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COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE

DUNJA MIJATOVIĆ

**REPORT FOLLOWING HER VISIT TO ROMANIA
FROM 12 TO 16 NOVEMBER 2018**

TABLE OF CONTENTS

SUMMARY	3
INTRODUCTION	5
1 HUMAN RIGHTS OF PERSONS WITH DISABILITIES.....	6
1.1 SYSTEMIC OBSTACLES TO THE EFFECTIVE PROTECTION OF THE RIGHTS OF PERSONS WITH DISABILITIES	6
1.2 THE RIGHT TO LIVE INDEPENDENTLY AND TO BE INCLUDED IN THE COMMUNITY	7
1.2.1 HUMAN RIGHTS CONCERNS RELATED TO THE INSTITUTIONALISATION OF PERSONS WITH DISABILITIES.....	8
1.2.2 INCLUSION IN THE COMMUNITY: DEINSTITUTIONALISATION, ACCESSIBILITY AND EMPLOYMENT	10
1.3 THE RIGHT TO LEGAL CAPACITY	12
1.4 INCLUSIVE EDUCATION.....	13
1.5 CONCLUSIONS AND RECOMMENDATIONS	14
2 VIOLENCE AGAINST WOMEN.....	17
2.1 DATA COLLECTION, RESOURCE ALLOCATION, AND INTER-INSTITUTIONAL COORDINATION AND CO-OPERATION	18
2.2 AVAILABILITY AND ACCESSIBILITY OF CERTAIN SUPPORT SERVICES FOR VICTIMS OF DOMESTIC VIOLENCE	19
2.3 PROTECTIVE MEASURES AND ACCESS TO JUSTICE OF WOMEN VICTIMS OF DOMESTIC VIOLENCE.....	19
2.4 CONCLUSIONS AND RECOMMENDATIONS	22
3 THE REFORM OF THE JUDICIARY AND THE AMENDMENTS TO THE CRIMINAL JUSTICE LAWS	24
CONCLUSIONS AND RECOMMENDATIONS.....	25

SUMMARY

Commissioner Dunja Mijatović and her team visited Romania from 12 to 16 November 2018. During the visit the Commissioner held discussions with the authorities, national human rights structures, NGOs and other members of civil society. The present report focuses on the human rights of persons with disabilities and violence against women and closes with the Commissioner's brief observations and recommendations on the ongoing reform of the judicial system in Romania and the adoption of certain measures in the area of criminal law.

Human rights of persons with disabilities

In recent years, the Romanian authorities have taken several legislative and policy measures to improve the protection of the human rights of persons with disabilities and established new coordinating and monitoring institutions acting in this field. While welcoming these steps, the Commissioner finds that there are numerous systemic obstacles to the effective protection of the rights of persons with disabilities in Romania. In particular, the authorities should increase the resources and clarify the mandates of the responsible institutions; strengthen monitoring mechanisms; build technical capacity and allocate sufficient funding to county and local authorities, enabling them to adequately fulfil their decentralised functions related to the protection of the rights of persons with disabilities; improve inter-institutional co-operation and coordination; and address existing deficiencies in data collection. The Commissioner also urges the Romanian authorities and national human rights structures to strengthen their collaboration with NGOs.

Furthermore, the Commissioner calls on the authorities to repeal the current legislation which allows the involuntary placement of persons with disabilities in closed institutions, which is contrary to the requirements of Article 19 of the UN Convention on the Rights of Persons with Disabilities. While deinstitutionalisation is still in progress, the authorities should take urgent measures to mitigate the most severe human rights violations caused by involuntary placements, which have also been examined by the European Court of Human Rights (hereinafter: the Court) in several judgments still awaiting execution. These concern the lack of adequate safeguards against involuntary placements, including the necessary legal and decision-making support to enable persons to have their will recognised and respected in this context, the poor material conditions prevailing in institutions, and the lack of independent representation and of adequate access to justice of those currently living in institutions.

However, beyond such measures, the Commissioner considers that there is a need for a paradigm shift from the institutionalisation of persons with disabilities to their full inclusion in the community. Current efforts focused on resizing large institutions and reducing the number of those living in institutions fall short of this genuine structural change. Instead, the authorities should devote more attention to developing a range of community-based support services, to prevent isolation or segregation from the community, and take measures to enable the transition of persons living in institutions to independent life. In addition, the accessibility of public spaces and services should be increased and the authorities should bolster existing incentives to the hiring of persons with disabilities on the open labour market with measures combating stigma and discrimination in employment.

The Commissioner is worried that, unlike in the case of other children, the current legislation still permits the placement in institutions of young children with severe disabilities. While she welcomes the authorities' plan to close all large institutions for children by 2020 and notes that many children have been transferred to smaller "family-type" homes, she urges the authorities to uphold the goal of providing children with care in families. The Commissioner is also concerned about the high number of children with disabilities out of education or segregated in special schools; the lack of reasonable accommodation and other forms of discrimination prevailing in mainstream schools; and the violence committed against children with disabilities in schools. She calls on the authorities to take measures to ensure that children with disabilities are not excluded from free and compulsory primary or secondary education and that they can access inclusive and quality education on an equal basis with others, in their communities. They should also enhance monitoring in schools and take urgent measures to protect children with disabilities from any form of violence or abuse committed against them, in any educational setting.

Violence against women

The Commissioner welcomes the ratification by Romania, in 2016, of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) and the authorities' efforts to develop the national legal and institutional framework accordingly. However, there are outstanding challenges in the implementation of the relevant legislation, which the authorities need to address promptly. The authorities should, fundamentally, demonstrate stronger commitment to protecting the right of women to live free from violence and ensure that the rights of the victim are at the heart of all measures taken to combat all forms of domestic violence and violence against women.

In respect of the systemic context, the Commissioner recommends that the authorities improve data collection; allocate sufficient resources to the National Agency for Equal Opportunities for Women and Men and to county and local authorities; enhance inter-institutional coordination and co-operation; continue their good co-operation with civil society; and further encourage and support, including by adequate financial allocations, the work of NGOs active in preventing and combating violence against women.

In addition, the authorities should further develop the network of shelters for victims of domestic violence and ensure that access to shelters is not subject to restricting conditions compromising their primary role of providing safe accommodation to victims in emergency situations. Moreover, they should ensure that protection orders are available for immediate protection and without undue financial or administrative burdens placed on the victim; that victims do not face barriers when requesting such orders, irrespective of, or in addition to, other proceedings; and that there are effective and dissuasive sanctions when issued orders are breached.

The Commissioner wishes to draw the authorities' particular attention to the necessity to improve access to justice for women victims of domestic violence. She is concerned by the discriminatory unresponsiveness of the judicial system to such victims and the impunity enjoyed by perpetrators, which has also been highlighted by the Court, and urges the authorities to reinforce capacity-building for the police, prosecutors and the judiciary to ensure that women's complaints are effectively investigated and that cases of violence against them are dealt with in a gender-sensitive way.

Lastly, she stresses the authorities' obligation to fight prejudices and practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men and calls on officials at the highest political levels to send a strong message that gender-based discrimination is unacceptable.

The reform of the judiciary and the amendments to the criminal justice laws

The Commissioner visited Romania in a period marked by the progressive implementation of a profound reform of the judicial system, as well as of extensive amendments to the Criminal Code and the Code of Criminal Procedure. The Group of States against Corruption (GRECO) and the European Commission for Democracy through Law (Venice Commission) have expressed concern that some amendments were likely to undermine the independence of judges and prosecutors and public confidence in the judiciary or would seriously impair the effectiveness of the Romanian criminal justice system in the fight against serious crimes, including violent crimes. In her discussion with the Romanian authorities the Commissioner stressed the importance of maintaining the independence of the judiciary and urged the authorities to give effect to the recommendations of the Venice Commission and GRECO. Underlining that the ongoing judicial and criminal law reforms have decisive implications for the independence of the judiciary and the protection of human rights in Romania, she wishes to reiterate these recommendations and calls on the authorities to carry out the reforms in full compliance with Council of Europe and international human rights standards.

INTRODUCTION

1. The Commissioner for Human Rights of the Council of Europe, Dunja Mijatović (the Commissioner), conducted a visit to Romania from 12 to 16 November 2018.¹ The visit focused on the human rights of persons with disabilities (section 1 of this report) and violence against women (section 2). In addition, in the context of the judicial reform currently being implemented in Romania, the Commissioner held discussions with the authorities on the implications of this process for the independence of the judiciary and human rights (section 3).
2. The Commissioner met with the Prime Minister of Romania, Vasilica-Viorica Dăncilă; the Minister of Foreign Affairs, Teodor-Viorel Meleşcanu; the Minister of Justice, Tudorel Toader; the then Minister of Labour and Social Justice, Lia-Olguța Vasilescu; the First Deputy to the Prosecutor General, Laura Oprean; officials from the Ministry of Health, and representatives of the National Authority for the Protection of the Rights of the Child and Adoption, the National Authority for Persons with Disabilities, and the National Agency for Equal Opportunities for Women and Men. She also met the Ombudsman, Victor Ciorbea and his deputies; the president of the National Council for Combating Discrimination, Csaba Ferenc Asztalos; the president of the Council for the monitoring of the implementation of the United Nations Convention on the Rights of Persons with Disabilities, Florinel Butnaru; and members of civil society.
3. The Commissioner travelled to Vâlcea County, where she visited several residential institutions for persons with disabilities and a special school in Băbeni, as well as a shelter for victims of domestic violence in Râmnicu Vâlcea.
4. The Commissioner wishes to thank the Romanian authorities in Strasbourg and Bucharest for their assistance in organising and facilitating the visit and for providing her with additional information and clarifications following the visit. Moreover, she is grateful to all of her interlocutors in Romania for sharing with her their knowledge and insights.

