in two areas of competence: promoting equal opportunities and treatment of women and men and to prevent and combat domestic violence. The NAEO operates under the aegis of Ministry of Family, Youth and Equal Opportunities.

E. Data collection and research (Article 11)

1. Administrative data collection

Regarding the paragraph 78 we would like to add that it will also be implemented an informational system on cases of domestic violence based on administrative records, design and conduct of the National Survey on Gender-Based Violence (2022-2024).

The amendment was made in accordance with the provisions of the Partnership Agreement concluded between National Institute of Statistics and National Agency for Equal Opportunities between Women and Men.

*We would also like to add **National Institute of Statistics** in list of National entities.*

Regarding the paragraph 83 we would like to maintain the comments from the previous report.

Regarding the paragraphs 93, 94 and 97 we would like to maintain the comments we made on the previous report.

III. Prevention

B. Education (Article 14)

Regarding the paragraph 117:"The Law no. 272 of 2004 for the Protection and Promotion of the Rights of Children (Law 272/2004) states that the public central administration, the local administration, as well as other relevant institutions should take all necessary measures to systematically integrate sessions on "education for life" in schools, including sexuality education with the aim of preventing sexually transmitted infections and early pregnancies."

We suggest to rephrase it in order to be in accordance with the text of law:

„The Law No. 272 of 2004 on the protection and the promotion of the children's rights, republished, with the subsequent amendments and completions, provides that the specialized bodies of the central public administration authorities, local public administration authorities, as well as any other public or private institutions with responsibilities in the field of health and in the field of education are obliged to adopt, in accordance with the law, all necessary measures for the systematic development in the school units, at least once a semester, of life education programs, including sexual education for children, in order to prevent the contact with sexually transmitted diseases and of the girls pregnancy (art. 46 paragraph (3) letter (i))."

C. Training of professionals (Article 15)

Regarding this chapter we would like to maintain the observations we have made on the previous report and add the following:

***Paragraph 128:** The National Institute of Magistracy includes in the initial training programmes of future judges and prosecutors the study of the domestic violence topic, within the disciplines "Family Matters" and "Criminal Law", the issue of investigating domestic violence offences being addressed in the context of analysing crimes against the person. Also, the programmes for "Family Rights" and "Judicial Psychology" disciplines include conferences dedicated to the phenomenon. During these conferences, aspects related to different types of domestic violence, the forms it may take, the vulnerabilities of victims of domestic violence and the particularities of solving the causes of domestic violence - including applications for protection orders - are analysed.*

Paragraph 129: *The information in bold is not correct. As mentioned in Para 131, it should be noted that, under national law, continuous training of judges and prosecutors is both a right and a duty for the members of judiciary. Thus, judges and prosecutors are required to attend at least one continuous training session every 3 years, organised by the NIM, by higher education institutions in the country or abroad or by other forms of professional development. Attending to such training activities represents a criterion for the regular professional evaluation of judges and prosecutors.*

Paragraph 130: *NIM attaches great importance to training judges and prosecutors in themes related to combating violence against women, domestic violence, and combating discrimination - including gender discrimination. Therefore, the Institute constantly integrates dedicated training sessions within the annual training programs and initiates partnerships or participates in externally funded projects aimed at developing the judiciary's capacity to solve cases concerning domestic violence. The general objective of externally funded projects is to complement and cover continuous training needs, so that the activities financed and carried out under them cannot be doubled in terms of the addressed topics. After completion of the project implementation period, the Institute is required to ensure the results' sustainability, meaning that the training activities in the field of domestic violence will be constant within the future continuous training programs.*

Paragraph 131: *According to the national legislation, the continuous training of magistrates must take into account the dynamics of the legislative process. It mainly consists of apprehending and deepening the domestic legislation, the European and international documents to which Romania is Party, case-law of national courts and the Constitutional Court, case-law of the European Court of Human Rights and the Court of Justice of the European Union, comparative law, specific rules of ethics, multidisciplinary approach of novelty institutions, as well as the foreign languages and computer-based operation. Therefore, when drawing up the annual programme of continuous training, the Institute carries out an extensive analysis process, taking into account the provisions of the strategic documents assumed by Romania for the judiciary, the proposals formulated by the national courts and the prosecutor's offices, the proposals of the trainers of the NIM regarding the themes to be debated, proposals from professional associations of magistrates, proposals from other legal institutions and organisations etc.*

The selection of judges and prosecutors organised by the Institute is carried out following the choices made by them, after an analysis and approval in the governing colleges of the national courts and prosecutors' offices. As noted in the draft report, according to the law, continuous training of judges and prosecutors is carried out considering the need for their specialisation.

