



FRA  
Thematic Study on Child Trafficking  
Romania

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## Executive Summary

- [1]. Anti-trafficking legislation and measures in the Romanian context were triggered mostly by the need to respond to internal trafficking of persons and to the trafficking of human beings for whom Romania is a country of origin.
- [2]. Child victims of trafficking can be in one of the following legal categories:
  - the child is a Romanian national seeking assistance who is sent to a specialised centre.
  - the child is a Romanian national subject to a special child protection measure and is sent to a special centre managed by the local child welfare authority (or a partner NGO).
  - the child is an alien who has applied for asylum and resides in one of the specialised centres for trafficked children.
  - the child is an alien who has not applied for asylum or has been denied asylum, but may be granted tolerated stay on grounds of being a victim of trafficking or temporary residence if the parents of the child cannot be identified or if he/she is not accepted in his/her country of origin.

## General anti-child trafficking framework

- [3]. Romania ratified all major international legal instruments on child trafficking and adopted comprehensive anti-child trafficking legislation incorporating the standards and definitions spelled out in the international anti-trafficking framework. Legal provisions are complemented by detailed secondary norms and implementation strategies, national plans, and mechanisms.

## Prevention of child trafficking

- [4]. Awareness-raising campaigns for the prevention and combating of child trafficking have been carried out, including some with governmental support, and some initiatives which targeted more vulnerable communities and ethnic groups.

## Appointment of legal guardian

- [5]. Legal guardians are appointed whenever an unaccompanied child is identified as a victim of trafficking. With the exception of the professionals employed by the child welfare authorities, there are no conclusive data as to any training of persons appointed as guardians.
- [6]. In cases of doubt over the age of a child a medical (forensic) examination can take place, but only with the consent of the child and/or of his/her legal guardian.

## Coordination and cooperation

- [7]. All relevant bodies involved in anti-trafficking efforts are bound by memorandums of cooperation, and work under a formalised working group comprising key central authorities and non-governmental bodies. The National Authority for the Protection of Children's Rights (NACPR) has signed several agreements with a range of NGOs which provide assistance and support to child victims of trafficking.
- [8]. In practice, the coordination of efforts is lagging behind in terms of establishing a unified data collection structure for recording relevant data on victims of trafficking. Poor inter-agency communication causes some data to be recorded twice by different agencies, or not to be registered at all, thus affecting the accuracy of any statistics.

## Care and protection

- [9]. Any alien presumed to be a victim of trafficking is entitled to a period for recovery and reflection of up to 90 days, irrespective of their cooperation with police/prosecutor. The right of residence is afterwards conditional on cooperation with police/prosecutor only for children who are granted tolerated stay on grounds of trafficking.
- [10]. While they are recognised the right to reside in Romania, children of foreign nationality benefit from the same protection as Romanian children deprived of their family environment, and consequently reside in child protection centres. The Romanian Office for Immigration takes steps to ensure family reunification, with due consideration given to the best interests of the child.
- [11]. In the absence of any contrary provision, children who are awaiting deportation may be taken into public custody and placed in accommodation centres managed by the Romanian Office for Immigration. The legal framework

concerning administrative detention/detention pending deportation for children does not include provisions for any special detention regime.

- [12]. Child victims of trafficking are entitled to special protection and assistance, including provision for psychological and physical recovery, free medical care, access to education and legal aid. Any child who does not speak Romanian will be assisted by an interpreter. Asylum applicants with special needs will be interviewed by specialised officers, who must take into account the special situation of such persons.

## Best interests determination and durable solutions, including social inclusion/return

- [13]. Any procedure aiming to identify measures or solutions for trafficked children will give due consideration to the best interests of the child. Child victims of human trafficking may be granted tolerated stay, refugee status or other forms of subsidiary protection. The child will be heard during any judicial or administrative procedure which concerns him/her. Interpreters will be provided for children who do not speak Romanian. Integration programmes are available.

## Prosecution

- [14]. Although child victims of trafficking can be offered some forms of protection, there are otherwise few legal provisions requiring that police/prosecutor/court conduct proceedings in a child-sensitive manner. Child victims have the right of access to justice, including legal aid and compensation.
- [15]. Currently, data collected by law enforcement agencies refers to all trafficking cases, without making a distinction between adult and child victims. Since the law on preventing and combating trafficking in human beings was adopted in late 2001, the first convictions for trafficking were obtained in 2003.

## Miscellaneous

- [16]. There are limitations in gathering relevant statistical data, caused by poor inter-agency communication and gaps in data collection. Draft regulations can improve the framework on assistance and protection of victims of trafficking.

## Good practices

- [17]. The NAPCR's National Interest Projects made a large contribution to developing and improving methods for the assistance of children victims of trafficking.
- [18]. The National Institute of Magistracy has organised several training courses on trafficking in human beings, particularly children, for judges and prosecutors.

## A. General anti-child trafficking framework

- [19]. In general, the Romanian anti-child trafficking framework complies with international standards. Legal provisions are complemented by detailed secondary norms, and implementation strategies, national plans, and mechanisms.

### A.1. Legal provisions and case law

#### A.1.1. Application of international instruments

- [20]. Romania ratified all international instruments relevant for anti-child trafficking and signed the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, which has still to be ratified by the Parliament.<sup>1</sup> According to Art.10 and 20 of the Romanian Constitution, all international treaties and conventions in the field of human rights which are ratified are part of domestic law; are directly applicable and have priority over national legislation in cases of a conflict of norms.<sup>2</sup> However, this is only relevant when trying to engage the state's responsibility for not taking measures required according to international obligations.
- [21]. Relations between private parties need to be regulated by legislation adopted at national level, especially as this is an area covered by criminal law, where sanctions can only apply if they are expressly stipulated in the legislation.

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<sup>1</sup> Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000) ratified by Romania/Lege 470/2001 (20.09.2001); UN Convention against Transnational Organised Crime/Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000) ratified by Romania/Lege 565/2002 (16.10.2002); ILO Convention Nr. 182 on the Worst Forms of Child Labour (1999) ratified by Romania/Lege 203/2000 (15.10.2000); CoE Convention on Action against Trafficking in Human Beings (2005) ratified by Romania/Lege 300/2006 (11.07.2006). Romania signed the CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007) (25.10.2007).

<sup>2</sup> Romania/*Constituție* 1991 (21.11.1991), revised by Romania/Lege 429/2003 (29.10.2003).



## A.1.2. Criminalising child trafficking in line with international standards

- [22]. *Lege 678/2001 privind prevenirea și combaterea traficului de persoane* [Law 678/2001 on the prevention and combating of trafficking in human beings] is the main legal source for the field of trafficking in human beings.<sup>3</sup> Law 678/2001 also contains special provisions on child trafficking. The law has been amended four times.<sup>4</sup>
- [23]. According to Law 678/2001, child trafficking consists of recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation.<sup>5</sup> In accordance with Art. 3(3) of the Palermo Protocol, in relation to child trafficking, the law does not provide for any particular means as required in the case of trafficking of adults.<sup>6</sup> Furthermore, the consent of the victim to trafficking does not make a difference in engaging criminal liability. If trafficking involves any of these means, they amount to aggravating circumstances and the penalty shall be increased.<sup>7</sup> These acts are criminalised irrespective of whether trafficking takes place between different countries or domestically.
- [24]. The legal definition of ‘exploitation’ is in line with the minimum requirements of the Palermo Protocol, with one exception. The protection granted in Romanian legislation is more extended, and covers: forced labour or services, or labour and services carried out in violation of the legislation on working conditions, salary, health, and protection at the workplace; slavery or similar practices of suppression or servitude; forced prostitution, pornography with a view to production and dissemination of pornographic materials and other forms of sexual exploitation; removal of organs; carrying out certain activities in violation of human rights.<sup>8</sup>

<sup>3</sup> Romania/ *Lege 678/2001 privind prevenirea și combaterea traficului de persoane*, [Law 678/2001 on the prevention and combating of trafficking in human beings], amended (16.10.2005)

<sup>4</sup> Romania/OUG 143/2002(24.10.2002); Romania/Lege 39/2003 *privind prevenirea și combaterea criminalității organizate* [Law on preventing and combating organised crime] (21.01.2003); Romania/OUG 79/2005 (14.07.2005); Romania/Lege 287/2005.

<sup>5</sup> Art.13.(1) of Romania/Lege 678/2001 *privind prevenirea și combaterea traficului de persoane* (21.11.2001), as amended by Romania/OUG 79/2005 (14.07.2005).

<sup>6</sup> Such as by threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, or of the impossibility of the person to protect himself/herself or to express his/her will, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.

<sup>7</sup> Art.13.(2) of Romania/Lege 678/2001 *privind prevenirea și combaterea traficului de persoane* [Law 678/2001 on the prevention and combating of trafficking in human beings] (21.11.2001), as amended by Romania/OUG 79/2005 (14.07.2005).

<sup>8</sup> Art.2.(2).(a)-(e) of the Romania/Lege 678/2001 *privind prevenirea și combaterea traficului de persoane* [Law 678/2001 on the prevention and combating of trafficking in human beings] (21.11.2001), as amended by Romania/OUG 79/2005 (14.07.2005).