¹ During her visit the Commissioner was accompanied by Özgür Derman, Deputy to the Director of her Office, and Patricia Ötvös, Adviser.

1 HUMAN RIGHTS OF PERSONS WITH DISABILITIES

5. In 1999 Romania ratified the revised European Social Charter (ESC), accepting to be bound by Article 15, paragraphs 1 and 2 concerning the right to education of persons with disabilities and their access to employment. Romania ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in 2011, without reservations. However, it has not yet ratified the Additional Protocol to the ESC providing for a system of collective complaints or the Optional Protocol to the CRPD, which provides for an individual complaints mechanism.
6. The Commissioner welcomes the adoption by the authorities of the [National Strategy](#) “A barrier-free society for persons with disabilities 2016-2020” (National Disability Strategy),² together with an action plan, and of an instrument for the annual monitoring of the implementation of the strategy.³ She encourages the authorities to use these tools to systematically address the current challenges faced by persons with disabilities in the enjoyment of their human rights, as well as future ones, through timely and effective measures.
7. In the past few years, the authorities have also taken several legislative measures aimed at improving the protection of the rights of persons with disabilities, notably in the areas of social welfare, education and employment. In addition, a reform of the social care system and of the guardianship for adults with disabilities is under way. This chapter shall address specific issues concerning the involuntary placement of persons with disabilities in institutions; inclusion in the community; the right to legal capacity; and the right to inclusive education. However, the Commissioner wishes first to share her observations on a number of systemic obstacles which, in her view, currently hinder the effective protection of the rights of persons with disabilities in Romania.

1.1 SYSTEMIC OBSTACLES TO THE EFFECTIVE PROTECTION OF THE RIGHTS OF PERSONS WITH DISABILITIES

8. There is a need to strengthen the resources and to clarify the mandates of the institutions involved in the protection of the rights of persons with disabilities. These include the National Authority for Persons with Disabilities (NAPD), the National Authority for the Protection of the Rights of the Child and Adoption (Child Protection Authority), the National Council for Combating Discrimination (NCCD), the Ombudsman, including its mandates as National Preventive Mechanism (NPM) under the Optional Protocol to the UN Convention against Torture (OPCAT) and as Children’s Ombudsman, and the Council for the Monitoring of the Implementation of the CRPD (Monitoring Council). During her visit, the Commissioner found that both the NPM and the NCCD were understaffed, and that the NCCD lacked resources to carry out planned surveys. Moreover, no tangible difference could be identified between the responsibilities of the Monitoring Council, the NPM and the Children’s Ombudsman in monitoring the situation of children with disabilities living in institutions. Several interlocutors stressed the need to improve public awareness about the competencies of the various agencies involved in the protection of the rights of children with disabilities.
9. There are also important gaps in the monitoring of the implementation of the legislation for the protection of the human rights of persons with disabilities. At the time of the Commissioner’s visit, the Children’s Ombudsman was struggling to become operational and the activity and procedures of the Monitoring Council lacked transparency, including in respect of its collaboration with civil society. In this context, the Commissioner notes the shrinking, in recent years, of the space afforded to NGOs in monitoring the situation of persons living in institutions. The authorities had previously explained this by the establishment, in 2016, of the Monitoring Council, which has a procedure for selecting the civil society experts included in its monitoring teams.⁴ The Monitoring Council shared this view and stressed that the selection of experts was necessary to ensure a fair representation of civil society actors and to limit any undue interference in the lives of persons living in institutions. The Commissioner does not find this argument convincing and is concerned that the [selection rules](#) include arbitrary criteria such as those excluding persons who “had been

² The previous national disability plan covered the period 2006-2013.

³ Order no. 1254/2018 of the Ministry of Labour and Social Justice.

⁴ See [letter](#) by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, to the Minister of Labour and Social Justice of Romania, 14 September 2017, and the Minister’s [reply](#), 29 September 2017.

involved in denigrating the Monitoring Council or the Romanian State". She is equally worried by the approach of some county officials, who during her visit stated that they could not accept the monitoring visits of overly critical NGOs.

10. The Commissioner is also concerned about certain outcomes of the functional decentralisation, which began in the 1990's, of responsibilities in education, social services and benefits, which have been transferred to county and local authorities. The lack of technical capacity, as well as the continued dependence of these authorities on funding from the central government, which to date has been insufficient, has led to discrepancies in the implementation of the relevant standards across the country.⁵ The Commissioner understood from her discussions with various interlocutors that local and county authorities often fail to correctly interpret or to apply primary legislation and justify their inaction by the absence of relevant secondary legislation.
11. Furthermore, there is an acute need to strengthen inter-institutional co-operation and coordination at various levels and across sectors. The Commissioner's interlocutors stressed the need for better co-operation, in particular between the social care, health and education authorities. The Commissioner was pleased to learn, in this respect, that the Ministries of Labour and Social Justice, National Education and Health have recently launched a [pilot programme](#) providing integrated community services in 139 of the poorest localities in Romania, aimed at combating poverty and increasing the social inclusion of vulnerable persons, including persons with disabilities. Regarding monitoring, the Ombudsman and the Monitoring Council confirmed that until present there has been no effective collaboration between them.
12. Lastly, there is no coordinated collection of comprehensive and accurate disaggregated data on persons with disabilities. Various authorities keep databases which are not coordinated and data are not adequately shared among all relevant institutions. Moreover, while the NAPD has been keeping a National Electronic Register of persons with disabilities since 2011, the Commissioner learnt that recent legislative amendments require the Monitoring Council to set up a similar register.⁶ The Commissioner agrees with her interlocutors' conclusion, across the board, that the current data collection system should be reformed, and welcomes the authorities' intention to develop, in the coming years, a mechanism aimed at improving data sharing between all institutions involved in the protection of the rights of persons with disabilities.

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

13. The Commissioner recalls that Article 19 CRPD recognises the right of persons with disabilities to live independently and to be included in the community, "with the freedom to choose and control their lives".⁷ The obligations imposed by Article 19 are wide-reaching and entail the undertaking to fully observe the civil and political, as well as the economic, social and cultural rights of persons with disabilities, on an equal basis with others. These obligations must be implemented with due consideration of the general principles of the CRPD, particularly respect for each individual's inherent right to integrity, autonomy and independence and full and effective participation and inclusion in society.⁸
14. In Romania, from 31 December 2013⁹ to 30 June 2018, the number of adults living in public social care homes increased from 17 123 to 18 081, while the number of such institutions rose from 335 to 426.¹⁰ The Commissioner was informed that this growth is owed in part to the continued trend of using national and European funds to restructure large institutions into smaller ones, rather than to develop community-based services.¹¹ Another key factor in maintaining a high number of persons in institutions is the current legal

⁵ See [Report](#) by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, 8 July 2014, CommdH(2014)14.

⁶ Amendments to Law no. 8/2016 on the establishment of mechanisms provided for by the CRPD. At the time of the Commissioner's visit, the amendments had not yet been signed into law.

⁷ Committee on the Rights of Persons with Disabilities, [General comment No. 5 \(2017\)](#) on living independently and being included in the community, paragraph 2.

⁸ *Ibid.* paragraph 3.

⁹ This date was taken as the reference date in Commissioner Muižnieks' report on Romania, 2014 (see fn. 5 above).

¹⁰ See statistical data at: <http://www.mmuncii.ro/j33/index.php/ro/transparenta/statistici/buletin-statistic>. These data do not cover persons living in private social care homes or in psychiatric institutions.

¹¹ Between 2007 and 2013, Romania invested 26.7 million euros in residential institutions (see fn. 5 above).

framework which allows involuntary placements in closed institutions and which, furthermore, lacks basic safeguards to challenge such placements.

15. The Commissioner shall first refer to this problem and to other concerns related to institutionalisation, namely, the poor living conditions prevailing in institutions and the lack of independent representation and access to justice of persons living in institutions. These issues have already been examined by the Court in several judgments,¹² the execution of which is currently pending.¹³ The Commissioner wishes to highlight the importance of the full execution of these judgments, which reveal structural deficiencies and have serious and immediate implications for a large number of persons with disabilities. It is against this background that the Commissioner will provide her observations on the above-mentioned violations of the rights of persons at risk of, or affected by institutionalisation. However, the Commissioner wishes to stress that measures taken to mitigate the most serious human rights concerns caused by involuntary placements in institutions are not in themselves sufficient to address the core right of persons with disabilities to be included in the community. She will provide her observations on the implementation of this right in the second part of this section, concerning deinstitutionalisation, accessibility and the employment of persons with disabilities. She will then refer to the specific situation of children in institutions.
16. Secondly, the Commissioner will highlight some aspects concerning the right of persons with disabilities to be included in the community, with a focus on deinstitutionalisation, accessibility, and employment.