Regarding the paragraph 134: *Within the continuous training activities, combating domestic violence subject includes aspects regarding violence against women and a child-centred approach, with the Institute also attaching particular relevance to training in the field of justice for minors (techniques for hearing minors, sexual abuse of minors, effective handling of criminal cases of crimes against freedom and sexual integrity committed against minor victims), in the field of hearing techniques for vulnerable persons and in the fight against discrimination, including gender discrimination.*

Regarding the paragraph 135: *In the initial training programmes for future judges and prosecutors, topics on cases involving domestic violence are studied annually. Training*

sessions in the field of combating domestic violence (including violence against women), anti-discrimination, including gender-based discrimination, are also constantly integrated into continuous vocational training programmes. As pointed out previously, under national law, continuous training of judges and prosecutors is both a right and a duty for the members of judiciary.

D. Preventive intervention and treatment programmes (Article 16)

1. Programmes for perpetrators of domestic violence

Paragraph 136: *In what concerns the statement regarding the inexistence of specific programmes for the preventive intervention and treatment of perpetrators of domestic violence in relation to the penitentiary system, we draw attention to the fact that it is contradicted by the Para 137 of the Report.*

In relation to the probation system, we underline that it is correct, but incomplete. No such programmes, addressing this level of intervention, have been developed to date in the probation system, due to fact that the convictions for domestic violence have amounted to only a small fraction of the total probation population (of a total of 68725 probationers in 2020, only 350 had been convicted for domestic violence). However, the Romanian Probation System does implement programs designed especially for offenders convicted for violent offences, like the aforementioned Anger Management program – aimed at developing the ability to prevent violent behaviour by developing the necessary anger management mechanisms and those needed to manage crisis situations.

2. Programmes for sex offenders

Paragraph 142: *Regarding the probation system, the National Probation Directorate is developing within the CORRECTIONAL project (Norwegian Financial Mechanism 2014-2021) two programmes, one of them especially designed to address sexual offences and the other one to address domestic violence:*

- *Intervention programme for sex offenders „SEXOFF";*
- *Intervention programme for offenders with a violent behaviour "VIOFF".*

IV. Protection and support

A. General obligations (Article 18)

Article no. 18 point 155: "The ICTs have only a consultative role and provide assistance and guidance to professionals working directly with victims of domestic, and at the request of the case manager from GDSACP, facilitating cooperation between the institutions participating in case management, on a case-by-case basis. The ICTs have been set up in most of the counties by decisions of the local authorities. However, due to their consultative role, they do not deliver multi-agency interventions at the level of case management, which impedes a proper multi-agency and multi-sectoral coordinated response."

We suggest deleting the reference to the consultative role of the ICTs, since these structures have a main role in prevention activities.

In the same time we suggest introducing the following information for a better understanding of the ITCs activity:

According to the terms of the Government Decision no. 49/2011, annex 1 Framework methodology on the prevention and intervention in multidisciplinary team and network in situations of violence against the child and of domestic violence, multidisciplinary teams of intervention are distinct from ICTs. Multidisciplinary teams are coordinated by a case manager from the General Department for Social Assistance and Child Protection or NGO.

c. General support services (Article 20)
Social Services

In that concerns the paragraph 175: *We mention that the methodology approved through the joint Order no. 173/65/ 3.042/C/2021 for the approval of the Methodology for evaluation and multidisciplinary and interinstitutional intervention in providing support and protection services for victims of crime sets out a comprehensive framework for both informing[1] the victims on the existing support services and guiding the authorities in the referral[2] process.*

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[1] 1 Art. 7. (1) The informative materials regarding the functioning of CSVI / SSVI and the list of social service providers holding a functioning license for CSVI / SSVI from the county / sector of Bucharest are published on the DGASPC website.

[2] 2 The information materials regarding the support and protection services for victims of crime developed in accordance with the minimum quality standards shall be communicated, through the care of social service providers, to the following public or private institutions / structures, from the administrative-territorial unit where the social service operates: a) police units;

b) sanitary units and family doctors' offices;

c) educational units and institutions;

d) social service providers;

e) any other units which, by the nature of the activity carried out, may come into contact with victims of crime. 2 Art. 5. (1) The referral to CSVI / SSVI and the social services providers mentioned in art. 31 of law is carried out quickly, after identification, by the first institution that comes into contact with persons who are potential victims of crime.

Paragraph 176*: With regard to local cooperation between the main actors involved in managing the cases of violence against women or minors, we reiterate that the issue is a constant subject on the agenda of the Working Group on the Protection of Victims of Crime coordinated by the Ministry of Justice.*

As a result of the debates carried out in this format, an informal network of specialists from the police, social assistance system and prosecutor's offices with responsibilities in cases of sexual abuse of minors has been established.

During the previous months, there were exchanges of contact information between the three professional categories, and a joint meeting was held to discuss practical issues and share good practices. The network also aims to develop unitary procedures at national level in the field. Efforts will be continued to intensify cooperation at the local level.

E. Shelters (Article 23)

Regarding the paragraph 201 we will definitely maintain the observation we made on the previous report on the point 202.