- [25]. Romanian law is in accordance with international standards with respect to the definition of a child as any person under the age of 18. Penalties no longer differ according to the age of the child victim.<sup>9</sup> They consist of imprisonment from five to 25 years and the limitation of certain rights depending on the aggravating forms.<sup>10</sup> Both attempt to and organisation of trafficking are criminal offences.<sup>11</sup> In the absence of comprehensive statistical data, it is not possible to provide an estimate of the average sentences imposed in practice, and the use of the minimum sentence.
- [26]. The law enforcement authorities may confiscate money, valuables or any other goods proven to have resulted from trafficking in persons or other crimes prescribed by the law, as well as transportation vehicles and buildings used, if they belong to the perpetrators.<sup>12</sup>

### A.1.3. Other criminal offences in connection with child trafficking

- [27]. Romanian law also punishes other criminal offences in relation to trafficking in persons, especially child pornography, consisting of exposing, selling, disseminating, renting, distributing, making or producing in any other way, transmitting, offering or providing, possessing with the aim of distributing objects, movies, photographs, slides, symbols or other visual media that represent postures or sexual acts having a pornographic nature, which present or involve children under 18 years.<sup>13</sup> Also punishable is the import or supply of such objects to a transportation agent or distributor with a view to commercialisation or distribution.<sup>14</sup> Penalties consist of imprisonment from three to ten years.

<sup>9</sup> See by comparison Art.13.(1) of the of Romania/Lege 678/2001, *privind prevenirea și combaterea traficului de persoane* [Law 678/2001 on the prevention and combating of trafficking in human beings] (21.11.2001) and Art.13.(1) of the Romania/Lege 678/2001 (21.11.2001), as amended by Romania/OUG 79/2005 (14.07.2005).

<sup>10</sup> Art.13.(1)-(4) of Romania/Lege 678/2001 *privind prevenirea și combaterea traficului de persoane* (21.11.2001), as amended by Romania/OUG 79/2005(14.07.2005).

<sup>11</sup> Art.15 of Romania/Lege 678/2001 *privind prevenirea și combaterea traficului de persoane* [Law 678/2001 on the prevention and combating of trafficking in human beings] (21.11.2001).

<sup>12</sup> Art.19 of Romania/Lege 678/2001 *privind prevenirea și combaterea traficului de persoane* [Law 678/2001 on the prevention and combating of trafficking in human beings] (21.11.2001).

<sup>13</sup> Art.18.(1) of Romania/Lege 678/2001 *privind prevenirea și combaterea traficului de persoane* [Law 678/2001 on the prevention and combating of trafficking in human beings] (21.11.2001), amended by Art.2 of Romania/OUG 143/2002 (24.10.2002) and Art.34 of Romania/Lege 39/2003 (21.01.2003).

<sup>14</sup> Art.18.(2) of Romania/Lege 678/2001 *privind prevenirea și combaterea traficului de persoane* [Law 678/2001 on the prevention and combating of trafficking in human beings] (21.11.2001), amended by Art.2 of Romania/OUG 143/2002 (24.10.2002) and Art.34 of Romania/Lege 39/2003 (21.01.2003).

- [28]. Law 678/2001, amended by Law 287/2005, does not criminalise prostitution<sup>15</sup> or begging<sup>16</sup> in the case of victims of trafficking in persons, including victims of child trafficking.<sup>17</sup>

#### A.1.4. Special procedural provisions with regard to criminalising child trafficking

- [29]. Law 678/2001 contains several procedural provisions that ensure a more appropriate framework for the fight against trafficking in persons in general and child trafficking in particular: prosecutors carry out the criminal investigation (Art.21), tribunal level courts examine the case as first instance courts (Art.21), undercover investigators may be deployed (Art.22), access and supervision of suspects' telecommunication or IT systems may be allowed by the prosecutor (Art.23), court hearings are not held in public in cases of child trafficking and child pornography (Art.24), special protection and assistance for the victims of child trafficking, including protecting their private life and identity, physical protection by the police, provision of identity papers by Romanian diplomatic missions, information, provision of counselling and temporary accommodation in special centres upon request (Chapter 5).

#### A.1.5. Legal provisions establishing the principle of best interests of the child

- [30]. The legislation in the field of child protection complements the legal framework on child trafficking. The principle of best interests of the child is fundamental. Art.2(1) of the *Lege 272/2004 privind protecția și promovarea drepturilor copilului* (21.06.2004) [Law 272/2004 concerning the protection and promotion of the rights of the child] establishes that the principle of the superior interest of the child has priority over any law or regulation adopted in the field of promoting children's rights. Law 272/2004 contains special provisions recognising children's right to protection from any form of trafficking or exploitation.<sup>18</sup>

<sup>15</sup> Art.328 of the Romania/*Codul penal* [Criminal Code] (21.06.1968), updated 12.02.2007.

<sup>16</sup> Art.326 of the Romania/*Codul penal* [Criminal Code] (21.06.1968), updated 12.02.2007.

<sup>17</sup> Art.20.(1) of the Romania/*Lege 678/2001 privind prevenirea și combaterea traficului de persoane* [Law 678/2001 on the prevention and combating of trafficking in human beings] (21.11.2001), as amended by Romania/*Lege 287/2005* (11.10.2005).

<sup>18</sup> Art.98-99 of the Romania/*Lege 272/2004 privind protecția și promovarea drepturilor copilului* [Law 272/2004 concerning the protection and promotion of the rights of the child] (21.06.2004).

## A.2. Implementation measures

- [31]. The Government adopted *Strategia Națională Împotriva Traficului de Persoane pentru perioada 2006-2010* [National Strategy against Trafficking in Persons for 2006-2010 (NSTP)]. This is a general strategy, addressing all victims of trafficking in persons. The NSTP states that special attention will be given to protecting and assisting children because of their special vulnerability.<sup>19</sup> Specific objectives with regard to child trafficking mentioned in the strategy are to improve coordination between bodies working in the field of prevention and combating child trafficking, and to reduce the vulnerability of unaccompanied, neglected, and institutionalised children as groups at risk.<sup>20</sup>
- [32]. In parallel, the *Autoritatea Națională pentru Protecția Drepturilor Copilului* [National Authority for the Protection of Children's Rights (NAPCR)]<sup>21</sup> is implementing a project on the national strategy in the field of children's rights, promoting an integrated general policy regarding all forms of violence against children, including child trafficking.<sup>22</sup>

### A.2.1. National Plans of Action against Trafficking

- [33]. The Government adopted National Plans of Action against Trafficking (NPAs). NPA 2006-2007 has already been implemented and evaluated.<sup>23</sup> The results of the evaluation are not made public nor provided upon request.<sup>24</sup> Based on this evaluation, *Agenția Națională împotriva Traficului de Persoane* [National

<sup>19</sup> NSTP 2006-2010, p.6, point 1, available at <http://anitp.mira.gov.ro/?zone=legislatie> (06.07.2008).

<sup>20</sup> NSTP 2006-2010, pp.9-10, points B.3, C.2.

<sup>21</sup> The National Authority for the Protection of Children's Rights (NAPCR) was established on the 01.01.2005 pursuant to the provisions of Law 275/2004 and Governmental Decision no. 1432/2004, and parallel with the enforcement of the legislative package on protection and promotion of children's rights, as a result of the reorganisation of the National Authority for Children's Protection and Adoption. NAPCR operates as a specialised organisation within the central public administration, is under the aegis to the Ministry of Labour, Social Solidarity and Family. The organisational structure of NAPCR includes: Body of Control, Directorate for Monitoring of Children's Rights, Directorate for Economic and Human Resources, Directorate for Inspection, Licensing Department, Strategies, Programmes and Training Service, European Integration Service, Communication and Public Relations Department, Legal Office, and Audit Department. The authority has no territorial structures under it. The General Directorates for Social Assistance and Children's Protection are subordinate to the city councils and the local councils of the Bucharest municipality respectively.

<sup>22</sup> See Response of NAPCR No.SAERI/es./5483/13.06.2008, on file with the national Fralex expert

<sup>23</sup> See NPA 2006-2007 for the implementation of NSTP 2006-2010, available at [http://anitp.mira.gov.ro/ro/docs/proiect\\_PNA\\_final\\_ro.pdf](http://anitp.mira.gov.ro/ro/docs/proiect_PNA_final_ro.pdf) (04.07.08).

<sup>24</sup> See Response of NATP No.1494982/11.06.2008, on file with the national Fralex expert.