1.2.1 HUMAN RIGHTS CONCERNS RELATED TO THE INSTITUTIONALISATION OF PERSONS WITH DISABILITIES

17. The Commissioner is concerned about the persistent lack of even the most basic safeguards against involuntary placements in institutions, despite some recent improvements to the procedures concerning psychiatric placements. The Commissioner notes that following the judgment of the Court in the case of *Cristian Teodorescu*,¹⁴ the Mental Health Act¹⁵ was amended so that initial placements in psychiatric institutions, decided by medical committees, have become subject to *ex officio* judicial review.¹⁶ However, the law still does not provide for a judicial review of subsequent decisions to prolong the placement. In addition, NGOs informed the Commissioner that, although psychiatric placements ordered by courts under criminal law are in principle subject to stronger safeguards, the actual opportunities for those concerned to effectively challenge their placement remain very limited. The Commissioner notes the Court's findings in the case of *N. v. Romania*,¹⁷ where the applicant, who challenged his placement in a psychiatric hospital, was not provided with effective legal assistance during the proceedings for the review of his detention, was represented by different lawyers in each set of proceedings, and had no opportunity to speak with them before the hearings.
18. In any event, the Commissioner would like to stress that the existence of legal safeguards regarding the involuntary placement of persons with psychosocial disabilities, even when they are well-designed, is not a sufficient guarantee in itself to prevent abuses, the root causes of which are broader. One of the main reasons for this is the inherently discriminatory nature of most legal systems when it comes to persons with psychosocial disabilities, such as the failure to take account of their specific support needs, the unpreparedness of judges to handle the human rights implications of involuntary measures, and the inbuilt inequality and biases within the system.¹⁸ The Commissioner considers that in the medium term Romania should review its mental health policy with a view to drastically reducing and progressively

¹² See notably, *Parascineti v. Romania*, no. 32060/05, Judgment, 13 March 2012; *Cristian Teodorescu v. Romania*, no. 22883/05, Judgment, 19 June 2012; *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, no. 47847, Judgment [GC], 14 July 2014, and *N. v. Romania*, no. 59152/08, Judgment, 28 November 2017.

¹³ See Council of Europe, Department for the Execution of the Judgments of the Court, Factsheet on Romania, available at: <https://www.coe.int/en/web/execution/country-factsheets>.

¹⁴ See fn. 12 above.

¹⁵ Law no. 487/2002 on mental health and the protection of persons with mental disorders.

¹⁶ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) found that the involuntary placement procedure was very rarely applied: see [visit report](#), 2014, p. 66.

¹⁷ See fn. 12 above.

¹⁸ See the Commissioner's [comments](#) on a draft Additional Protocol to the Convention on Human Rights and Biomedicine, 8 November 2018, paragraph 12.

eliminating recourse to coercive practices in psychiatry in favour of alternative measures designed to ensure treatment based on free and informed consent, in accordance with Article 25 CRPD.

19. In respect of placements in social care homes, the legislation only regulates voluntary placement or placement at the request of the legal representative of the person with disabilities, which are treated as equivalent. Although placement decisions may be challenged before the administrative courts, they are not subject to periodical judicial review. The Commissioner is aware of the argument that placements to social care homes, including transfers between such homes, are voluntary, as placement decisions are followed by contracts signed between the person concerned and the authorities in charge of the institution. However, in her view, this does not adequately address the situation of persons with psychosocial and intellectual disabilities, who are in many cases left without the necessary support to express informed consent or whose wishes are substituted with the wishes of their legal representative. Currently, the only form of representation available to such persons under domestic law is their placement under guardianship, which entails their deprivation of legal capacity (see section 1.3. below). Moreover, for those living in institutions, despite potential conflicts of interest, guardians are often appointed from among representatives of the institutions or of local authorities. However, as found by the Court in the case of *Valentin Câmpeanu*,¹⁹ a large number of persons living in institutions are in practice left without any form of representation.²⁰ The Commissioner witnessed this situation in the two institutions for adults with disabilities that she visited in Băbeni.²¹ While the authorities informed her that all residents had formally “agreed” to their placement, they also considered that many of them had no access to the support they would have needed to express their will or to independent representation during the procedure.
20. The Commissioner is also concerned about the improper living conditions prevailing in many institutions, including overcrowding, poor hygiene, and lack of adequate healthcare.²² In Băbeni, there was a stark difference in the material conditions provided by the above-mentioned institutions for adults, which were located on the premises of a former, larger institution for children with disabilities. While one of the two institutions had been fully renovated, both were understaffed and, in the absence of a qualified medical doctor, the modern therapy equipment installed in the renovated institution was left unused.
21. The Commissioner is also deeply worried about the numerous reports showing that persons with disabilities are subjected to various forms of abuse in institutions. She wishes to recall, in this context, the very serious allegations of ill-treatment perpetrated in a recovery centre in Măciuca,²³ concerning, *inter alia*, beatings and the excessive use of restraint measures and of prolonged solitary confinement.
22. In connection to this, the Commissioner wishes to express her extreme concern about the lack of effective access to justice of persons living in institutions. She wishes to stress in this respect that the Action plan for the implementation of the National Disability Strategy, adopted by the government in 2016, sets a specific duty on a number of authorities to diversify support services in order to ensure the effective access of persons with disabilities to justice, and calls on these authorities, in particular the Ministry of Justice, to show commitment to this undertaking.
23. The Commissioner also recalls that the absence of a redress mechanism for persons with mental disabilities facing violations of their rights was at the heart of the Court’s judgment in the case of *Valentin Câmpeanu*. The lack of independent representation of persons living in institutions, already discussed above, was one of the elements which contributed to this problem. As stressed by one of the Commissioner’s predecessors in

¹⁹ See fn. 12 above.

²⁰ See [Action plan](#) in view of the execution of the Court’s judgment in the case of *Valentin Câmpeanu*, October 2017.

²¹ Centre for recovery and rehabilitation and Centre for recovery and neuropsychiatric rehabilitation no. 2 Băbeni.

²² See, *inter alia*, *Parascineti v. Romania* (fn. 12 above). See also the CPT’s reports on Romania, available at:

<https://www.coe.int/en/web/cpt/romania>, and the NPM’s reports, available at: <http://www.avp.ro/index.php?lang=ro-ro>.

²³ See [letter](#) by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, to the Prime Minister of Romania, 16 March 2017 and [Joint urgent appeal](#) from special procedures, 5 May 2017; see also the NPM’s [report](#) on their visit to the Măciuca centre in January 2017.

written observations submitted to the Court in this case, disability rights NGOs have a crucial role to play in facilitating access to justice for persons in closed institutions.²⁴

24. Another element, on which the Commissioner wishes to provide additional remarks, concerned the inconsistent reporting of deaths occurring in institutions.²⁵ The Commissioner understands that at present only psychiatric institutions and wards are required to report all deaths to the investigative authorities, while social care institutions are only required to report suspicious deaths.²⁶ However, as of 2016, an obligation was introduced for all institutions to report to the Monitoring Council all deaths of persons in their care or custody. Moreover, the Office of the Prosecutor General attached to the High Court of Cassation and Justice (OPG) introduced a new procedure providing for an enhanced review of decisions to close cases involving persons in institutions²⁷ and issued internal guidelines for conducting investigations in cases concerning such persons. The Commissioner considers it encouraging that as a result of these measures, as well as of increased capacity-building for prosecutors, the number of investigated cases grew from 96 in 2016 to 149 in the first half of 2017.²⁸
25. Lastly, as concerns the institutionalisation of children, the Commissioner was informed that as of 2015, the minimum age for placement in institutions was raised from two to three years, and that newly adopted legislation prohibits the placement in institutions of children under the age of seven.²⁹ While welcoming these improvements, the Commissioner regrets that the new law exceptionally allows such placements in the situation of children with severe disabilities. The Commissioner is also extremely concerned about the reported cases of abuse and neglect suffered by children in institutions. In Băbeni, she was pleased to see that the ten children living in the “Nicoleta” family-type home were warmly cared for. However, the home was only surrounded by other institutions, and all of the children attended the nearby special school, isolated from other children and the community.

1.2.2 INCLUSION IN THE COMMUNITY: DEINSTITUTIONALISATION, ACCESSIBILITY AND EMPLOYMENT

26. There are several barriers to deinstitutionalisation, of which a crucial one is the insufficiency of community-based services. The Romanian authorities have still not adopted a clear policy for the deinstitutionalisation of adults with disabilities and a recent [programme](#) for the deinstitutionalisation of 300 adults largely failed to be implemented. The authorities have recently launched a [revised programme](#) which aims to deinstitutionalise 244 adults and to increase the number of day care centres and sheltered homes by 38 and 61, respectively. However, the authorities appear to focus mainly on the reorganisation of large institutions into smaller ones. Thus, newly adopted legislation limits the capacity of institutions at 50 places and provides for progressive cuts of state financing for institutions which fail to reorganise, and which will be entirely funded by county or local authorities, from 2022.³⁰
27. The Commissioner has serious doubts about the efficacy of these measures. According to her observations, until present, the authorities’ efforts have essentially resulted in repeated transfers of persons with disabilities from large institutions to smaller ones, rather than their inclusion in the community. In Băbeni, local officials confirmed that a few residents “had seen all institutions in the Vâlcea County”.³¹ This problem is compounded by the lack of services supporting transition to independent life. The Commissioner is also

²⁴ [Third party intervention](#) by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, in the case of *Valentin Câmpeanu*, 14 October 2011, CommDH(2011)37.

²⁵ See also [letter](#) (reply) from the Prime Minister of Romania to Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, May 2017.