D. Telephone helplines (Article 24)

Article no. 24 point 213:" Romania has two helplines for child victims of violence; one is run by Child Helpline Association: Line 116.111 – European number for children's helpline and the other one Line 116.000 – European hotline for missing children. The main forms of violence registered by Line 116.111 are: emotional abuse, physical molestation and neglect. An alarming increase of sexual abuse against children has been recently noted."

We suggest adding the following information, in order to be consistent with the reality in Romania:

"In the same time a toll free line is operating at the level of each General department for Social Assistance and Child Protection (DGASPC)."

V. Substantive law

A. Civil law

3. Custody, visitation rights and safety (Article 31)

(2) The referral is made by informing the person about the possibility to address CSVI / SSVI, respectively to the social service providers mentioned in art. 31 of law, both verbally and by handing a form under signature that includes at least the CSVI / SSVI address and its responsibilities, according to art. 37 of the law.

- ✓ ***Paragraph 259:*** *According to a centralization made by the NAPRCA and presented during the last meeting of the Working Group on the Protection of Victims of Crime, a number of 24 specially designed rooms at the level of the GDASCP were identified, as well as a number of 12 hearing rooms set up at the prosecutor's offices.*
  Being aware of the necessity and benefits of such specially designed venues, both the Prosecutor's Office attached to the High Court of Cassation and Justice and the Superior Council of Magistracy have proposed to set-up in a clearly defined time frame a total of 60 hearing rooms, with technical facilities necessary to record the hearing of minors and to create a friendly environment for them.
  Through the project "Protection of Victims of Crimes" funded under the Norwegian Financial Mechanism 2014-2021, implemented between January 28, 2022 and April 30, 2024, the General Prosecutor's Office dedicates a budget of 2,000,000 euros to ensure an efficient, accessible and qualitative criminal justice system for children who are victims of crimes and for victims of hate crimes. The package of multidimensional intervention in the two target areas provides for thematic analyses, training of professionals and the setting-up of 35 rooms for the hearing of minors.
  Also, the project "Professional training and capacity building at the level of the judiciary", initiated by the Superior Council of Magistracy, which has an implementation period of 60 months, was completed in order to ensure a favourable judicial environment for minors through three components: training of professionals, development of a guide of good practices and the development of a number of 25 rooms dedicated to the hearing of minors. The total value of the project is 4.100.000 euro.

4. Civil consequences of forced marriages (Article 32)

Comment:
With regard to the civil consequences of forced marriage we mention the following:

- *According to art. 259 para. (1) Civil Code, marriage is the freely consented union between a man and a woman, concluded under the law, consent to marriage being a substantive condition for the conclusion of marriage (according to art.271 C.civ. consent must be personal and freely expressed).*
- *According to the enumeration in art. 293 para. (1) C.civ. the marriage concluded with the failure to meet the requirements regarding the consent to the marriage is sanctioned with absolute nullity (art. 271 C.civ.). If the manifestation of will exists in its materiality, but its free character has been altered by error, fraud or violence, the marriage is voidable for the vitiation of consent (art. 298 para. 1).*
- *A civil proceeding for a declaration of absolute nullity of the marriage may be invoked by any person who justifies a legitimate interest.*
- *The absolute nullity of the marriage can be proved by any means of proof (e.g. documents, questioning, witnesses, etc.). The action for a declaration of absolute nullity of the marriage is imprescriptible. The court decision establishing the absolute nullity of marriage is constituted by rights and takes effect erga omnes.*

- *The relative nullity of the marriage may be invoked by the spouse who claims that his or her consent has been vitiated by error, fraud or violence.*
- *As regards the effects, we mention that both absolute nullity and relative nullity produce the same effect, that is to say, the dissolution of the marriage, both for the past and for the future, as if it had not been concluded. As regards the personal relations between the spouses, by reason of the effects of the dissolution of the marriage, they are reinstated in the situation prior to the marriage, and it is therefore considered that they never had the status of spouse.*
- *At the same time, we would like to point out that it is erroneously referred to in paragraph 267 of the report to the limitation of the spouses' right of action for the annulment of marriage to 18 months after its conclusion, the provisions of Book II of the Civil Code, which set out the rules applicable in the field of family relations, including in the matter of marriage, not establishing such an objective term.*
- *In the matter of marriage there are special rules for the limitation of the right of action; thus, according to art. 301 C.civ., the limitation period of 6 months for the action for annulment of the marriage begins to run:*

  - in the absence of consent or authorization required by law, from the date on which those whose consent or authorization was required for the conclusion of the marriage became aware of it;

  - in case of nullity for defects in consent or lack of discernment, from the date of cessation of the violence or, as the case may be, from the date on which the interested party knew the fraud, the error or the temporary lack of discernment;

  - in the case of marriage concluded between the guardian and the minor person under his/her guardianship, from the date of conclusion of the marriage.