Agency against Trafficking in Persons (NATP)]<sup>25</sup> proposed to the government a project for NPA 2008-2010, which is not yet approved.<sup>26</sup> NAPCR is currently drafting a NPA on all forms of child violence, including child trafficking.<sup>27</sup>

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- 25 The National Agency against Trafficking in Persons (NATP) established through the Government Decision no. 1584 of 08.12 2005, is a specialised body of the central public administration, with legal status, under the coordination of the Ministry of Administration and Interior, through the reorganisation of the National Office for Preventing Trafficking in Persons and Monitoring the Protection provided to its Victims within the General Inspectorate of the Romanian Police. The purpose of the Agency is to coordinate, evaluate and monitor, at national level, the implementation of policies in the field of trafficking in persons by the public institutions, as well as those in the field of protection and assistance provided to its victims. The Agency has the following main responsibilities:
1. to draft, based on the proposals submitted by the institutions with responsibilities in the field, the National Strategy against Trafficking in Persons and the National Action Plans, which are sent to the Romanian government for approval;
  2. to monitor and evaluate the activities developed by the public institutions with responsibilities in the field of trafficking in persons, pursuant to the achievement of the objectives stipulated in the National Action Plans and the National Strategies;
  3. to coordinate the collaborative activities carried out by public institutions together with NGOs for achieving the objectives of the National Strategy;
  4. to draw up the national standards in the field together with the public institutions and NGOs involved, which are then submitted for approval to the Government, in accordance with the law;
  5. to establish the indicators and evaluation criteria of the trafficking in persons phenomenon;
  6. to collect, store, process and analyse statistical data and information in its area of responsibility;
  7. to carry out studies and research on the diagnosis and evolution of the trafficking in persons phenomenon;
  8. to facilitate statistical data and information exchange between institutions with responsibilities in the field, within the country and abroad;
  9. to submit proposals for the amendment and completion of legislation in its field of activity;
  10. to disseminate, within the legal framework, official data and information in its field of activity;
  11. to draw up the answers to questionnaires, as well as the country reports in the field of trafficking in persons;
  12. to develop its own programmes to carry out activities for preventing trafficking in persons and for providing assistance to the victims of trafficking, and on request to provide other institutions with support needed in running programmes,;
  13. to draw up, in collaboration with the other structures of the Ministry of Administration and Interior, based on the data supplied by public institutions with responsibilities in the field, the yearly report on the evolution and level of trafficking in persons, which is sent to the Romanian Government for approval;
  14. to draw up national interest programmes on preventing trafficking in persons, and for assistance provided to the victims of trafficking with a view to their social reintegration;
  15. to manage or, in certain cases, to monitor the management of funds allocated for financing the programmes in its field of activity;
  16. to support human rights information provision for the victims of trafficking in persons, both within the country and abroad;
  17. to support, on demand, the public institutions in acquiring the necessary resources for the development of specific activities, and to supply, on demand, the statistical data necessary for planning their own activities for reducing the trafficking in persons phenomenon;

- [34]. As the impact assessment of the NPA 2006-2007 is not publicly available, there is no evidence to imply that the changes in the proposed project for NPA 2008-2010 were triggered by this assessment.

#### A.2.1.1. Brief summary of the National Plan of Action 2006-2007

- [35]. To improve coordination between those working in the field of prevention and combating child trafficking, NPA 2006-2007 took measures to extend the number of active members in the *Grupul Tematic de Lucru* [Thematic Working Group (TWG)] dealing with child trafficking and to develop their expertise in this field, to establish within the NAPCR a department specialising in the protection of the child against abuse, neglect, exploitation and trafficking, also to make provision for the TWG's Secretariat on child trafficking. These objectives have been maintained in the draft NPA 2008-2010, adding the requirement to develop more expertise among the members of the TWG on assistance and protection for victims of child trafficking and to hold periodic TWG meetings on the coordination, analysis and evaluation of activities carried out by institutions competent in the area of prevention and combating child trafficking.
- [36]. To reduce the vulnerability of unaccompanied, neglected, and institutionalised children as groups at risk, the NPA 2006-2007 engaged in implementing projects, programmes and campaigns in Romania and Romanian communities abroad, developing anti-trafficking campaigns for disadvantaged groups, including Roma communities, and awareness raising and prevention programmes targeting private companies from sectors of activity with a high risk of trafficking, creating a safe environment (economically, socially, educationally), promoting campaigns adapted for children. the NPA 2008-2010 maintains this objective.
- [37]. The NPA 2006-2007 also addressed raising the efficiency of prevention activities targeting child trafficking, in particular through establishing a protocol of collaboration between the NATP and the NAPCR to ensure better coordination of their activities in prevention and assistance for the victims of child trafficking, permanent monitoring and harmonisation of legislation.

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18. to develop international cooperation activities in the field and to monitor and evaluate international cooperation activities carried out by public institutions in the field of expertise;

19. to have representatives in the specialised groups or structures of the European Union, as well as in international organisations in the field of competency.

<sup>26</sup> See NPA 2008-2010 for the implementation of the NSTP 2006-2010, available at <http://www.mai.gov.ro/Documente/Transparenta%20decizionala/PNA%20DGJ.pdf> (04.07.08)

<sup>27</sup> See Response of NAPCR No.SAERI/es./5483/13.06.2008, on file with the national Fralex expert.

- [38]. The NAPCR's National Plan of Action 2008-2010 will address the prevention of violence against children, rehabilitation and social reintegration of victims, monitoring children's human rights, and child trafficking.<sup>28</sup>

#### A.2.1.2. Data collection mechanisms

- [39]. NATP has developed a national system of data collection on trafficking in persons (both for adults and children), operational from January 2007. From a technical point of view, the system uses a central database, a search application and a web-type interface. Access is permitted only to NATP (a specific department: Service for Monitoring, Evaluation and Research and Regional Centres) and to certain public institutions on the basis of explicit protocols. Personal data can only be accessed by the user who introduced them, and statistical data are accessible depending on particular indicators, at different hierarchical levels.<sup>29</sup>
- [40]. The NAPCR has developed a separate national system of data collection specific for child trafficking. This system includes a series of common indicators with the NATP's system. The NAPCR's system collects information from: the nominal database of Romanian children who are unaccompanied abroad and of repatriated Romanian child victims or alleged victims of child trafficking, as well as the national system of data collection on child victims of internal trafficking, implemented by child protection authorities from each county.<sup>30</sup>
- [41]. There is also a data collection mechanism for case law currently developed. The *Direcția de Investigare a Infracțiunilor de Criminalitate Organizată și Terorism* [Department for the Investigation of Criminal Offences of Organised Criminality and Terrorism (DICOOCT)] centralises and communicates data to The *Centru de Resurse privind combaterea traficului de persoane din cadrul Direcției Generale de Combatere a Criminalității Organizate* [Centre of Resources for Combating Trafficking in Persons within the General Directorate for Combating Organised Criminality (CRCTP within GDCOC)].<sup>31</sup> Data collected regarding criminal offences in this area are not segregated by age.

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<sup>28</sup> See Response of NAPCR No.SAERI/es./5483/13.06.2008, on file with the national Fralex expert.

<sup>29</sup> See Response of NATP No.1494982/11.06.2008, point 2, on file with the national Fralex expert.

<sup>30</sup> See Response of NAPCR No.SAERI/es./5483/13.06.2008, point 2, on file with the national Fralex expert.

<sup>31</sup> See Response of DICOOCT No.1612/2008/24.06.2008, point 2, on file with the national Fralex expert.

### A.2.1.3. Designated budget of relevant ministries/other bodies<sup>32</sup>

- [42]. The NATP and the NAPCR stated that they do not have a specific budget designated for activities in the field of child trafficking. These activities are financed from their global annual budgets. The NAPCR mentioned an exception – the national programmes are implemented with finance allocated from the national budget (EUR 600,000 for 2004-2005). For research on child trafficking, both institutions declared that they cooperate with NGOs, international organisations and public institutions. While the NATP does not have a specific budget designated for this purpose but uses resources from its general budget, the NAPCR does not have any budget at all for this type of activity.

### A.2.1.4. Monitoring mechanisms

- [43]. Romania does not have a national system of monitoring the right of children to be protected against child trafficking. However, all institutions involved in the identification and referral of child victims of trafficking are informed about this right and about the regulations and procedures. In this sense, the NAPCR mentioned as guarantees: regulations on children travelling abroad and safeguards at border controls, setting up and operation of emergency helplines for notifying situations with potential risk, immediate taking over of the victim or of the alleged victim of child trafficking and ensuring emergency protection, and providing information and adequate assistance to the child (psychological, medical, legal, social, with a view to rehabilitation and social reintegration, etc).<sup>33</sup> Although monitoring the assistance provided to victims of trafficking in persons is among the NATP's responsibilities, the NATP mentioned that it does not have competence in the field of combating child trafficking.<sup>34</sup>

### A.2.1.5. National Referral Mechanism

- [44]. So far, there is no Romanian National Referral Mechanism or similar systematic, formalised and standardised instrument for cooperation and referral. Since 2004, the NAPCR and the NGO *Salvați Copiii* [Save the Children Romania] have been using an interim methodology for the transit centres for protection and assistance of repatriated unaccompanied children and/or victims of child trafficking. This methodology was based on the existing regulations

<sup>32</sup> See Response of NATP No.1494982/11.06.2008, points 4, 5, and Response of NAPCR No.SAERI/es./5483/13.06.2008, points 4, 5, on file with the national Fralex expert.

<sup>33</sup> See Response of NAPCR No.SAERI/es./5483/13.06.2008, point 6, on file with the national Fralex expert.