²⁶ In 2017 the Ombudsman recommended that all deaths should be reported to the investigative authorities, irrespective of the institution where they occurred: see the Ombudsman’s [Annual activity report](#), 2017, p. 384.

²⁷ OPG’s Order no. 144/2017.

²⁸ See OPG, [Annual activity report](#), 2017.

²⁹ Law no. 284/2018 amending Law no. 272/2004 on the protection and promotion of the rights of the child.

³⁰ Government emergency ordinance no. 69/2018.

³¹ See also the Ombudsman’s (NPM) [report](#) following visits made in May 2017 to seven residential institutions in the Vâlcea County.

concerned that many sheltered homes function in practice as institutions, leaving persons with disabilities little choice about the conduct of their daily lives.

28. Concerning the situation of children, the Commissioner welcomes the authorities' plan to close all large institutions for children by 2020.³² According to official data, from 31 September 2013 to 30 June 2018, the number of children with disabilities in institutions decreased from 7891 to 5254, and the number of institutions for such children dropped from 373 to 301. The Commissioner was informed that many children have been transferred from large institutions to smaller ones, such as the "Nicoleta" home in Băbeni. While such homes provide a better environment than large institutions, the Commissioner calls on the authorities to ensure that they do not become a dead-end, falling short of a full deinstitutionalisation process for children with disabilities. In Băbeni, the staff expressed their fear that the only option for most children in the "Nicoleta" home was to remain there until the age of 18, before being transferred to an institution for adults.
29. A further problem is the lack of national programmes for preparing children to leave the institutional care system. The authorities of the Vâlcea County informed the Commissioner that, for the first time, they were able to participate, together with authorities of two neighbouring counties, in an EU-funded project aimed, *inter alia*, at providing capacity building to professionals working in child protection and care, with a focus on designing working methods to support children ageing out of institutions, which will be disseminated at national level.
30. The Commissioner welcomes, on the other hand, the recent inclusion measures taken by the central authorities, such as the adoption of standards for services provided by professional personal assistants; the legal recognition of sign language; increased benefits; and measures to improve the accessibility of public spaces and transportation.³³ However, official and civil society reports show that the majority of housing units and public buildings are not as yet accessible to persons with disabilities and that the accessibility of streetscapes, public transportation, television and electronic services is low. Moreover, universal design and reasonable accommodation are not taken into consideration in the development of sectorial plans and measures such as for the protection of victims of domestic violence (see chapter 2. below).
31. In respect of employment, in recent years the authorities have introduced measures to improve the access of persons with disabilities to the open labour market, consisting notably in the obligation of employers having at least 50 employees to hire persons with disabilities at 4% of their workforce or to pay a monthly tax, and the granting of subsidies to other employers that hire persons with disabilities. The Commissioner was informed, however, that as of September 2017, the repealing of the option previously available to bigger employers to buy goods and services from sheltered workshops,³⁴ instead of paying the monthly tax, has led to the closing of most workshops and the loss of some 2 000 jobs held by persons with disabilities.³⁵ Moreover, the subsidies available to smaller employers are underused, with only 154 being granted in 2017. Thus, at 30 September 2017, the employment rate of persons with disabilities was of only 17.5%, compared to the overall rate of 63.5%.³⁶ The Commissioner was also informed that persons with disabilities are often hired only formally, without being provided with an actual job.
32. The Commissioner further notes that the legislation still uses the system of "invalidity", which classifies persons according to the loss of their work capacity, following initial employment or contribution to the social welfare system.³⁷ At the time of the Commissioner's visit, only persons falling in the third (lighter) degree of "invalidity" were permitted to engage in paid work. The Commissioner was pleased to learn that in December 2018 a new Law on Public Pensions was adopted, which allows persons in all categories of "invalidity" to

³² [National Strategy](#) for the protection and promotion of the rights of the Child 2014-2020; see also Committee on the Rights of the Child, Consideration of reports of States parties [...], [Replies of Romania](#) to the list of issues, 2017.

³³ Government ordinance no. 548/2017, Government emergency ordinances nos. 51/2017 and 69/2018, and Order of the Minister of Labour and Social Justice no. 1 069/2018.

³⁴ The term "sheltered workshop" refers to an organisation or environment that employs people with disabilities separately from others.

³⁵ See [Explanatory memorandum](#) to Government emergency ordinance no. 60/2017.

³⁶ National Statistical Institute, [press release](#), 22 December 2017.

³⁷ For a previous assessment of this system, see CommDH(2014)14 (fn. 5 above).

perform paid work, while also drawing benefits.³⁸ However, she considers that the legal category of “invalidity”, which is derogatory and perpetuates an undue distinction between persons with disabilities on the grounds of the moment when they became disabled, should be repealed.³⁹ She also notes the concerns raised by civil society that the new law introduces more restrictive conditions for accessing benefits. The Commissioner encourages the authorities to carry out a detailed impact assessment before implementing these measures, to avoid any undesired consequences for persons with disabilities.

1.3 THE RIGHT TO LEGAL CAPACITY

33. Article 12 CRPD requires states parties to safeguard the right of persons with disabilities to equal recognition before the law and in particular their right to enjoy legal capacity on an equal basis with others in all aspects of life. The CPRD Committee has reaffirmed that a person’s status as a person with a disability or the existence of impairment “must never be grounds for denying legal capacity or any of the rights provided for in Article 12.”⁴⁰ It has also called on states parties to review the laws allowing guardianship and trusteeship, and to take measures to replace regimes of substituted decision-making by supported decision-making, which respects the person’s autonomy, will and preferences.⁴¹
34. Furthermore, the Commissioner recalls the case-law of the Court, which has established that the non-recognition of a person’s legal capacity severely limits their human rights, and full deprivation of legal capacity is a very serious interference with the right to private life which is protected by Article 8 of the European Convention of Human Rights (ECHR). According to the Court, the existence of a mental disorder, even a serious one, cannot by itself justify incapacitation.⁴²
35. The Commissioner notes with regret that Romanian legislation still allows for the deprivation of persons with intellectual and psychosocial disabilities of their legal capacity, which entails a loss of autonomy and rights in virtually all areas of their lives. Despite these serious consequences, the law does not provide for an automatic periodic review of incapacitation decisions and in practice, even the existing procedural safeguards, such as the obligation for the court to hear the person, are not systematically respected.
36. The Commissioner notes that the Action Plan for the implementation of the National Disability Strategy provides for the establishment of services supporting the exercise, by persons with disabilities, of their legal capacity. The Commissioner observes that this intention has not been followed up by any concrete initiatives and consequently there is no system for supported decision-making for persons with intellectual and psychosocial disabilities in Romania. She was also informed that as part of the execution of the Court’s judgment in the case of *Valentin Câmpeanu*, the authorities are preparing a reform of the guardianship system, which aims to clarify the status of the guardian and to ensure that guardianship provides effective and independent protection. The Commissioner understands that the authorities intend in the future to adapt the new system to respond to the needs, wishes and rights of persons with disabilities. However, in a first stage, the legislation would still preserve the full deprivation of legal capacity, as currently provided by the Civil Code.⁴³
37. The Commissioner is worried about the consequences of the continuation of this system, not least for persons with disabilities living in institutions, a large number of whom are currently under the guardianship of representatives of the institutions or of local authorities. She regrets that the authorities did not take the opportunity of this reform to replace the existing substituted decision-making system with supported decision-making alternatives.
38. Finally, during his discussion with the Commissioner, the president of the NCCD, Csaba Ferenc Asztalos, expressed concern that deprivation of legal capacity sometimes acts as an impediment to the recognition of persons with disabilities as persons with equal standing in courts. The Commissioner shares this concern and

³⁸ At the time of writing this report, the new act on Public Pensions has not yet been signed into law.

³⁹ See also CommDH(2014)14 (fn. 5 above), pp. 12-13.

⁴⁰ Committee on the Rights of Persons with Disabilities, General Comment on Article 12 on Equal recognition before the law, paragraph 9.

⁴¹ *Ibid.* paragraph 22.

⁴² See, in particular, *Shtukaturov v. Russia*, no. 44009/05, Judgment, 27 March 2008.

⁴³ See Action plan in view of the execution of the Court’s judgment in the case of *Valentin Câmpeanu* (fn. 20 above).

urges the authorities to ensure that persons deprived of legal capacity are not denied access to courts on this basis.