B. Criminal law

1. Psychological violence and stalking (Articles 33 and 34)

Comment: *Regarding the offense provided in art. 33 of the Convention (Psychological violence), we remind that the Romanian Criminal Code criminalizes (under Title I, Chapter VI of the Special Part) certain crimes against the mental freedom of the person. We have in mindcrimes such as threat (art. 206 CP)[3], blackmail (art. 207 CP)[4] and harassment (art. 208*

[3] Art. 206 - Threat
(1) The act of threatening an individual with the perpetration of a offense or of a prejudicial act against him/her or other individual, if this is of nature to cause a state of fear, shall be punishable by no less than 3 months and no more than 1 year of imprisonment or by a fine; however, the applied penalty may not exceed the sanction established by law for the offense that was the subject matter of the threat.
(2) A criminal action shall be initiated based on a prior complaint filed by the aggrieved party.

[4] Art. 207 - Blackmail
(1) Coercion of an individual to give, to do, not to do, or incur something for the purpose of unjustly acquiring a non-financial benefit, for him/herself or for other individual, shall be punishable by no less than 1 and no more than 5 years of imprisonment.

CP)[5]. All of these offenses established in the domestic law are capable of covering the various ways in which a person's mental liberty may be harmed, an objective which is also pursued by the offense provided for in art. 33 of the Convention, as results from paragraph 178 of the Explanatory Report to the Convention.

Regarding the offense provided in art. 34 of the Convention (Stalking), we maintain the previous opinion. The offense of harassment provided in art. 208 of the Criminal Code is fully covered by the requirements of the Convention. In this context, a separate criminalization of the crime of "stalking" would only create legislative overlaps and affect the predictability of the criminal law, because the constitutive content of the two crimes would be in fact identical, differing only in name.

We also note that some of the ways in which the act considered by the Convention is committed (see, for example, paragraph 183 of the Explanatory Report to the Convention) are already covered by domestic law in other offenses than harassment, such as - for example - the crime of destruction (art. 253 and 254 CP).

Apart from these aspects, we note that - according to paragraph 186 of the Explanatory Report of the Convention - regulating the possibility of issuing a protection order represents an appropriate non-criminal measure, or Law no. 217/2003 for the prevention and combating of domestic violence provides such a possibility. Consequently, for those conducts which present the level of social danger characteristic of criminal law, the national legislation provides for means of criminal coercion, while for the other types of conduct regulating noncriminal instruments is considered as a timely approach.

2. Physical violence (Article 35)

Comment:

Regarding the fact that the notion of "family member", as defined in art. 177 of the Criminal Code, does not include ex-spouses or partners, or current partners who do not live together, we make the following clarifications:

*→ **(i)** the notion of family member is defined by the Criminal Code and it is, in general, applicable to the rules contained in the same normative act. This notion is characteristic not only to the crime of domestic violence (art. 199 CP), but also to other norms of incrimination (either as an element of the constitutive content of the crime, or as an aggravating circumstance or cause of impunity) or criminal law institutions (extended confiscation). At the same time, the notion of family member provided in the Criminal Code is also applicable in the criminal proceedings, for example regarding the persons entitled to request a revision (art.*

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(2) With the same penalty is sanctioned a threat to disclose a real or fictitious fact compromising for the threatened individual or for a member of his/her family, for the purpose set under par. (1).

(3) If the acts set by par. (1) and par. (2) were perpetrated for the purpose of acquiring a financial benefit, for him/herself or for other individual, they shall be punishable by no less than 2 and no more than 7 years of imprisonment.

[5] Art. 208 - Harassment

(1) The act of an individual who repeatedly, with or without a legitimate interest, pursues an individual or supervises his/her domicile, working place or other places attended by the latter, thus causing to him/her a state of fear, shall be punishable by no less than 3 and no more than 6 months of imprisonment or by a fine.

(2) Making of phone calls or communications through remote communication devices which, through their frequency or content, cause a state of fear to an individual, shall be punishable by no less than 1 and no more than 3 months of imprisonment or by a fine, unless such act represents a more serious offense.

(3) A criminal action shall be initiated based on a prior complaint filed by the aggrieved party 6 https://rm.coe.int/1680a48903 7 See footnote no. 5.

455 Code of Criminal Procedure). Ergo, changing this notion will have repercussions on other situations as well.

*→ **(ii)** the crime of domestic violence (art. 199 CP) seeks to punish certain acts more severely due to the relationship established between the perpetrator and the victim, a relationship defined by the legislator through the notion of "family member". In this context, when establishing the field of the notion of family member, the legislator took into account only those situations in which the connection between the perpetrator and the victim of the crime is sufficiently characterized/important [either as a result of the kinship or as a result of another circumstances (cohabitation)] to justify aggravated treatment[6]. This does not mean, however, that the persons who don't qualify as family members under the Criminal Code do not enjoy criminal protection against acts covered by the Convention. On the contrary, acts such as physical violence directed against the ex-spouse or concubine, or the concubine who does not live with the perpetrator, will be penalized according to the rules of criminalization for the crimes of murder, aggravated murder, bodily harm, battery or other acts of violence[7] etc.*

→ In other words, the facts contained in the Convention are also found in the domestic law in one form or another (mainly as offenses of murder, manslaughter, bodily harm, battery or other acts of violence etc., and - as an aggravated variant determined by the quality of the victim - as domestic violence).