<sup>34</sup> See Response of NATP No.1494982/11.06.2008, point 4, on file with the national Fralex expert.



and inspired by the UNICEF Reference Guide on Protecting of the Rights of Child Victims of Trafficking in South-East Europe (2003).<sup>35</sup>

- [45]. At present, a common order adopting the *Mecanismul național de identificare și referire a victimelor traficului de persoane* [National mechanism for identification and referral of victims of trafficking in persons] has been sent for approval by different ministries.<sup>36</sup> The NATP drafted the mechanism. The document aims to create a joint system of identification of victims of trafficking in persons (children and adults) and referral to providers of assistance services, and prescribes clear responsibilities for all those involved in the process.<sup>37</sup>

#### A.2.1.6. Training for professionals

- [46]. At the level of professionals involved in the identification, care and protection of child victims of trafficking, there is no official strategy for training. In 2004 and 2005, the NAPCR organised training for specialised service providers, or providers of related services for the protection of child victims of abuse, neglect and exploitation, as well as for professionals working at local level with different authorities, e.g. police, education, health, labour protection, social protection. After 2005, it was mostly NGOs and international organisations such as the ILO and the IOM who organised training. The NAPCR is currently drafting a national strategy on training for professionals working in the field of promotion and protection of children's rights, including in child trafficking.<sup>38</sup>
- [47]. The *Institutul Național al Magistraturii* [National Institute of Magistracy (NIM)] carries out the training of judges and prosecutors. During initial training, NIM students examine aspects related to trafficking in persons – Criminal Law (first year) and Justice for Minors (second year). As for continuing legal education, NIM reported that around 145 judges and prosecutors were trained on trafficking in persons during 2006-2007, funded from budgetary resources. In 2006, a further 54 judges and prosecutors received training funded from external resources, while for 2007-2008, their number will be between 45-70. In 2006, a non-governmental organisation provided for training of trainers focused on child trafficking and migration for 28 judges and prosecutors, who are then supposed to go on to train magistrates. Similar

<sup>35</sup> See Response of NAPCR No.SAERI/es./5483/13.06.2008, point 7, on file with the national Fralex expert.

<sup>36</sup> The draft is available at [http://anitp.mira.gov.ro/ro/docs/norme\\_identificare\\_referire.pdf](http://anitp.mira.gov.ro/ro/docs/norme_identificare_referire.pdf), and [http://anitp.mira.gov.ro/ro/docs/metodologie\\_referire\\_imediata.pdf](http://anitp.mira.gov.ro/ro/docs/metodologie_referire_imediata.pdf) (05.07.08).

<sup>37</sup> See Response of NATP No.1494982/11.06.2008, point 7, on file with the national Fralex expert.

<sup>38</sup> See Response of NAPCR No.SAERI/es./5483/13.06.2008, point 8, on file with the national Fralex expert.

training may be carried out at regional level, depending on the need for such training.<sup>39</sup>

#### A.2.1.7. Policy of non-criminalisation of children victims of trafficking

- [48]. Art. 20 of Law 678/2001 states that the person subjected to trafficking in persons, who was engaged in prostitution or begging as sanctioned by the Criminal Code (Art.328 and Art. 326), will not be punished for this, if is announcing the authorities before the criminal investigations for trafficking in persons begin, or if cooperates in the arrest of the perpetrators after the criminal investigation begun or after the perpetrators had been revealed.<sup>40</sup>

## B. Prevention of child trafficking

### B.1. Awareness-raising campaigns

- [49]. During 2004-2005, the NAPCR implemented a nation-wide information campaign for the prevention and combating of child trafficking, with funding from the state budget. The target groups were pupils, teachers, parents, children from the social protection system, their families, NAPCR personnel, and communities with a high risk of migration.<sup>41</sup> During 2004-2007, the NAPCR implemented a PHARE-sponsored campaign aimed to educate both professionals working in the field and the general public on children's rights, focusing on preventing abuse, neglect, exploitation, trafficking and other forms of violence against children.<sup>42</sup>
- [50]. During 2008, the NATP is organising a national awareness-raising campaign against child exploitation for commercial reasons (*Lăsați copilăria copiilor* [Let children live their childhood]). The campaign launched a TV spot and two studies on sexual exploitation of children and psychological and social rehabilitation of child victims of trafficking. Results of these were not available

<sup>39</sup> See Response of NIM No.18653/1154/2008/20.06.2008, on file with the national Fralex expert.

<sup>40</sup> Art.20.(1) of the Romania/Lege 678/2001 *privind prevenirea și combaterea traficului de persoane* [Law 678/2001 on the prevention and combating of trafficking in human beings] (21.11.2001), as amended by Romania/Lege 287/2005 (11.10.2005)

<sup>41</sup> More information available at <http://www.copii.ro/content.aspx?id=144>, <http://www.copii.ro/content.aspx?id=143> (05.07.08).

<sup>42</sup> See Response of NAPCR No.SAERI/es./5483/13.06.2008, point 9, on file with the national Fralex expert. See also <http://www.copii.ro> (05.07.08).

at the time of the writing of this report.<sup>43</sup> In 2007-2008, the NATP organised an awareness-raising and information campaign on the risks associated with trafficking in persons, increasing self-protection capacity, reducing the vulnerability of groups at risk, including children, reducing the demand for sexual exploitation of women, and work exploitation.

- [51]. With regard to direct participation, NGOs working in the fields of preventing trafficking in persons or children's rights participated in all programmes mentioned above. Moreover, they themselves implemented projects, with funding from the NAPCR.<sup>44</sup>
- [52]. The NAPCR's programmes actively involved children in activities such as the children's forum *SPUNE!* [Name it!], interactive workshops in schools, children as initiators of the education campaign for children's rights, and drafting an alternative report on the children's rights situation in Romania.<sup>45</sup> However these are more general projects on children's rights, not focusing on child trafficking. The NATP's campaigns involved children, their teachers and parents as beneficiaries of activities.<sup>46</sup>
- [53]. Both the NAPCR and the NATP reported only the participation of local Roma communities as beneficiaries (NATP brochures in one project have been translated into Romani), or the involvement of local Roma leaders, but without giving any details or providing evidence.<sup>47</sup>

## B.2. Prevention policies on children in a vulnerable position

- [54]. The NATP's response indicated the NAPCR as the authority with exclusive competence to adopt special measures for child victims or potential victims. Cases of child victims are referred to the county-level *Direcția Generală de Asistență Socială și Protecția Copilului* [Social Assistance and Child Protection General Department (SACPGD)].
- [55]. The NAPCR identified the following categories of children at high risk of trafficking: unaccompanied migrant children, children living on the streets, children from very vulnerable families (extreme poverty, very low level of

<sup>43</sup> See Response of NAPCR No.SAERI/es./5483/13.06.2008, point 9, on file with the national Fralex expert

<sup>44</sup> See Response of NAPCR No.SAERI/es./5483/13.06.2008, points 11-12, Response of NATP No.1494982/11.06.2008, point 11, on file with the national Fralex expert.

<sup>45</sup> See Response of NAPCR No.SAERI/es./5483/13.06.2008, point 12, on file with the national Fralex expert. See also <http://www.drepturilecopiilor.ro/spune/> (05.07.08).

<sup>46</sup> See Response of NATP No.1494982/11.06.2008, point 12, on file with the national Fralex expert.

<sup>47</sup> See Response of NAPCR No.SAERI/es./5483/13.06.2008, point 13. See Response of NATP No.1494982/11.06.2008, point 13, on file with the national Fralex expert.

education, alcoholism, domestic violence, etc), children from poor Roma communities, neglected or abused children, children who dropped out of school, children, particularly those in rural areas, subjected to work exploitation, children with disabilities, children whose parents both work abroad, migrant children accompanied by vulnerable families, etc.<sup>48</sup>

- [56]. In their strategies and national plans, the competent authorities address the objective of reducing the vulnerability of the groups at risk of trafficking, including the most vulnerable children.<sup>49</sup> Furthermore, since 2008, local teams of representatives from different authorities (social assistance, education, health, police, work inspectorate), NGOs and other representatives of civil society, who used to deal with the prevention of work exploitation in the case of children, have extended their mandate to any form of neglect, abuse, exploitation and child trafficking. Their role is to identify children at risk and child victims, file a *Fișă de semnalare* [notification], and send it to the SACPGD, monitor vulnerable communities at county level, help establish focal points in these communities, raise awareness among the general public and decision-makers, propose solutions at local level, and draft annual reports of activity.
- [57]. When individual cases of child victims from the groups at risk are notified, local social assistance services provide support for them and their families, and when necessary, emergency protection. In the case of Romanian unaccompanied children or Romanian migrant children accompanied by abusive families abroad, the Romanian authorities (NAPCR) expect to be informed by the state concerned, which is also expected to take emergency protection measures with a view to repatriation, and to ensure the necessary protection measures.<sup>50</sup>

## C. Appointment of legal guardian

- [58]. Any child, regardless of citizenship, whose parents are deceased, missing or unknown, will as a rule be appointed a guardian.<sup>51</sup> Since an ‘unaccompanied child’ is, by definition, a child who is deprived of supervision and guidance of his/her parents, any unaccompanied child will be appointed a guardian. However, some distinctions have to be made in this context:

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<sup>48</sup> See Response of NAPCR No.SAERI/es./5483/13.06.2008, point 14, on file with the national Fralex expert.