1.4 INCLUSIVE EDUCATION

39. In the Romanian education system, children with disabilities have traditionally been directed to special education, segregated from mainstream settings. The Commissioner welcomes the adoption, in 2016, of legislation which specifically gives parents the right to choose the type of education desired for their children with disabilities, the first option being mainstream education.⁴⁴ According to information received from civil society, following the adoption of this legislation, more than 5 000 children with disabilities were enrolled in mainstream schools.
40. Despite this progress, the Commissioner is concerned that the Romanian education system remains, to a large extent, segregated. Official statistics show that out of 59 930 children with disabilities enrolled in the current school year, 33 930 attend mainstream education, 2 131 are included in special classes or groups in mainstream schools, while 21 779 are enrolled in special schools.⁴⁵ The remaining children receive education in hospitals or are home-schooled. According to NGOs, around one third of the special schools function as closed institutions, and special schools often fail to provide children with disabilities with the necessary skills for their inclusion in society. NGOs also assessed the number of children not receiving any form of education at around 20 000.⁴⁶ The Commissioner is furthermore concerned that children with disabilities continue to be denied access to mainstream schools, often at the initiative or with the support of parents of other children. She recalls that this discriminatory practice has been raised before the Court in the recent case of *Ștefan-Moshe Stoian*.⁴⁷
41. Moreover, in their discussions with the Commissioner, NGOs have expressed their concern that the legislation on education remains incoherent and non-inclusive, an example of this being the obligation placed on parents of children having a “severe disability requiring a personal assistant” to provide “facilitators” (shadows) to such children and the fact that in the absence of clear rules, parents are in practice required to cover the related costs. In addition, existing procedures for the assessment of the needs of children with disabilities and the provision of individualised support are not disseminated to parents systematically and in an accessible way.
42. Another issue brought to the Commissioner’s attention concerns the discrepancies in the local implementation of standards, resulting from the partial decentralisation of responsibilities in the education area and the insufficient financial allocation to county and local authorities. The Commissioner’s interlocutors highlighted that the lack of funds allowing schools to provide reasonable accommodation, as well as the lack of adaptation of curricula and teaching methodologies and materials leave teachers to their own devices.⁴⁸ They stressed that these deficiencies often force children with disabilities to drop out or to shift to home-schooling.⁴⁹
43. The Commissioner notes that in 2017-2018 there were 1 406 itinerant and support teachers working nationwide, with some counties having only one or two such teachers. Her interlocutors agreed that the number of support teachers and the time spent by them with each child, of up to two hours per week, was extremely low compared to the existing needs. She is, however, satisfied that in line with the national [Strategy on Reducing Early School Leaving 2015-2020](#), the authorities have recently introduced national

⁴⁴ Joint Order no. 1985/1305/5805/2016 of the Ministries of Labour, Health and National Education.

⁴⁵ Domestic legislation specifically excludes special schools from the definition of school segregation (see Order of the Minister of National Education no. 6134/2016, prohibiting school segregation in pre-university education).

⁴⁶ According to the [National Strategy for the protection and promotion of the rights of the child 2014-2020](#), lack of schooling is seven times higher for children with disabilities compared to those without disabilities.

⁴⁷ *Ștefan-Moshe Stoian and Luminița Stoian v. Romania*, no. 284/14, currently pending; see the [Third party intervention](#) submitted in this case by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, 13 November 2017 CommDH(2017)36.

⁴⁸ See the Ombudsman’s Annual activity report, 2017, p. 252 (fn. 26 above); see also European Centre for the Rights of Children with Disabilities, [Results of the “1st Grade Student” program](#), 17 April 2014.

⁴⁹ The drop-out rate of children with disabilities is double that of other children (see fn. 46 above).

standards for the adaptation of some examinations to the needs of children with certain types of disabilities.⁵⁰

44. The “Inclusive Education Centre” visited by the Commissioner in Băbeni was in fact a special school with 201 pupils. The school had been recently renovated with EU funds and was equipped with modern teaching materials. However, there were not enough teachers to provide adequate support to all children. The Commissioner was informed that there were only six qualified teachers in the county for some 1 100 children with disabilities. School officials highlighted the principle that the funds should follow the child, rather than the reverse, and the necessity for clear rules for the inclusion of children in mainstream education. They further regretted that local mainstream schools were reluctant to accept children with disabilities.
45. Lastly, the Commissioner is extremely worried by the reports which show that children with disabilities continue to face abuse in schools, with some severe cases having been reported in special boarding schools. NGOs informed her that bullying is a reason for the drop-out of children with disabilities, as teachers are unequipped or too few to effectively deal with this problem. She welcomes, in this respect, the recent legislation requiring the establishment of school committees in charge of developing and implementing measures for reducing violence and segregation in each school⁵¹ and the implementation of national programmes such as the [programme](#) for the prevention of bullying launched by the Ministry of National Education in 2017 with the NGO Save the Children. However, she is concerned that the current institutional arrangements do not provide for an effective mechanism to monitor and secure liability for abuses committed against children in schools. The Commissioner would be grateful to be informed by the authorities of any progress made in the future in this respect.

1.5 CONCLUSIONS AND RECOMMENDATIONS

46. The Commissioner encourages the Romanian authorities to ratify the Optional Protocol to the CRPD providing for an individual complaints mechanism and the Additional Protocol to the European Social Charter providing for a system of collective complaints.
47. The authorities are urged to address the systemic obstacles that hinder the effective protection of the rights of persons with disabilities. The overlapping competencies and poor resourcing of institutions involved in this field not only weaken their mandates, but also affect the successful performance of their duties and may lead to conflicting initiatives. The responsible institutions should complete each other’s work, rather than compete with one another. Furthermore, the authorities should strengthen monitoring mechanisms; build technical capacity and allocate sufficient funding to county and local authorities, enabling them to adequately fulfil their decentralised functions; improve inter-institutional co-operation and coordination; and address existing deficiencies in data collection. The Commissioner also urges the Romanian authorities and national human rights structures to strengthen their collaboration with NGOs.
48. The Commissioner stresses that isolating persons with disabilities in institutions severely interferes with their right to live independently, recognised by Article 19 CRPD,⁵² and undermines their full and effective participation and inclusion in society. Involuntary placements are in principle against Article 19 CRPD and the existence of legal safeguards regarding the involuntary placement of persons with disabilities, even when they are well-designed, is not a sufficient guarantee in itself to prevent abuses.⁵³ Romania should develop a strategy to replace involuntary placements with alternative measures in the community, designed to ensure care and treatment based on free and informed consent, in accordance with Article 25 CRPD. In the Commissioner’s view, this must include a review of the existing mental health policy, with a view to drastically reducing and progressively eliminating the recourse to coercive practices in psychiatry. As long as involuntary placements continue, however, they should be subject to a wide array of safeguards, including

⁵⁰ Ministry of National Education, Order no. 3622/2018 and Procedure no. 31852/2018.

⁵¹ Order of the Minister of Education no. 5079/2016.

⁵² See the Commissioner’s Issue Paper [“The right to of people with disabilities to live independently and to be included in the community”](#), 2012.

⁵³ See the Commissioner’s comments on a draft Additional Protocol to the Convention on Human Rights and Biomedicine, 8 November 2018 (fn. 18 above).

those defined under Article 5 ECHR, in order to mitigate the most severe forms of human rights violations inherent to such placements.

49. It cannot be excluded that some persons might voluntarily choose forms of institutional care, although the Commissioner observes that this is generally the result of a lack of alternatives in the community. Even in such cases, the concerned persons should be able to transition to a life in the community at any time, if they choose to do so, and should not face any legal or practical impediments in this process. They should also receive all the support they might need in their transition, including from NGOs or other representatives of civil society.
50. The Commissioner is extremely worried about the reported cases of serious abuse committed against adults and children living in institutions and strongly urges the authorities to ensure that those responsible are brought to justice, in accordance with the 2011 [Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for human rights violations](#). The Commissioner calls on the authorities to ensure that persons living in institutions have access to adequate legal support and independent representation before courts and that they can effectively challenge any violation of their human rights.⁵⁴ They should further strengthen the reporting obligations concerning deaths of persons in institutions and give NGOs and other members of civil society ample opportunity to monitor the situation of persons living in institutions and facilitate their access to justice.
51. Current efforts to restructure or close large institutions are not by themselves conducive to the inclusion of persons with disabilities in the community. The Commissioner stresses the need to ensure that big residential institutions are not merely replaced with small ones which replicate the previous model. The authorities should adopt a clear deinstitutionalisation plan, allocate sufficient funding for replacing institutions with community-based services, and take measures to facilitate the transition of persons living in institutions to independent life. The authorities are strongly urged to prevent further placements of children with disabilities in institutions, and ensure that they are provided with care in families, rather than “family-type” institutions.
52. The Commissioner urges the authorities to take measures to improve the accessibility of public spaces and services and to ensure that universal design and reasonable accommodation are taken into consideration in the development of all sectorial policies. In addition, while welcoming the measures taken to enhance the access of persons with disabilities to the open labour market, the Commissioner stresses the authorities’ responsibility to take further action to fight stigma and discrimination in employment. The repeal of the obsolete category of “invalidity” could be a suitable step in that direction.
53. The Commissioner recalls that Article 12 CRPD requires member states to recognise the right of persons with disabilities to enjoy legal capacity on an equal basis with others in all aspects of life. The Commissioner is of the view that the ongoing reform of the guardianship system for persons with intellectual and psychosocial disabilities, by keeping a system of substituted decision-making which even provides for full deprivation of legal capacity, still falls short of these standards. The Commissioner calls on the authorities to expand the scope of this reform by taking measures to replace the current system of substituted decision-making with supported decision-making, while ensuring that the support provided is independent, free of conflict of interest and subject to periodical judicial review.⁵⁵ Notwithstanding the need to abolish the guardianship system and while this system remains in place, the authorities are urged to ensure that persons deprived of legal capacity are always recognised as persons with equal standing in courts and tribunals and are not denied access to courts on this basis.
54. The Commissioner calls on the authorities to ensure that children with disabilities are not excluded from free and compulsory primary or secondary education and that they can access inclusive and quality education on an equal basis with others, in the communities in which they live. She further stresses that Article 24 CRPD requires states parties to ensure that persons with disabilities are provided with reasonable accommodation of their requirements and receive the support required, within the general education system, to facilitate

⁵⁴ See [letter](#) by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, to the Prime Minister of Romania, 16 March 2017.