We recall that, as it also results from the wording of art. 35 of the Convention and form paragraphs 187 and 188 of its Explanatory Report, it is necessary to criminalize the acts of "physical violence against another person", without requiring an aggravating circumstance, the latter being an option of the Romanian legislator (who thus is setting a higher standard than required by the Convention).

→ (iii) the notion of family member as defined in the Criminal Code does not affect the special legislation on the prevention and combating of domestic violence, Law no. 217/2003 defining - within the art. 5 - the family member in a broader context, as:

"a) ascendants and descendants, brothers and sisters, their children, as well as the persons becoming such relatives as a result of adoption;

b) spouse and / or ex-spouse; siblings, parents and children from other relationships of the spouse or ex-spouse;

c) persons establishing relations similar to those existing between spouses or between parents and children, whether or not they lived with the abuser, their partner's ascendants and descendants, and their siblings;

d) the guardian or another person who exercises in fact or in law the rights towards the child;

e) the legal representative or other person who takes care of the person with mental illness, intellectual disability or physical disability, except for those who fulfill these attributions in the exercise of professional tasks".

[6] For example, a cohabitation relationship between the perpetrator and the victim that took place 20 years ago can seldom have the relevance necessary to justify aggravated sanctioning treatment.

[7] We also draw attention to the fact that not giving effect to the quality of the victim of ex-spouse or partner or current partner who does not live with the perpetrator as an aggravated form of crime (domestic violence) does not mean that this circumstance could not be taken into account by the judge in the process of judicial individualization of the punishment, directing the punishment towards the special maximum provided by law.

3. Sexual violence, including rape (Article 36)

Comment:

→ Article 36 of the Convention implies the criminalization of rape and sexual assault having as central element the non-consensual nature of the specific acts of these offenses, drawing attention to the fact that - in domestic law - the material element of the offenses provided in art. 218 and 219 of the Criminal Code consists in committing the deed by coercion, making it impossible to defend oneself or to express one's will or taking advantage of this state.

→ In this respect, we point out that, even if the wording of the domestic law is not the same as that of the Convention, the area of incrimination is the same. In particular, the nonconsensual character represents the basis of the respective crimes in the national legislation too, where constraint, rendering the person in question unable to defend him/herself or to express his/her will or by taking advantage of such state are nothing but expressions of the numerous ways in which the lack of consent may be manifested. There is thus no limitation in this respect, so any impossibility, including that of a psychological / traumatic nature (socalled "tonic immobility" [8]), is covered by the text. Therefore, if the evaluation criterion considers the substantial conformity of the domestic law with the provisions of the Convention, and not the wording of the texts18, then it must be admitted that the domestic law is in perfect accordance with the standards imposed by the Convention.

→ Regarding the Para. 283, we reiterate that the criminal procedural law requires, according to the international human rights standards, the proof of any accusation brought against a person, therefore of all the constitutive elements of the crime imputed to him. Thus, whatever the wording of the incriminating text, it will be up to the judiciary to prove the commission of the crime (including lack of consent). Any other interpretation of Para. 283 would lead to the conclusion that it is desirable to reverse the burden of proof and to infringe the presumption of innocence.

→ We also note the contradictory nature of paragraphs 284-286 and 288 respectively in relation to paragraph 287. On the one hand (paragraph 287), the lack of a minimum age limit below which the acts of penetration of a minor would automatically constitute the offense of rape[9] does not mean that minors, victims of crime, are deprived of protection by criminal law,

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[8] In fact, this hypothesis has been explicitly addressed in the literature, showing that "it does not matter how the victim opposed the sexual act (violent or passive opposition, specific to the situation in which - because the victim did not want to further aggravate her situation - she chose not to actively oppose sexual intercourse). What matters is that the sexual act is performed or the perpetrator wishes to perform it (in the case of an attempt) by defeating the will of the victim or, in other words, in the absence of the victim's consent. " (S. Bogdan, D. A. Șerban, Criminal law. Special part. Crimes against the person and against the administration of justice, 2nd edition, Universul Juridic publishing house, Bucharest, 2020, p. 314) 18 As it clearly results from paragraph 193 of the Explanatory Report to the Convention.