<sup>49</sup> See Sections A.2.1. National Plans of Action against Trafficking, B.1. Awareness-raising campaigns.

<sup>50</sup> See Response of NAPCR No.SAERI/es./5483/13.06.2008, point 14, on file with the national Fralex expert.

<sup>51</sup> Art. 113, Romania/*Codul Familiei* [Family Code] (08.11.2007).

- An unaccompanied Romanian child found on the territory of another state, who is returned to Romania and whose parents are unable or unwilling to fulfil their parental duties, will be subject to a child protection measure under the norms for implementation<sup>52</sup> of the legislation on protecting and promoting the rights of the child, Law 272/2004.<sup>53</sup> In this case, a representative of the local child welfare authority will be appointed as guardian.<sup>54</sup>
  - *Oficiul Român pentru Imigrări* [Romanian Office for Immigration (ROI)] will take steps to ensure the appointment of a guardian for any unaccompanied child of foreign nationality who seeks asylum.<sup>55</sup>
  - The ROI can also take steps to ensure that unaccompanied children of foreign nationality will be ‘represented through the competent institution.’<sup>56</sup>
- [59]. Any child under 18 qualifies for representation by a guardian.<sup>57</sup> However, the ROI will not appoint a guardian for an unaccompanied child who will become 18 in less than 15 days.<sup>58</sup>

## C.1. Age assessment

- [60]. When an asylum seeker declares he/she is a minor and there can be no serious doubts as to this fact, he/she will be treated as a minor.<sup>59</sup> When there are serious doubts on the age of an unaccompanied child who seeks asylum, the child will be subject to an examination<sup>60</sup> by the *Institutul de Medicină Legală* [Institute of

<sup>52</sup> Romania/*Hotărârea de Guvern 1443/2004 privind metodologia de repatriere a copiilor români neînsoțiți și asigurarea măsurilor de protecție specială în favoarea acestora*, [Government Decision 1443/2004 regarding the methodology for the return of unaccompanied children and ensuring special protection measures in their favour] (02.09.2004).

<sup>53</sup> Romania/*Lege 272/2004 privind protecția și promovarea drepturilor copilului* [Law 272/2004 concerning the protection and promotion of the rights of the child] (23.06.2004).

<sup>54</sup> Art. 62 (2) Romania/*Lege 272/2004 privind protecția și promovarea drepturilor copilului* [Law 272/2004 concerning the protection and promotion of the rights of the child] (23.06.2004).

<sup>55</sup> Art.40 Romania/*Lege privind azilul în România* [Law 122/2006 on asylum in Romania] (18.05.2006).

<sup>56</sup> Art. 131 (1) (b) Romania/*Ordonanța de Urgență 194/2002 privind regimul străinilor în România* [Government Emergency Ordinance 194/2002 on the statute of aliens] (05.06.2002). By exclusion, this provision will apply to unaccompanied children who have not applied for or have been denied asylum, or who are granted tolerated stay on grounds of trafficking according to art. 130 of the same GEO 194/2002.

<sup>57</sup> Art. 113, Romania/*Codul Familiei* [Romanian Family Code] (08.11.2007).

<sup>58</sup> Art. 16 (3) Romania/*Lege privind azilul în România* [Law 122/2006 on asylum in Romania] (18.05.2006).

<sup>59</sup> Art. 41 (1) Romania/*Lege privind azilul în România* [Law 122/2006 on asylum in Romania] (18.05.2006).

<sup>60</sup> The examination to determine the age of the person involves ‘clinical and anthropological examinations’ (Art. 26 Romania/*Ordinul 255/2000 pentru aprobarea*

Forensic Medicine (IFM)],<sup>61</sup> with the consent of the child and/or of his/her legal guardian. If the child/ or his/her guardian refuses the examination, and there is no other conclusive evidence as to the fact that the applicant is a minor, the ROI will consider that the applicant was adult at the time he/she applied for asylum.<sup>62</sup> If the refusal was based on legitimate reasons, certified by a psychologist employed by the ROI, the authorities will accept the statement of the child regarding the age declared.<sup>63</sup>

- [61]. Medical examination of the unaccompanied child to establish his/her age in case of doubt is also used by the other authorities.<sup>64</sup>

## C.2. Training of legal guardians

- [62]. No data was available as to any specialised training for legal guardians employed for the representation of trafficked children during asylum procedures or for any other procedures coming under the authority of the ROI.
- [63]. Trafficked children taken into the care and supervision of the local child welfare authority will benefit from the assistance of professionals trained to deal with trafficked children.<sup>65</sup>
- [64]. There are no legal provisions concerning the time legal guardians have to allocate for preparation of a case. The authorities were unable to offer any conclusive data on the subject.<sup>66</sup>

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*Normelor procedurale privind efectuarea expertizelor, a constatărilor și a altor lucrări medico-legale* [Order 255/2000 for the approval of procedural rules for forensic examinations, investigations and other acts] (19.09.2000). The examination is carried out in the presence of one of the parents, or of the child's guardian, or of an adult relative of the child of the same sex as the child.(art. 14 (2) Romania/*Ordinul 255/2000 pentru aprobarea Normelor procedurale privind efectuarea expertizelor, a constatărilor și a altor lucrări medico-legale* [Order 255/2000 for the approval of procedural rules for forensic examinations, investigations and other acts] (19.09.2000).

<sup>61</sup> Art. 41 (2) Romania/*Lege privind azilul în România* [Law 122/2006 on asylum in Romania] (18.05.2006). The same procedure applies in the case of a returned unaccompanied Romanian child, or any child whose age cannot be established. See also Response 5483/13.06.2008 of the Romanian National Authority for the Protection of Child's Rights, on file with the national Fralex expert.

<sup>62</sup> Art. 41 (3) Romania/*Lege privind azilul în România* [Law 122/2006 on asylum in Romania] (18.05.2006).

<sup>63</sup> Art. 41 (5) Romania/*Lege privind azilul în România* [Law 122/2006 on asylum in Romania] (18.05.2006).

<sup>64</sup> Response 5483/13.06.2008 of the Romanian National Authority for the Protection of Child's Rights, on file with the national Fralex expert.

<sup>65</sup> Romania/*Hotărârea de Guvern 1443-2004 privind metodologia de repatriere a copiilor români neînsoțiți și asigurarea măsurilor de protecție specială în favoarea lor* [Government Decision 1443/2004 concerning the methodology for the return of Romanian unaccompanied children and ensuring special protection measures in their favour] (02.09.2004).

## D. Coordination and cooperation

### D.1. Cooperation between state bodies

- [65]. The *Grupul Interministerial de Lucru pentru Coordonarea și Evaluarea Activității de Prevenire și Combatere a Traficului de Persoane (GIL)* [The Inter-Agency Working Group for Coordinating and Assessing the Prevention and Combating of Trafficking in Human Beings (GIL)], was created in 2003.<sup>67</sup> This group includes: four representatives of the *Ministerul Internelor și Reformei Administrative* [Ministry of Internal Affairs and Administrative Reform] (of which at least one person belongs to *Direcția Generală de Combatere a Crimei Organizate și Antidrog* [Central Department for Organised Crime and Anti-Drug Action]), and one representative from each of the following: *Ministerul de Justiție* [Ministry of Justice], *Ministerul de Externe* [Ministry of Foreign Affairs], *Parchetul General* [Public Ministry], *Ministerul Muncii, Familiei și Egalității de Șanse* [Ministry of Labour and Social Solidarity], *Ministerul Educației și Cercetării* [Ministry for Education and Research], *Ministerul Administrației Publice* [Ministry of Public Administration],<sup>68</sup> *Ministerul Sănătății și Familiei* [Ministry for Health and Family], *Ministerul Tineretului și Sportului* [Ministry of Youth and Sports], *Ministerul Culturii* [Ministry of Culture], the NAPRC, NGOs working with victims of trafficking.<sup>69</sup> The tasks of the GIL include: designing and coordinating joint efforts to prevent and combat trafficking in human beings, assessing the impact of anti-trafficking legislation and measures, and designing corresponding strategies. A subgroup of GIL was created in November 2003, with similar responsibilities in relation to trafficking in children.<sup>70</sup>

<sup>66</sup> Response 2211634/04.06.2008 of ROI, on file with national Fralex expert.

<sup>67</sup> Romania/*Hotărârea de Guvern privind Regulamentul de aplicare a Legii 678/2001* [Government Decision 299/2003 approving the regulation issued for the application of Law 678/2001 concerning prevention and combating trafficking in human beings] (13.03.2003).