⁵⁵ See the Commissioner’s Issue Paper [“Who gets to decide? Right to legal capacity for persons with intellectual and psychosocial disabilities”](#), 2012.

their effective education.⁵⁶ Finally, the authorities should enhance monitoring in schools and take urgent measures to effectively protect children with disabilities from any form of violence or abuse committed against them in any educational setting.

⁵⁶ See also Committee on the Rights of Persons with Disabilities, General Comment no. 4 (2016) on the right to inclusive education.

2 VIOLENCE AGAINST WOMEN

55. The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) establishes that violence against women is a violation of human rights and a form of discrimination. Domestic violence constitutes a form of violence which affects women disproportionately and which is therefore distinctly gendered, as highlighted in the Istanbul Convention. According to a [survey](#) carried out by the EU Fundamental Rights Agency in 2014, 30% of women in Romania have experienced physical or sexual violence since the age of 15 and 39% have experienced psychological violence perpetrated by current or former partners. In the [Gender Equality Index 2017](#), Romania's score in the domain of violence is 25.0, slightly lower than the EU average of 27.5.⁵⁷ National statistics published in the past few years show a yearly increase of incidents of domestic violence, despite an overall decrease following a peak in 2013.⁵⁸ Domestic violence predominantly affects women, who represented 76% of victims in 2017.⁵⁹
56. In the past few years, the Romanian authorities have dedicated increased attention to domestic violence and violence against women. The Commissioner welcomes the ratification by Romania of the Istanbul Convention, in May 2016,⁶⁰ and the efforts made by the authorities to bring national legislation in line with the requirements of the Convention.⁶¹ These include the recent extension of the definition of domestic violence to violence committed between former and current partners, whether or not the perpetrator shares or has shared the same residence with the victim; the broader definition given, *inter alia*, to psychological, physical, and social violence; the introduction of provisional protection orders; and the obligation imposed on all county authorities and the authorities of the city of Bucharest to develop social services for the prevention and combating of domestic violence, by the end of 2020.⁶²
57. The Commissioner also welcomes the establishment of the National Agency for Equal Opportunities for Women and Men (Equal Opportunities Agency) in 2015 and of the Inter-ministerial Committee for Preventing and Combating Domestic Violence (Inter-ministerial Committee), in 2016, as the body in charge of supporting the coordinated implementation of the Istanbul Convention in Romania. Following a slower start, in 2018 the Inter-ministerial Committee increased the frequency of its working sessions, which were held with the participation of national human rights institutions and representatives of civil society.
58. The Istanbul Convention highlights that the realisation of *de jure* and *de facto* equality between women and men is a key element in the prevention of violence against women. The Commissioner commends the Romanian authorities' coordinated approach in devising policies and measures in the areas of domestic violence, violence against women, and gender equality. This approach is reflected in the [National Strategy for promoting equal opportunities for women and men and preventing and combating domestic violence 2018-2021](#) (Domestic Violence Strategy), as well as in the mandate of the National Agency for Equal Opportunities for Women and Men (Equal Opportunities Agency).
59. The Commissioner welcomes the launching in Romania of the [UN Global Solidarity Movement for Gender Equality](#) ("HeForShe" Movement) in 2015 and the [impact commitments](#) made by the authorities in this context, which include the creation of the profession of gender equality expert and the implementation of

⁵⁷ In respect of violence against women, the Gender Equality Index uses a scale of 1 to 100, where 1 indicates that violence against women is inexistent and 100 shows that violence against women is extremely common, highly severe and not disclosed.

⁵⁸ See the Equal Opportunities Agency's [Monitoring report](#) on the implementation of the National Strategy and Action Plan for preventing and combating domestic violence 2013-2017, 14 February 2018.

⁵⁹ See statistical data at: <https://violentaimpotrivafemaleilor.ro/violenta-in-familie-in-2017-conform-datelor-oficiale-ale-politiei/>.

⁶⁰ The reservations contained in the ratification instrument are available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210> (reservations and declarations).

⁶¹ The relevant legislation includes, *inter alia*, Law no. 217/2013 on preventing and combating domestic violence; Law no. 202/2002 on equal opportunities and treatment for women and men; the Criminal Code and the Code of Criminal Procedure; Law no. 211/2004 on victim protection; Law no. 272/2004 on the protection and promotion of the rights of the child; and Joint order no. 384/306/993/2004 of the Ministries of Labour, Interior and Health approving a procedure of inter-institutional collaboration in the prevention and monitoring of domestic violence.

⁶² Law no. 174/2018 amending Law no. 217/2013 on preventing and combating family violence.

youth programmes promoting gender sensitivity and gender equality. She appreciates the involvement of the President of Romania in promoting these commitments, and is highly encouraged by the commitment of the Prime Minister of Romania to denouncing domestic violence against women and improving the protection of women's rights. The Commissioner also welcomes the resuming, in 2017, of the activity of the National Commission for Equal Opportunities for Women and Men, which brings together representatives of central authorities, trade unions and employers' associations, as well as of relevant NGOs.

60. Furthermore, the Commissioner was informed of the good co-operation between the Equal Opportunities Agency and civil society in the process of developing the Domestic Violence Strategy. She is also satisfied that the work of NGOs active in combating violence against women and promoting equality between women and men is recognised on the [website](#) of the Equal Opportunities Agency and that other authorities, as well as national human rights structures have established effective co-operation with such organisations.
61. The Commissioner acknowledges the importance of these developments, which took place at a swift pace. However, she notes that there remain numerous outstanding challenges to the implementation of the existing legal and policy framework, which the authorities should also address promptly. The Commissioner wishes to stress at the outset that the authorities need to demonstrate a stronger commitment to protecting the right of women to live free from violence and should ensure that the rights of the victim are at the centre of all measures taken for combating of all forms of violence covered by the Istanbul Convention.
62. In the following subsections, the Commissioner shall provide her remarks concerning data collection, resource allocation, and inter-institutional coordination and co-operation; the availability and accessibility of certain support services for victims of domestic violence; and some aspects related to protective measures and the access to justice of women victims of domestic violence, including gender-based discrimination in law enforcement and the judiciary. In relation to this, the Commissioner shall also refer to the more general problem of tolerance of violence against women and domestic violence, evidenced in Romanian society at large.

2.1 DATA COLLECTION, RESOURCE ALLOCATION, AND INTER-INSTITUTIONAL COORDINATION AND CO-OPERATION

63. The Commissioner notes that Romania does not have an integrated system of data collection concerning domestic violence and other forms of violence against women. Various authorities, including the police, the prosecution authorities, the judiciary and the Equal Opportunities Agency collect separate data, which are not centralised to provide a comprehensive picture of the phenomenon of domestic violence. Moreover, the Commissioner was informed that not all relevant authorities collect disaggregated data and that available data are not systematically made available to the public. The Commissioner welcomes, in this respect, the authorities' commitment under the "HeForShe" Movement to establish a national integrated information management and reporting system for cases of domestic violence and urges them to put this system in place in the shortest time possible.
64. Another critical problem is the insufficient allocation of resources to the relevant central and local authorities. At the time of the Commissioner's visit, only thirty of the fifty specialist staff positions of the Equal Opportunities Agency had been filled. The Commissioner also learned that a number of [programmes](#) proposed by the Equal Opportunities Agency for the years 2017-2019, including the establishment of new shelters for victims of domestic violence, failed to be allocated financing from the state budget. Insufficient resources, combined with a lack of technical capacity at county and local levels are also at the root of the scarcity and inconsistent quality of support services provided to victims in various regions of the country (see section 2.2. below).
65. Some of the Commissioner's interlocutors have highlighted the difficulty of implementing the Domestic Violence Strategy in an environment of weak inter-institutional coordination and co-operation. They stressed in particular the unresponsiveness of some ministries to the efforts of the Equal Opportunities Agency and the poor co-operation between authorities at county and local levels. The Commissioner's discussions with various interlocutors also revealed that despite the existing collaboration protocols, there is often a lack of common ground among authorities concerning the level of participation expected from them.