[9] According to some authors, such an age, below which the minor does not have the necessary discernment in order to issue a valid consent, which could be considered by the judicial body, would be 12 years. In all cases, however, it is for the court to determine whether - as a result of the minor's age - the minor committed the sexual act (with the correct representation of the meanings of that act) or was forced to undergo such an act (case in which the deed will constitute rape) (D. I. Lămășanu, in G. Antoniu, T. Toader (coord.), Explanations of the new Criminal Code. Vol. III. Art. 188-256, Universul Juridic publishing house, Bucharest, 2015, p 218). In other words, it must be determined, on a case-by-case basis, whether the concerted act (with all its peculiarities) harmed the sexual freedom of the minor (the related legal framework being rape) or his sexual integrity (the legal classification being sexual intercourse with a minor).

as the offense sexual intercourse with a minor already exists . On the other hand (paragraph 288), as stated in paragraph 281 of this report as well, the central element of rape must be the lack of consent, which may or may not result from the victim's situation of disability; the assessment of this aspect can only belong to the court, on a case-by-case basis, since not every disability of the victim makes the act a rape (admitting otherwise would mean denying the right of these persons to self-determination).

4. Forced marriage (Article 37)

We reiterate that acts such as those covered by the Convention may receive, in domestic law, the legal classification of rape, sexual assault, sexual intercourse with a minor, illegal deprivation of liberty, ill-treatment applied to underage persons, even trafficking in human beings etc., depending on the specific circumstances of the case. Furthermore, legislation, jurisprudence and specialized works analysis entitles us to unreservedly opine that the act of determining the conclusion of a forced marriage constitutes the specific action of ill-treatment applied to underage persons.

→ This offense consists of "Serious jeopardy, through measures or treatments of any kind, of the physical, intellectual or moral development of an underage person, by parents or by any person under whose care the underage person is". Given the wording of the indictment, the measures or treatments can be of any kind, so they can also include forced marriages. Looking from the immediate consequences required by law, it has been shown that such marriages brutally violate not only the freedom of decision of the minor, but also the right to a normal sex life, the physical, mental and intellectual development of the victim[10].

→ Contrary to what is stated in paragraph 298 of this report, acts such as those enshrined by the Convention have received in practice the legal classification of ill-treatment applied to underage persons (art. 197 CP) or sexual intercourse with a minor (art. 220 CP). Noticeable that if some of these facts resulted in convicting the husband (in fact or in law) of the minor victim for the crime of sexual intercourse with a minor, it is true that the courts have been reluctant to convict the parents for instigating the sexual intercourse with a minor or for the committing the crime of ill-treatment applied to underage persons22. However, this circumstance is not due to a legislative gap, but - according to the opinion expressed in certain specialized works - to the criticisable practice of the judicial bodies to use the so-called cultural clauses (not enshrined in law), such as the tradition of the respective communities.

→ In conclusion, we emphasize once again that the non-existence in the national criminal law of a deed whose incrimination is required by a convention under the strictly same name as that of the convention does not necessarily mean that the conduct is not criminalized/ sanctioned. It may exist in domestic law under another name, which in our view qualifies domestic law to be in conformity with that convention.

→ This view is confirmed, as we have already shown, by the Explanatory Report to the Convention itself, para. 155: "155. The obligations contained in Articles 33 to 39 require Parties to the Convention to ensure that a particular intentional conduct is criminalised.

[10] In this sense, M. O. Constantin, The cultural clause in criminal jurisprudence in Romania, The New Journal of Human Rights no. 3/2021, pp. 32. 22 Ibidem, p. 26.

The drafters agreed on this wording to oblige Parties to criminalise the conduct in question. However, the Convention does not oblige Parties to necessarily introduce specific provisions criminalising the conduct described by the Convention. With regard to Article 40 (sexual harassment) and taking account of the specific nature of this conduct, the drafters considered that it could be subject to remedy either under criminal law sanctions or other legal sanctions. Finally, the offences established in this chapter represent a minimum consensus which does not preclude supplementing them or establishing higher standards in domestic law."

→ Furthermore, we cannot agree with paragraph 299 of this report. As long as a proper offense under domestic law exists, the imposition of another specific indictment rule fails out of necessity. Reasoning that this would contribute to data collection regarding the extent of forced marriages phenomenon is not an argument which corresponds to the reason suggested by the report.

5. <u>Female genital mutilation (Article 38)</u>

Comment:

From our point of view, the facts of woman's genitals mutilation are already incriminated in the legislation in force, in the context of crimes with a broader object, such as: art. 193 of the Criminal Code - Battery and other acts of violence, art. 194 of the Criminal Code - Bodily injury.

→ Thus, we do not consider it necessary to incriminate these acts separately. On the one hand, the ultimate purpose of the Convention is to criminalize the acts listed in its text, and not necessarily to create separate offenses, with a name identical to that of the Convention, when the incrimination already exists in national law. On the other hand, Romania is not among the states in which the acts of genital mutilation constitute a widespread social phenomenon and for the fight against which a specific response from the state would be necessary, through their separate incrimination.

→ We also do not share the same perspective over the issues raised in paragraphs 304 and 305 of this report. It is shown that (i) „the conduct of coercing, procuring or inciting someone to undergo female genital mutilation described in Article 38b and c remain outside the scope of such provisions and do not appear to be criminalised under any other existing offence" and that (ii) the acts of instigation and complicity in domestic law are not covering for these criminal activities (letters b) and c) of art. 38 of the Convention] because they concern the activity of the perpetrator carried out on the victim, without the perpetrator having an active role in carrying out the mutilation procedure.