<sup>68</sup> In December 2003, this ministry merged with the Ministry of Internal Affairs to form the Ministry of Internal Affairs and Public Administration (Law 604/2003), then in April 2007 became the Ministry of Internal Affairs and Administrative Reform (Government Emergency Ordinance 24/2007)

<sup>69</sup> Art. 6 Romania/*Hotărârea de Guvern 299/2003 privind Regulamentul de aplicare a Legii 678/2001* [Government Decision 299/2003 approving the regulation issued for the application of Law 678/2001 on preventing and combating trafficking in human beings] (13.03.2003).

<sup>70</sup> Art 2 Romania/*Hotărârea de Guvern 1295/2004 privind aprobarea Planului național de acțiune pentru prevenirea și combaterea traficului de copii.* [Government Decision 1295/2004 approving the national strategy for 2006-2010 against trafficking of children] (12.12.2006). See also GIL Annual Report 2003-2004, available at [http://www.antitrafic.ro/sections/yjklrlyl/gjg/?t\\_id=0p19p1](http://www.antitrafic.ro/sections/yjklrlyl/gjg/?t_id=0p19p1) (02.07.2008).

- [66]. Cooperation agreements were signed between all the relevant ministries and central agencies involved in the prevention and combating of trafficking in human beings.<sup>71</sup> For example, the NAPCR has signed a cooperation agreement with the NATP concerning the exchange of data and information of common interest, research and prevention of trafficking in children, as well as assistance to child victims of trafficking. Cooperation between the NAPCR and other ministries (Ministry of Foreign Affairs, Ministry of Internal Affairs and Administrative Reform) as well as agencies under the supervision of such ministries, is regulated by law.<sup>72</sup>

## D.2. Cooperation between Romania and other states

- [67]. Romania has general bilateral readmission agreements with 32 states, 22 of which are Member States of the European Union. In December 2005, Romania signed a bilateral agreement with Spain on collaboration regarding unaccompanied Romanian minors. A similar agreement regarding cooperation for the protection of Romanian children in difficulty in France was valid up to 04.02.2004, and should be renewed as an extension of a bilateral agreement on cooperation in the area of organised crime and juvenile delinquency.
- [68]. Romania has not yet signed any cooperation agreements with countries outside the EU which can be described as ‘countries of origin for human trafficking.’
- [69]. Romania itself is largely a country of origin for trafficked persons and only to a small extent a transit country for trafficking networks. For instance, during the first six months of 2008, the NAPCR received 250 requests regarding unaccompanied Romanian children abroad, 138 of whom have been repatriated.<sup>73</sup>
- [70]. Romania does not as yet implement any programme of international development assistance in the field of trafficking of human beings in third countries of origin.

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<sup>71</sup> A summary of cooperation agreements can be found on the site of the National Agency against Trafficking in Persons <http://anitp.mira.gov.ro/ro/?zone=nationala> (02.07.2008)

<sup>72</sup> For instance, Romania/*Hotărârea de Guvern 1295/2004 privind aprobarea Planului național de acțiune pentru prevenirea și combaterea traficului de copii* [Government Decision 1295/2004 approving the national anti-trafficking strategy for 2006-2010] (12.12.2006). See Romania/*Hotărârea de Guvern 1443-2004 privind metodologia de repatriere a copiilor români neînsoșiți și asigurarea măsurilor de protecție specială în favoarea lor* [Government Decision 1443/2004 concerning the methodology for the return of unaccompanied Romanian children and ensuring special protection measures in their favour] (2.09.2004).

<sup>73</sup> See NAPCR site <http://www.copii.ro/comunicate.aspx> (08.07.2008).



### D.3. Cooperation with NGOs

- [71]. The NAPRC has signed a cooperation agreement with the NGO Gavroche Bucharest, creating a pilot centre which receives unaccompanied returned Romanian children who enter the country through airports or border points close to Bucharest, as well as child victims of trafficking. The NGO Save the Children Romania was involved in creating the first transit centres for unaccompanied children and child victims of trafficking, with funds from the NAPRC. The NAPRC works with the International Organisation for Migration in situations concerning the return of Romanian children,<sup>74</sup> as well as with a range of NGOs which provide assistance to child victims of trafficking.<sup>75</sup>

### D.4. Inter-agency cooperation and protection of personal data of trafficked children

- [72]. The two authorities independently compiling information on trafficked children, the NAPCR and the NATP, have signed a cooperation agreement concerning the exchange of data and information of common interest, research and prevention of trafficking in children, as well as assistance for child victims of trafficking. The data compiled under both databases observe legal provisions on the protection of personal data (Art.2 and 3 of Law 677/2001).<sup>76</sup> There are no specific guidelines aimed at protecting the personal data of trafficked children.

## E. Care and protection

- [73]. Any alien who claims to be a victim of human trafficking or who may presumably be a victim of human trafficking is entitled to a period for recovery and reflection of up to 90 days, irrespective of their cooperation with police/prosecutor.<sup>77</sup> During this period they will be 'tolerated on Romanian territory'.<sup>78</sup> There are no equivalent provisions ensuring a period for recovery

<sup>74</sup> Response of the NAPCR no 5483/13.06.2008, on file with the national Fralex expert.

<sup>75</sup> Such as *Alternative Sociale*, an NGO which provides social and psychological as well as legal assistance for victims of trafficking.

<sup>76</sup> Romania/*Lege pentru protecția persoanelor cu privire la prelucrarea datelor cu caracter personal și libera circulație a acestor date* [Law 677/2001 on the protection of persons in relation to the use of personal data] (21.11.2001).

<sup>77</sup> Art. 39.1 Romania/*Lege 678/2001 privind prevenirea și combaterea traficului de persoane* [Law 678/2001 on prevention and combating of trafficking in human beings], amended (16.10.2005).

<sup>78</sup> Art. 39.1 Romania/*Lege 678/2001 privind prevenirea și combaterea traficului de persoane* [Law 678/2001 on the prevention and combating of trafficking in human beings], amended (16.10.2005)

and reflection for victims of trafficking of Romanian citizenship,<sup>79</sup> who, meanwhile, are granted entry and freedom to choose their place of residence on Romanian territory.<sup>80</sup>

## E.1. Categories of children victims of trafficking and their status

[74]. When a child is identified as a victim of human trafficking, the following measures apply, as appropriate:

- The child is a Romanian national, has asked for assistance and is sent to a specialised centre managed by NATP. In this situation, he/she can be lodged in the centre for a period of ten days at most.<sup>81</sup> The child can reside in the centre longer during the criminal proceedings, based on the request of the investigation authorities. Also, the management of the centre may allow the child to reside there longer, but not longer than three months, or up to the end of the criminal proceedings.<sup>82</sup>
- The child is a Romanian national and is subject to a special child protection measure.<sup>83</sup> In this case, the child can reside in a special centre managed by the local child welfare authority (or by a partner not-for-profit organisation)<sup>84</sup> for an indeterminate and variable period of time, depending on the particular circumstances, regardless of any cooperation with the police/prosecutor.<sup>85</sup>

<sup>79</sup> See Romania/*Lege 678/2001 privind prevenirea și combaterea traficului de persoane* [Law 678/2001 on the prevention and combating of trafficking in human beings], amended (16.10.2005).

<sup>80</sup> Art. 15 (1) , Art. 25 (2) *Constituția României* [Romanian Constitution] (31.10.2003)

<sup>81</sup> See Art. 32 of Romania/*Lege 678/2001 privind prevenirea și combaterea traficului de persoane* [Law 678/2001 on the prevention and combating of trafficking in human beings], amended (16.10.2005).

<sup>82</sup> Art. 51 (3) of Romania/*Hotărârea de Guvern 299/2003 privind Regulamentul de aplicare a Legii 678/2001* [Government Decision 299/2003 approving the regulation issued for the application of Law 678/2001 concerning prevention and combating the trafficking in human beings] (13.03.2003).

<sup>83</sup> See Romania/*Hotărârea de Guvern 1443-2004 privind metodologia de repatriere a copiilor români neînsoțiți și asigurarea măsurilor de protecție specială în favoarea lor* [Government Decision 1443/2004 concerning the methodology for the return of the unaccompanied Romanian child and ensuring special protection measures in their favour] (2.09.2004).

<sup>84</sup> Art. 12 (2) Romania/*Hotărârea de Guvern 1443-2004 privind metodologia de repatriere a copiilor români neînsoțiți și asigurarea măsurilor de protecție specială în favoarea lor* [Government Decision 1443/2004 concerning the methodology for the return of the unaccompanied Romanian child and ensuring special protection measures in their favour] (2.09.2004).

<sup>85</sup> Art. 50-56, Romania/*Lege privind protecția și promovarea drepturilor copilului* [Law 272/2004 concerning the protection and promotion of the rights of the child] (23.06.2004). A child may benefit from a special protection measure such as

- The child is an alien who has applied for asylum. In such cases, he/she can reside in one of the specialised centres for trafficked children, managed by the local child welfare authority (or by a partner not-for-profit organisation) under the same conditions as a Romanian child,<sup>86</sup> until his/her application for asylum is processed. If the child is over 16, he/she can ask to be accommodated in a reception centre run by the ROI.
- The child is an alien who has not applied for asylum, or has been denied asylum. In such cases, he/she may be granted tolerated stay on grounds of being a victim of trafficking,<sup>87</sup> or temporary residence if the parents of the child cannot be identified, or he/she is not accepted in his/her country of origin.<sup>88</sup> In the first case, the child's residence is conditional on his/her cooperation with the criminal investigation authorities.<sup>89</sup> In the second case, he/she will benefit from the same protection as a Romanian child deprived of his/her family environment,<sup>90</sup> regardless of any cooperation with the police/prosecutor.