2.2 AVAILABILITY AND ACCESSIBILITY OF CERTAIN SUPPORT SERVICES FOR VICTIMS OF DOMESTIC VIOLENCE

66. The Commissioner welcomes the establishment by the Equal Opportunities Agency of a national helpline number for victims of domestic violence, which works in collaboration with the police, the child protection and social care authorities, and with NGOs. The Commissioner was pleased to learn about the growing public awareness of this service, as demonstrated by the substantial increase in the number of calls received, from 1700 in the first year following its establishment in December 2015 to 2 627 in 2017.⁶³
67. Furthermore, the Commissioner welcomes the recent establishment in Bucharest of a pilot rape crisis centre which introduced an integrated services model that the authorities intend to replicate in nine other similar centres to be set up over the following three years.⁶⁴
68. The Commissioner notes with concern that shelters for victims of domestic violence are currently concentrated in urban areas, making it difficult for victims from rural or isolated areas to access them. Moreover, although the law requires all county authorities to provide social assistance to victims of domestic violence, in some counties public shelters are still lacking and the authorities do not consistently allocate financial resources to shelters run by NGOs. However, the Equal Opportunities Agency has recently initiated the development of a four-year project supported by EU funds, which aims to establish a network of 42 shelters of adequate geographical distribution covering all counties of Romania and the municipality of Bucharest.⁶⁵
69. Another problem noted by the Commissioner during her visit was the lack of specific quality standards in force for services provided by shelters. Various interlocutors highlighted that county and local authorities applied different policies concerning the admission of victims to the shelters, restrictions on access being determined principally by the financial resources available at local level. The Commissioner was informed that victims were usually required to present identification documents in order to gain access to shelters,⁶⁶ followed by extensive evidence of their health and employment situation, and that most shelters were not accessible to victims with disabilities and were unable to provide support to victims having certain addictions or communicable diseases.
70. In Râmnicu Vâlcea, the Commissioner visited a shelter which at that time provided support to seven victims of domestic violence, some of whom were hosted together with their children. She was pleased to learn that, although the admission conditions established by the county authorities were rather restrictive, these were interpreted flexibly so as to ensure that the shelter could fulfil its primary role of providing safe accommodation in emergency situations.
71. Finally, the Commissioner was informed about the low use by victims of the available support services, which in her interlocutors' view was related, *inter alia*, to the victims' fear of being stigmatised for "making public" their situation. According to data collected by the Equal Opportunities Agency, which only cover cases of victims who have used such services, there were 12 961 victims of domestic violence registered in 2017, representing a third of the 37 905 victims recorded by the police authorities in the same year.⁶⁷

2.3 PROTECTIVE MEASURES AND ACCESS TO JUSTICE OF WOMEN VICTIMS OF DOMESTIC VIOLENCE

72. The Commissioner recalls that Article 52 of the Istanbul Convention requires states parties to grant the competent authorities the power to issue emergency barring orders for the evacuation of perpetrators of domestic violence from the residence of the victim and prohibiting them from entering the residence or

⁶³ Equal Opportunities Agency, monitoring reports on the implementation of the National Strategy and Action Plan for preventing and combating domestic violence 2013-2017, available at: <http://anes.gov.ro/rapoarte/>.

⁶⁴ Project "Supporting the implementation of the Istanbul Convention in Romania", see at: <http://norwaygrants.just.ro/en-gb/projects/predefinedprojects.aspx>.

⁶⁵ Project "Venus", see at: <http://anes.gov.ro/proiecte-in-curs-de-implementare/>.

⁶⁶ See also Committee for the Elimination of Discrimination against Women (CEDAW), [Concluding observations](#) on the combined seventh and eighth periodic reports of Romania, 2017.

⁶⁷ See fn. 58 above.

contacting the victim or person at risk. According to Article 53, states parties must ensure that appropriate restraining or protection orders are available for immediate protection, without undue financial or administrative burdens placed on the victim, and irrespective of, or in addition to, other legal proceedings.

73. Protection orders were first introduced in Romania in 2012.⁶⁸ The legislation currently in force provides for an accelerated procedure for the issuance of protection orders, within 72 hours from the registration of the applicant's request. However, various reports indicate that many courts struggle to observe this term.⁶⁹ Moreover, in Râmnicu Vâlcea, the Commissioner learnt with concern that, although protection orders are by law available to victims irrespective of, and in addition to, other legal proceedings, some victims had been advised by the police not to request a protection order while their divorce cases were pending.
74. Furthermore, according to information received from NGOs, some courts have developed a practice of requiring victims who request protection orders to produce substantial evidence of the violence, including forensic certificates.⁷⁰ This requirement not only imposes a high evidentiary threshold, which is not conducive to providing victims with the immediate protection that they need, but also represents a significant financial burden for many victims. Recently adopted legislation requires local authorities to cover the expenses incurred by victims with the issuance of forensic certificates. However, the Commissioner was informed that the procedure is cumbersome and only applies to victims who are users of public support services. At the time of the Commissioner's visit, not all county and local authorities covered such expenses.
75. Another issue of concern is the low enforcement rate of protection orders. According to official information, in 2017, 1 011 out of 2 894 issued protection orders were breached.⁷¹ Although such breaches constitute an offence punishable by imprisonment of up to a year, civil society representatives informed the Commissioner that offenders are rarely sanctioned, or their sentences are suspended. A victim with whom the Commissioner spoke in Râmnicu Vâlcea noted that the lack of effective and dissuasive sanctions encouraged perpetrators to persist in their violent behaviour.
76. Recent legislative amendments authorise police agents to issue emergency barring orders (called "provisional protection orders") in situations where the life, physical integrity or liberty of a person are at risk of imminent danger caused by acts of domestic violence.⁷² The measures ordered may consist, *inter alia*, in the temporary evacuation of the perpetrator from the residence shared with the victim, the reinstatement of the victim into the residence, and the obligation imposed on the perpetrator to keep a security distance from the victim and/or to wear an electronic monitoring device. The Commissioner was informed that the first provisional protection orders were issued in January 2019, very shortly after the provisions introducing them became applicable. While this is a positive development, the Commissioner calls on the authorities to ensure that the concerns noted with respect to the enforcement of protection orders are not replicated in respect of provisional protection orders.
77. Concerning substantive criminal law, the Commissioner notes that the Criminal Code includes over 30 offences covering intentional conduct that states parties are required to criminalise, in accordance with the Istanbul Convention. These include, *inter alia*, various forms of physical assault, rape, sexual assault, sexual harassment, forced abortion, murder, threatening, and trespassing. Article 199 of the Criminal Code - *Family violence* establishes as an aggravating circumstance, for some offences, the fact that the offence was committed against "family members". The Commissioner notes that the recent legislative amendments which replaced the term "family violence" with "domestic violence"⁷³ are not applicable in criminal law. Thus, while the civil law definition of "family members" includes former and current spouses and partners, as well as persons who have established relations similar to those between parents and children, whether or not the perpetrator shares or has shared the same residence with the victim, under the Criminal Code only

⁶⁸ Law no. 25/2012 amending Law no. 217/2003 on preventing and combating family violence.

⁶⁹ See [reply](#) of the Equal Opportunities Agency to the NGO Asociația Necuvinte, 12 November 2017.

⁷⁰ See also CEDAW, Concluding Observations, Romania, 2017, paragraph 18(b) (fn. 66 above).

⁷¹ See fn. 58 above.

⁷² Law no. 174/2018 amending Law no. 217/2003 on preventing and combating family violence.

⁷³ *Ibid.*

current spouses and partners are covered, and partners and persons who have relations similar to those between parents and children are considered family members only if they share the same residence.⁷⁴

78. Moreover, during their discussions with the Commissioner, civil society representatives strongly stressed the authorities' lack of technical capacities to implement the existing legislative framework. They highlighted, in particular, the insufficient number of police agents working in rural areas and the fact that in many cases protection orders are issued with significant delays.
79. The Commissioner is deeply concerned about the gender-based discrimination prevailing in law enforcement and in the judiciary system with respect to women victims of domestic violence. NGOs stressed that police agents are often reluctant to register or process women's complaints, advise women not to submit complaints, and blame them for their situation. Moreover, it was stressed that acts of violence committed against Roma women are routinely ascribed to "cultural practices" specific to their communities and ignored on that ground. Concerning this last aspect, the Commissioner welcomes the recent amendments to Act no. 217/2003 on preventing and combating domestic violence which state that custom, culture, religion, tradition and honour cannot, in any form or circumstances, be considered as a justification for any acts of domestic violence.
80. The Commissioner wishes to recall the case of *Bălşan v. Romania*,⁷⁵ in which the Court found that despite the adoption of relevant legislation and of a national strategy, the overall unresponsiveness of the judicial system and the impunity enjoyed by aggressors indicated that there was insufficient commitment to take appropriate action to address domestic violence. The authorities demonstrated a general and discriminatory passivity and a rather small number of reported incidents were followed by criminal investigations. The applicant had been a victim of gender-based discrimination, the authorities having failed, *inter alia*, to consider her requests for protective measures and having denied her free legal aid.
81. The Commissioner notes that a series of measures were taken by the authorities as part of the execution of the Court's judgment in the case of *Bălşan*.⁷⁶ She welcomes the legislative amendments introducing the above-mentioned provisional protection orders, the extensive awareness-raising campaigns carried out by the authorities, as well as the issuance, in 2016, of a manual of good practices and a guide for the management of cases of domestic violence by courts and law enforcement authorities. However, the impact of these measures on the effectiveness of investigations and court proceedings has not been very encouraging so far; the information provided by the authorities shows that the number of individuals committed for trial is still very low compared to that of the reported domestic violence-related offences and that the number of final convictions for such offences has decreased in the past years.⁷⁷
82. During her discussions with the authorities, the Commissioner noted with concern that this situation was generally explained simply by reference to the fact that women tended to reconcile with their aggressors or to withdraw their complaints, such options being available to victims in cases of offences deemed of lesser gravity, investigated *ex parte*. Moreover, she found that there was a strong focus on "keeping families together", at the expense of the obligation to protect women from domestic violence, and that there was a widespread perception that no particular concerns existed in this respect, as Romanian legislation protects victims regardless of their gender. The Commissioner wishes to recall that Article 1 of the Istanbul Convention places the protection of women against all forms of violence first among the purposes of the Convention and that Article 2 recognises that domestic violence affects women disproportionately.
83. The Commissioner stresses that it is not sufficient for the authorities to adopt legislation protecting all victims of violence. It is also necessary that they implement it systematically and in a gender-sensitive and non-discriminatory manner. The authorities should take robust action to prevent gender-based discrimination and secondary victimisation of women in law enforcement and judicial proceedings. The Commissioner urges them to further enhance capacity-building for police agents, prosecutors and judges, strengthen legal assistance for victims, including by guaranteeing free access to legal aid to all women without sufficient

⁷⁴ See CEDAW, Concluding Observations, Romania, 2017 (fn. 66 above).