→ With regard to these aspects, we cannot fail to note that - according to paragraphs 200 and 201 of the Explanatory Report of the Convention - letters b) and c) of art. 38 cover the activities of assisting the perpetrator in order to perform the genital mutilation operation („the act of assisting the perpetrator to perform acts in lit.a"). In other words, even if the acts of coercion, procurement or determination are carried out on the victim, they take into account the help given to the perpetrator for the activity of mutilation, so acts of material or moral complicity prior to the commission of the crime.

→ Moreover, this is also the nature of complicity or instigation acts under domestic law, which do not imply an actual performance- by an accomplice or instigator - of the action or inaction

that forms the material element of the crime, otherwise he will become the perpetrator or co-perpetrator of the deed.

→ Last but not least, the coercive activity may receive, depending on the specific circumstances of the case, the legal qualification of threat or other offenses against bodily integrity already enshrined in domestic law (beatings or other violence, personal injury, etc.).

8. Sanctions and measures (Article 45)

Paragraph 319: *These data, which is mentioned to have been provided by the National Probation Directorate, were not correctly correlated, so the situation is as follows: the period referred to in 20142020, at the level of the probation system, there were registered a number of 1442 of persons convicted of sexual assaults on children, under the supervision of the probation services.*
→ Also, in connection with the statement that these convicted persons have executed their obligations of unpaid work for the benefit of the community within schools or other institutions for child's protection, we mention that during the referred time interval (20142020) there were only 5 situations in which the courts ordered the performance of unpaid work for the benefit of the community within institutions that carry out activities with minors, however, the probation counsellors who were case managers either requested the modification of the community service institution (in 4 cases) or decided to perform unpaid work during the school holidays, during the period when the children were not in those units (1 case).
→ These issues were clarified by the NPD at the time of their appearance in the public space.

9. Aggravating circumstances (Article 46)

Comment: *As regards the fact that "the crime was committed with the use or threat of a weapon", we note - as stated in paragraph 327 of this report (footnote 121) - that The Romanian Criminal Code criminalizes this act as an independent crime[11].*
Therefore, whenever the acts considered by the Convention are committed with the use or threat of a weapon, they will generate multiple violations (together with the unlawful use of a weapon), resulting in an even more severe aggravation of the sanctioning regime.
Regarding the circumstance from letter a) art. 46 of the Convention by reference to the notion of family member, see the observations made above.
In addition, the fact that the concept of family member does not include ex-spouses or partners, or current partners who do not cohabit with the perpetrator, so that those acts acquire the legal qualification of domestic violence, does not exclude that the court takes into account the quality of the passive subject in the process of judicial individualization of the sentence.

[11] Art. 343 - Unauthorized use of a weapon
(1) The use of a lethal or prohibited weapon, without right, shall be punishable by no less than 1 and no more than 3 years of imprisonment.
(2) The use of a non-lethal weapon included in the category of weapons for which a permit is required, without right, shall be punishable by no less than 6 months and no more than 2 years of imprisonment.

10. Prohibition of mandatory alternative dispute resolution processes or sentencing (Article 48)

Comment:
→ With regard to the recommendation on the identification by judges and mediators of power imbalances (para. 337a.), we maintain our expressed opinion, reiterating the fact that in the matter of family relations, on certain aspects (for example, regarding the exercise of parental authority, the domicile of the minor, etc.), the court is obliged to rule ex officio when the parties have not requested or have not agreed in the mediation agreement; in addition, any measure regarding the child, regardless of its author, including by the court, must be taken, according to art.263 C.civ. Respecting the best interests of the child.
→ Moreover, in solving the cases brought before the court, regardless of its object, the judge according to art. 22 para. (2) C.pr.civ., has the duty to insist, by all legal means, in order to prevent any mistake regarding the finding of the truth in question, based on the establishment of the facts and by the correct application of the law, for the purpose of pronouncing a solid and legal decision.
→ To that end, with regard to the facts and the statement of reasons in law on which the parties rely, the judge is entitled to ask them to submit explanations, orally or in writing, to discuss them any factual or legal circumstances, even if they are not mentioned in the application or in the defence, to order the taking of the evidence which he considers necessary, as well as other measures provided for by law, even if the parties oppose it.

VI. Investigation, prosecution, procedural law and protective measures

E. Ex parte and ex officio proceedings (Article 55)

Comment: *The reasoning of the Romanian legislator, when establishing the condition of the victim's prior complaint regarding certain crimes, was that – either as a result of the low seriousness of certain facts (e.g. Battery and other acts of violence), or due to a certain link that may exist between the perpetrator and the victim (for example, the theft pursued upon the prior complaint, rape in the basic form, etc.) - it was considered that sometimes the victims' interests or position in such crimes should be considered as important as the criminal policy interests of the state.*

→ In other words, balancing the victim's possible interest in not wanting to be unwillingly involved into a judicial procedure regarding issues closely related to his/her private life and the interest in achieving justice, it was considered that the most able to decide on this issue is the injured person himself/herself. Otherwise, by an ex officio criminal prosecution, the victim would be treated as a mere tool for carrying out the criminal policy, even if it is against her/his specific interests.