[75]. For numbers of children being granted tolerated stay on grounds of trafficking, see Annex 1.

[76]. Unaccompanied minors seeking asylum cannot be subject to an expedited procedure at the border.<sup>91</sup> Unaccompanied children who seek asylum are recorded in a special registry, and their official application for asylum is registered only after a legal guardian is appointed, the asylum procedure being suspended meanwhile. Children who are over 14 can file an asylum application on their own behalf before having a guardian appointed. The asylum application of an unaccompanied minor will have priority for analysis procedures.<sup>92</sup>

[77]. While they are recognised as having the right to reside on Romanian territory,<sup>93</sup> children of foreign nationality should benefit from the same protection as

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*plasamentul* [placement] until the case manager decides that the child can successfully be reinserted into the family, or can live independently.

<sup>86</sup> Art. 17 (4) Romania/*Legea azilului* [Law 122/2006 on asylum in Romania] (04.05.2006). Detailed at par. [51] 2. above.

<sup>87</sup> Art. 130, Romania/*Ordonanța de Urgență privind regimul străinilor* [Government Emergency Ordinance 194/2002 on the status of aliens in Romania] (05.06.2008).

<sup>88</sup> Art. 131, Romania/*Ordonanța de Urgență privind regimul străinilor* [Government Emergency Ordinance 194/2002 on the status of aliens in Romania] (05.06.2008).

<sup>89</sup> Art. 130 Romania/*Ordonanța de Urgență privind regimul străinilor* [Government Emergency Ordinance 194/2002 on the status of aliens in Romania] (05.06.2008).

<sup>90</sup> Art. 131 Romania/*Ordonanța de Urgență privind regimul străinilor* [Government Emergency Ordinance 194/2002 on the status of aliens in Romania] (05.06.2008).

<sup>91</sup> Art.75((2) and 84 of Romania/*Legea azilului* [Law 122/2006 on asylum in Romania] (04.05.2006).

<sup>92</sup> *România si Conventia ONU cu privire la drepturile copilului, al treilea si al patrulea raport periodic, 2007*, available at: [http://www.copii.ro/Files/Raport%20Geneva\\_200710164458906.pdf](http://www.copii.ro/Files/Raport%20Geneva_200710164458906.pdf) (03.07.2008).

<sup>93</sup> Either as asylum applicant, or having right of tolerated stay as victim of trafficking or unaccompanied minor.

Romanian children deprived of their family environment.<sup>94</sup> Consequently, such children may reside in child protection centres.<sup>95</sup> Unaccompanied children whose family could not be traced or who are not accepted by their country of origin will not be returned, but will be granted temporary protection, which can be prolonged.<sup>96</sup> A child whose application for asylum has been denied, or who has lost the right to stay will be returned to his/her country of origin. In the absence of any provision to the contrary, children who await deportation may be taken into public custody and reside in accommodation centres managed by the ROI.<sup>97</sup>

[78]. Legal provisions on the statutes for children taken into public custody who are awaiting deportation are few. A child may reside in an accommodation centre for an indefinite period of time, until he/she can be returned to the country of origin, but for no longer than six months.<sup>98</sup> The child can only appeal to court against the administrative decision ordering his/her return.<sup>99</sup> The child is initially taken into custody for a period of 30 days, which can be prolonged by a court at the request of the ROI.<sup>100</sup> After the appeal is rejected, the child has no other possibility to have his/her detention reviewed. However, when the detention has reached the six months threshold, the child can be granted the status of ‘tolerated alien’ for a period of six months, which may be prolonged.<sup>101</sup> In this situation, the child may leave the accommodation centre but can be subject to return at any time without prior notice.<sup>102</sup>

<sup>94</sup> Art. 17 (4) Romania/*Legea azilului* [Law 122/2006 on asylum in Romania] (04.05.2006)

<sup>95</sup> Art. 131 (1) (b) Romania/*Ordonanța de Urgență privind regimul străinilor* [Government Emergency Ordinance 194/2002 on the status of aliens in Romania] (05.06.2008).

<sup>96</sup> Art. 131 (1) (f) Romania/*Ordonanța de Urgență privind regimul străinilor* [Government Emergency Ordinance 194/2002 on the status of aliens in Romania] (05.06.2008).

<sup>97</sup> Art. 98 Romania/*Ordonanța de Urgență privind regimul străinilor în România* [Government Emergency Ordinance 194/2002 on the status of aliens in Romania] (05.06.2008).

<sup>98</sup> Art. 103 (b) Romania/*Ordonanța de Urgență privind regimul străinilor în România* [Government Emergency Ordinance 194/2002 on the status of aliens in Romania] (05.06.2008).

<sup>99</sup> Romania/*Ordonanța de Urgență privind regimul străinilor în România* [Government Emergency Ordinance 194/2002 on the status of aliens in Romania] (05.06.2008).

<sup>100</sup> Art. 97 (5) Romania/*Ordonanța de Urgență 194/2002 privind regimul străinilor în România* [Government Emergency Ordinance 194/2002 on the status of aliens in Romania] (05.06.2008).

<sup>101</sup> Art. 104 Romania/*Ordonanța de Urgență privind regimul străinilor în România* [Government Emergency Ordinance 194/2002 on the status of aliens in Romania] (05.06.2008).

<sup>102</sup> Art. 104 (4) Romania/*Ordonanța de Urgență privind regimul străinilor în România* [Government Emergency Ordinance 194/2002 on the status of aliens in Romania] (05.06.2008).

- [79]. The ROI is under a duty to trace the family of the alien unaccompanied child.<sup>103</sup> However, the child is to be consulted on the subject of his/her return or family reunification.<sup>104</sup> As soon as the family of the unaccompanied child is located, the case officer will analyse the possibility and conditions for reunification, based on the information gathered, and will decide accordingly.<sup>105</sup>

## E.2. Facilities and services available for trafficked children

- [80]. Romania has 12 specialised centres exclusively established for unaccompanied Romanian children who are returned to Romania and for child victims of trafficking. Each county child welfare authority manages at least one specialised emergency centre for abused, neglected, exploited or trafficked children (there is a total of 47 such centres),<sup>106</sup> which will be used to host a child presumed to be a victim of trafficking, if no specialised centre is available.
- [81]. No data is available on the number of children who leave shelters with unknown destinations.<sup>107</sup> No evidence so far has been offered as to the fact that such children may have again become victims of human trafficking. Most children seem to have been found soon after leaving the shelters at their parents' home.<sup>108</sup> To prevent their disappearance, the staff of the specialised centres is instructed to inform the children of the risks they face by leaving the centre, to supervise and 'create a trust relationship with the children'.<sup>109</sup>
- [82]. Victims of human trafficking are entitled to special protection and assistance,<sup>110</sup> including psychological and physical recovery.<sup>111</sup> All children have the right to free medical care.<sup>112</sup> Victims of trafficking are entitled to free psychological

<sup>103</sup> Art. 131 Romania/*Ordonanța de Urgență privind regimul străinilor în România* [Government Emergency Ordinance 194/2002 on the status of aliens in Romania] (05.06.2008).

<sup>104</sup> Response of the ROI no. 2211634/04.06.2008, on file with the national Fralex expert.

<sup>105</sup> Response of the ROI no. 2211634/04.06.2008, on file with the national Fralex expert.

<sup>106</sup> Response of the NAPCR no. 5483/13.06.2008, on file with the national Fralex expert.

<sup>107</sup> Response of the NAPCR no. 5483/13.06.2008, on file with Fralex national expert.

<sup>108</sup> Response of the NAPCR no. 5483/13.06.2008, on file with Fralex national expert.

<sup>109</sup> Response of the NAPCR no. 5483/13.06.2008, on file with national Fralex expert.

<sup>110</sup> Art. 26 (1) Romania/*Lege 678/2001 privind prevenirea și combaterea traficului de persoane* [Law 678/2001 on the prevention and combating of trafficking in human beings], amended (16.10.2005).

<sup>111</sup> Art. 26 (3) Romania/*Lege 678/2001 privind prevenirea și combaterea traficului de persoan.*[ Law 678/2001 on the prevention and combating of trafficking in human beings], amended (16.10.2005).

<sup>112</sup> Art. 213 (1) (a) Romania/*Lege privind reforma sistemului de sănătate publică* [Law 95/2006 concerning the reform of the health system], amended (26.09.2007).