⁷⁵ *Bălşan v. Romania*, no. 49645/09, Judgment, 23 May 2017.

⁷⁶ See [Action plan](#) in view of the execution of the Court's judgment in the case of *Bălşan v. Romania*, April 2018.

⁷⁷ See the status of execution of the Court's judgment in *Bălşan* at: <http://hudoc.exec.coe.int/eng/?i=004-47601>.

means, and invites them to consider establishing teams of specialised prosecutors and judges to handle gender-based violence cases.

84. More generally, the Commissioner notes that in the case of *Bălşan* the Court found that domestic violence was tolerated or even perceived as normal by a majority of people and that the general and discriminatory passivity of the authorities created a climate that was conducive to domestic violence. The high level of social tolerance of domestic violence was also highlighted in a number of reports issued by the Equal Opportunities Agency.⁷⁸ She urges the Romanian authorities to enhance their efforts to promote “zero tolerance” of domestic violence, as provided in the Domestic Violence Strategy, by carrying out further education and awareness-raising programmes in schools, through media campaigns and by further developing the professional competencies of all those involved in combating domestic violence and all other forms of violence covered by the scope of the Istanbul Convention.

2.4 CONCLUSIONS AND RECOMMENDATIONS

85. The Commissioner welcomes the Romanian authorities’ efforts to bring the national legal and institutional framework in line with the requirements of the Istanbul Convention and the recent adoption of coordinated policies in the fields of domestic violence and gender equality. However, a stronger commitment is needed to effectively protect women from all forms of violence covered by the scope of the Convention.
86. The authorities should set up an integrated information management and reporting system for cases of domestic violence as soon as possible. They should, in addition, allocate sufficient resources to the Equal Opportunities Agency and to county and local authorities; enhance inter-institutional coordination and co-operation; continue their co-operation with civil society, and encourage and support, including by adequate financial allocations, the work carried out by relevant NGOs.
87. The current scarcity of shelters and the low use of support services available to victims of domestic violence is a matter of concern. The Commissioner urges the authorities to develop a network of shelters of adequate geographical distribution and calls on them to ensure that access to shelters is not subject to restricting conditions compromising their role of providing support to victims in emergency situations. Furthermore, measures should be taken to ensure that victims are not excluded from accessing shelters on account of their disability or health situation.
88. The authorities should urgently address any delays in the issuance of protection orders and ensure that victims do not face undue financial or administrative barriers to requesting such orders, irrespective of, or in addition to other proceedings. The Commissioner invites the authorities to extend the financial support provided by law to victims requesting forensic certificates to those victims who are not users of public support services. Urgent measures are also needed to ensure that provisional protection orders and protection orders are systematically enforced and that breaches of issued orders are subject to effective and dissuasive sanctions.
89. Article 3b of the Istanbul Convention requires that any definition of domestic violence in national legislation include acts of violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim. The authorities should take the necessary legislative measures to ensure that all definitions of domestic violence under national law, whether civil or criminal, correspond to this requirement and that no conflicting definitions exist in different pieces of legislation.
90. The Commissioner is deeply worried about the prevailing gender-based discrimination faced by women victims of domestic violence in law enforcement and the judiciary system and the impunity enjoyed by aggressors. She strongly urges the authorities to fight gender-based discrimination, including any form of intersectional discrimination, in law enforcement and the judiciary, to strengthen legal assistance for victims, and enhance capacity-building for all officials in the justice system. The authorities are invited to consider

⁷⁸ Equal Opportunities Agency, monitoring reports on the implementation of the National Strategy and Action Plan for preventing and combating domestic violence 2013-2017, available at: <http://anes.gov.ro/rapoarte/>.

establishing teams of specialised prosecutors and judges to handle gender-based violence and domestic violence cases.

91. Lastly, the Commissioner stresses the authorities' obligation, under Article 12 of the Istanbul Convention, to fight prejudices and practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men and calls on officials at the highest political levels to send a strong message that gender-based discrimination is unacceptable.

3 THE REFORM OF THE JUDICIARY AND THE AMENDMENTS TO THE CRIMINAL JUSTICE LAWS

92. The Commissioner's visit took place in a period animated by the progressive implementation of a profound reform of the judicial system and of far-reaching amendments to the Criminal Code and the Code of Criminal Procedure. Both sets of reforms have been marked by constitutional challenges and have raised controversies, at domestic and international level, concerning their adverse implications for the independence of the judiciary and the effectiveness of the criminal justice system.
93. The new "justice laws"⁷⁹ and criminal law provisions have been the subject of in-depth assessment by the [Group of States against Corruption \(GRECO\)](#) and [the European Commission for Democracy through Law \(Venice Commission\)](#), which have issued their recommendations to the Romanian authorities in an *ad hoc* report⁸⁰ and, respectively, several opinions⁸¹ released in 2018. Below, the Commissioner wishes to reiterate some of the stringent concerns flagged in these documents, some of which she has highlighted in her discussions with the Romanian authorities.
94. The Commissioner noted the concerns expressed by GRECO and the Venice Commission that despite the importance and wide scope of these reforms, their impact had not been properly assessed, and the legislative process had been hasty. They further noted that dialogue and co-operation between key state institutions had been difficult and consultations took place in a climate of criticism and distrust towards the transparency of the legislative processes.
95. The Venice Commission and GRECO were also concerned that the amendments to the justice laws included elements which were likely to undermine the independence of judges and prosecutors and public confidence in the judiciary, as well as Romania's efforts to fight corruption. These elements concerned, among others, the recruitment, retirement and promotion of judges and prosecutors; the establishing of a new section, within the OPG, for the investigation of offences committed within the judiciary; the material liability of judges and prosecutors; the freedom of expression of judges and prosecutors; and the interaction between the judiciary and intelligence services.
96. Furthermore, certain amendments to the criminal legislation could negatively impact on the capacity of the criminal justice system to deal with serious forms of crime, including violent crime, organised criminality, and corruption-related offences, in line with Romania's international obligations. The Venice Commission stressed, for example, that the reduction of the statute of limitations and the limited time frame allowed for starting *in personam* investigations would affect the capacity of the judiciary to carry out investigations and trials in complex cases and to duly sanction perpetrators. Particular reference was made to cases concerning bodily offences, illegal deprivation of liberty and rape and to the case-law of the Court, which has in several judgments criticised short prescription periods, and the very existence of such periods for the most serious human rights violations, such as torture.⁸²
97. In light of this, GRECO and the Venice Commission recommended that the Romanian authorities remove or reconsider a series of amendments to the justice laws and conduct an overall reassessment of the amendments to the criminal legislation, through a comprehensive and effective consultation process leading to a fresh legislative proposal which should benefit from broad support within Romanian society and take fully into account the applicable standards.
98. During her visit, the Commissioner underlined the importance of maintaining the independence of the judiciary and urged the authorities to give effect to the recommendations of the Venice Commission and GRECO. She cautioned the authorities against the weakening of the judiciary and stressed that this would

⁷⁹ Draft amendments to Law no. 303/2004 on the status of judges and prosecutors, Law no. 304/2004 on judicial organisation and Law no. 317/2004 on the Superior Council of Magistracy.

⁸⁰ GRECO, [Ad hoc report](#) on Romania (Rule 34), 11 April 2018.

⁸¹ Venice Commission, [Preliminary opinion](#), 13 July 2018, and [Opinion](#), 20 October 2018, on draft amendments to Law No. 303/2004 on the Statute of Judges and Prosecutors, Law No. 304/2004 on Judicial Organisation, and Law No. 317/2004 on the Superior Council for Magistracy; [Opinion](#) on draft amendments to the Criminal Code and the Criminal Procedure Code, 20 October 2018.

⁸² See *supra*, Venice Commission, Opinion on draft amendments to the Criminal Code and the Criminal Procedure Code, 20 October 2018, pp. 14-15; the Court's relevant case-law is cited in fn. 42, p. 14.

translate into a weaker protection of human rights in Romania. The Commissioner further encouraged the authorities to keep dialogue channels open and seek solutions for a human rights compliant design and implementation of the reforms.

CONCLUSIONS AND RECOMMENDATIONS

99. The Commissioner stresses that the ongoing reforms of the judiciary and of the criminal justice legislation have decisive implications for the independence of the judiciary and the protection of human rights in Romania.
100. Recalling the Committee of Ministers' *Recommendation (2010)12 on judges: independence, efficiency and responsibilities*, and the Court's relevant case-law⁸³, the Commissioner calls on the Romanian authorities to:
- follow the recommendations of GRECO and of the Venice Commission;
 - keep dialogue open across the political spectrum and state institutions, as well as with civil society, and ensure that any further amendments to the justice laws and to the criminal legislation benefit from ample debate and are adopted after thorough consideration of their impact;
 - ensure that any such amendments protect the principle of the impartiality and independence of the judiciary, in line with the requirements highlighted by the Venice Commission, and
 - carry out the reforms in full compliance with Council of Europe and international human rights standards.

⁸³ See, for example, *Findlay v. the United Kingdom*, no 22107/93, Judgment, 25 February 1997, paragraph 73.