F. Measures of protection (Article 56)

Paragraph 409: *See the comment for paragraph 259.*

Paragraph 413: *The number of rooms intended for the hearing of minors listed in the report is incorrect.*
→ As partially indicated in the comment under Para. 259, a centralization of NAPRCA (National Authority for the Protection of the Rights of the Child and Adoption) shows that currently there are 73 venues dedicated to hearings of minors, victims of violence, as follows: 24 set up at GDASPCs, 27 – police inspectorates, 12 – prosecutor's offices, 9 – county courts, 1 - NGO. To these are added the rooms arranged at the premises of the courts, used in civil cases.
→ We also mention the Emergency Ordinance no. 105/2021 on the approval and implementation of the National Child Support Program, in the context of the COVID-19 pandemic - "Caring for children". In order to materialize the priorities[12] of the Program, one of the measures is represented by the arrangement of spaces specially destined for listening to / listening to the children victims of crimes, at the level of I.G.P.R., D.G.P.M.B. and county inspectorates by the police. Some rooms have been set up already.[13]
→ See also the commentary for Para. 259 on justice system projects to ensure a sufficient number of hearing rooms, with national coverage.

G. Legal aid (Article 57)

Comment: *Regarding the recommendations made, we mention that according to art. 7 para. (2) letter d) of the Law no. 217/2003 on preventing and combating domestic violence, the central and local public administration authorities have the obligation to ensure the exercise of the right to information of victims of domestic violence, according to their competences, as the case may be, on the right to legal assistance and the institution where they can address for the exercise of this right and on the conditions and procedure for granting free legal assistance.*

Regarding the paragraph 423: *We reiterate that the free legal assistance regulated by Law no. 211/2004 is not singular. The Code of Criminal Procedure establishes in art. 93:*

(4) Legal assistance is mandatory when a victim or civil party lacks mental competence or has a limited mental competence.

(5) When a judicial body believes that, for various reasons, a victim, civil party or party with civil liability cannot prepare their defense on their own, it shall order steps for securing a court appointed counsel.

→ In the situations stipulated by the criminal procedure legislation, providing legal assistance by the ex officio lawyer is not limited by a value threshold.

→ According to art. 6 of the Law no. 217/2003 on preventing and combating domestic violence, the victim of domestic violence has the right to free counselling and legal assistance, the legal

[12] Protecting children's psycho-emotional integrity by creating assessment and intervention mechanisms to ensure their psycho-emotional and mental health during the COVID-19 pandemic and post-pandemic, as well as improving the mechanism of prevention and multidisciplinary intervention for situations of violence against child, especially for situations of physical, sexual and emotional violence in the domestic, institutional, community and online setting.
[13] https://adevarul.ro/locale/calarasi/prima-camera-audiere-minorilor-romania-inaugurata-politia-calarasi-_6218e68e5163ec4271716003/index.html

assistance of the person requesting the protection order being mandatory, according to art. 42, thus not limited by a value threshold.

Regarding the paragraph 424: *We reiterate that it is true that many of the lawyers who provide legal assistance ex officio are young and at the beginning of their careers. However, through initial and continuing training courses, efforts are being made to ensure that young lawyers form a body of professionals who are well versed in both the rules of procedure and the provisions of substantive law, including the Istanbul Convention.*

→ Within the activities of initial or continuing training of lawyers, the courses/workshops carried out by the National Institute for the Training and Development of Lawyers include information on domestic violence, including relevant case law.

→ Also, UNBR recommends the Bars which organize continuous education courses include in their agenda courses on the Istanbul Convention as well - theoretical aspects and practical implications, especially for lawyers registered in the legal aid service.

AGENȚIA NAȚIONALĂ
PENTRU EGALITATEA DE ȘANSE
ÎNTRE FEMEI ȘI BĂRBAȚI

Appendix II
List of the national authorities, other public bodies, non-governmental organisations and civil society organisations with which GREVIO held consultations

Ministries

Ministry of Family, Youth and Equal Opportunities
Ministry of Education
Ministry of Health
Ministry of Internal Affairs
Ministry of Justice
Ministry of Labor and Social Protection
Public Ministry

National entities

National Agency for Equal Opportunities between Women and Men
National Authority for the Protection of the Rights of the Child and Adoption
National Institute of Statistics
National Agency for Roma
National Council for Combating Discrimination
General Inspectorate for Immigration

Non-governmental organisations

ALEG - Association for Liberty and Equality of Gender
Anais Association
Necuvinte Association
FILIA
E-ROMNJA
CMSC Iasi/Romanian Women's Lobby
JRS (Jesuit Refugee Society) Romania