- counselling, offered upon request by the Probation Services.<sup>113</sup> For statistical data, see Annex 1.
- [83]. The Ministry for Education and Research is under a duty to take measures to reintegrate victims of trafficking into the mainstream education system.<sup>114</sup> For statistical data, see Annex 1.
- [84]. All victims of human trafficking are entitled to legal aid in order to be able to exercise their rights during the criminal investigation and trial, as well as to claim damages.<sup>115</sup> However, distinct from similar cases when the norms spelling out the duty to provide legal aid also mention that the lack of legal aid in such cases leads to the sanction of annulment of the decision, in the case of victims of trafficking there is no sanction for failure to provide legal aid. Data collected on legal aid granted to victims of trafficking does not distinguish between children and adults.<sup>116</sup>
- [85]. Any child who does not speak Romanian will be assisted by an interpreter.<sup>117</sup> Specialised translators are requested for children from different ethnic backgrounds who did not speak Romanian.<sup>118</sup> Asylum applicants with special needs have the right to specialised medical assistance,<sup>119</sup> and will be interviewed by specialised officers, who must take into account ‘the special situation of such persons’.<sup>120</sup>
- [86]. A child who belongs to a national, ethnic, religious or linguistic minority has the right to his/her own religious and cultural life.<sup>121</sup>
- [87]. The NATP manages a helpline with the number 0800 800 678, where anyone can report situations or suspicions of trafficking.<sup>122</sup> The Romanian Centre for

<sup>113</sup> Art. 7 Romania/*Lege privind unele măsuri pentru asigurarea protecției victimelor infracțiunilor* [Law 211/2004 concerning some measures for the protection of victims of crimes], amended (26.10.2007).

<sup>114</sup> Art. 16 (h) Romania/*Hotărârea de Guvern 299/2003 privind Regulamentul de aplicare a Legii 678/2001* [Government Decision 299/2003 approving the regulation issued for the application of Law 678/2001 concerning prevention and combating the trafficking in human beings] (13.03.2003).

<sup>115</sup> Art. 44 Romania/*Lege 678/2001 privind prevenirea și combaterea traficului de persoane* [Law 678/2001 on the prevention and combating of trafficking in human beings], amended (16.10.2005).

<sup>116</sup> Response of General Prosecutors Office, Division of Investigation of Organised Crimes and Terrorism, no 1612-2008 of 24.06.2008, on file with national Fralex expert.

<sup>117</sup> Art. 17 (1) (c) Romania/*Legea azilului* [Law 122/2006 on asylum in Romania] (18.05.2006).

<sup>118</sup> Response of the NAPCR no. 5483/13.06.2008, on file with Fralex national expert.

<sup>119</sup> Art. 17 (1) (n) Romania/*Legea azilului* [Law 122/2006 on asylum in Romania] (18.05.2006).

<sup>120</sup> Art. 46 Romania/*Legea azilului* [Law 122/2006 on asylum in Romania] (18.05.2006).

<sup>121</sup> Romania/*Lege privind protecția și promovarea drepturilor copilului* [Law 272/2004 concerning the protection and promotion of the rights of the child] (23.06.2004).

<sup>122</sup> Response 1494982/04.06.2008 of the NATP, on file with national Fralex expert.

Missing and Sexually Exploited Children FOCUS manages another helpline at 0800 800 116.<sup>123</sup>

- [88]. The emergency number 112 can also be called for emergency situations concerning trafficked, exploited or abused children,. The Green Line for Child Protection, with the number 0800 8200 200, is also available.<sup>124</sup>

## F. Best interests determination and durable solutions, including social inclusion/return

### F.1. Best interest determination procedures

#### F.1.1. Procedures in the case of Romanian child victims of trafficking returned to Romania

- [89]. The best interest of the child must prevail in any decision that concerns a child that is taken by any administrative or judicial authority.<sup>125</sup>
- [90]. Prior to the return of a Romanian unaccompanied child found abroad, the local child welfare authorities have a duty to carry out a social assessment,<sup>126</sup> to prepare a plan for the reintegration of the child and decide whether any special protection measures should be taken in relation to the child.<sup>127</sup> The mandatory

<sup>123</sup> So far Romania has not implemented Commission Decision 2007/116/EC and the number 116000 is not yet functional in Romania. However, the FOCUS centre, which was established in January 2007 with the support of the European Federation for Missing and Exploited Children, Child Focus Belgium and of the International Centre for Missing and Exploited Children (IMEC), has succeeded in obtaining a free number containing the digits '116' for its call centre. Information is available on the Centre's web-site at : [http://www.copiiidisparuti.ro/ro/images/stories/raport/2007/Raport\\_Anual\\_Focus\\_2007.pdf](http://www.copiiidisparuti.ro/ro/images/stories/raport/2007/Raport_Anual_Focus_2007.pdf) (21.07.2008).

<sup>124</sup> For information on Greenline Child protection: <http://www.copii.ro/>. (02.07.2008)

<sup>125</sup> Art. 2 (3) Romania/*Legea 272/2004 privind protecția și promovarea drepturilor copilului* [Law 272/2004 concerning the protection and promotion of the rights of the child] (23.06.2004).

<sup>126</sup> Art. 7 (2) Romania/*Hotărârea de Guvern 299/2003 privind Regulamentul de aplicare a Legii 678/2001* [Government Decision 1443/2004 concerning the methodology for the return of the unaccompanied Romanian child and ensuring special protection measures in their favour] (2.09.2004).

<sup>127</sup> Romania/*Hotărârea de Guvern 299/2003 privind Regulamentul de aplicare a Legii 678/2001* [Government Decision 1443/2004 concerning the methodology for the return

indicators include the assessment of risk and safety.<sup>128</sup> After the return of the child, even if no protection measures are taken, the local child welfare authorities are under a duty to monitor the child for at least six months.<sup>129</sup>

### F.1.2. Procedures in the case of trafficked children who are not Romanian nationals

- [91]. As for an unaccompanied child of other nationality, the ROI are under a duty to identify the parents or other family members.<sup>130</sup> The child is consulted on the subject of his/her return or family reunification.<sup>131</sup> As soon as the family of the unaccompanied child is located, the case officer will analyse the possibility and conditions for reunification and will decide accordingly.<sup>132</sup>
- [92]. Asylum/subsidiary protection for child victims of trafficking is not mandatory:
- a. A child who is a victim of human trafficking may be granted tolerated stay, at the request of the prosecutor or of the court.<sup>133</sup>
  - b. The child may also apply for asylum if he/she can prove that he/she meets the criteria set by Law 122/2006 on asylum in Romania.<sup>134</sup>

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of the unaccompanied Romanian child and ensuring special protection measures in their favour] (2.09.2004)

<sup>128</sup> Annex 1 to Romania/*Ordinul Autorității Naționale pentru Protecția Drepturilor Copilului, pentru aprobarea modelului de anchetă socială privind situația sociofamilială a copilului român aflat neînsoțit pe teritoriul altui stat, în vederea repatrierii acestuia și a reintegrării sale sociale, și a structurii cadru a planului referitor la pregătirea reintegrării sociale a copilului care se află neînsoțit pe teritoriul altui stat și care urmează a fi repatriate* [Order 107/14.03.2005 of the National Authority for the Protection of Children's Rights approving the model of social assessment regarding the social and family situation of the unaccompanied Romanian child found on the territory of another state, in view of his return, and approving the framework plan preparing the social reinsertion of the unaccompanied child who is to be returned].

<sup>129</sup> Art. 13 (2) Romania/*Hotărârea de Guvern 1443-2004 privind metodologia de repatriere a copiilor români neînsoțiți și asigurarea măsurilor de protecție specială în favoarea lor* [Government Decision 1443/2004 concerning the methodology for the return of the unaccompanied Romanian child and ensuring special protection measures in their favour] (2.09.2004).

<sup>130</sup> Art. 131 (1) (c) Romania/*Ordonanța de Urgență privind regimul străinilor* [Government Ordinance 194/2002 on the status of aliens in Romania] (5.06.2008)

<sup>131</sup> Response of the ROI no. 2211634/04.06.2008, on file with Fralex expert.

<sup>132</sup> Response of the ROI no. 2211634/04.06.2008, on file with Fralex expert.

<sup>133</sup> Art. 103 (e), art.130 (1) Romania/*Ordonanța de Urgență privind regimul străinilor* [Government Ordinance 194/2002 on the status of aliens in Romania] (5.06.2008)

<sup>134</sup> A person will be granted refugee status if 'he/she, due to fear of persecution on grounds of race, religion, nationality, political opinion or belonging to a particular social group, is found outside the country of origin, and due to the fear of persecution, refuses the protection of the country of origin' (art. 23 (1) Romania/*Legea azilului* [Law 122/2006



- c. In addition, if the parents of the child cannot be identified or if the child is not accepted back in his/her country of origin, the ROI will grant subsidiary protection to the child.<sup>135</sup>

[93]. Unaccompanied minors seeking asylum cannot be subject to expedited procedures.<sup>136</sup> The asylum application of an unaccompanied minor will have priority for analysis procedures.<sup>137</sup>

## F.2. Available care and protection measures

[94]. Any child must be heard during any judicial or administrative procedure which concerns him/her,<sup>138</sup> and his/her opinion must be given due consideration in accordance with his/her age and level of understanding.<sup>139</sup> The child will be listened to during the proceedings on any special child protection measure. The child is consulted on the subject of his/her return or family reunification.<sup>140</sup> During the asylum procedure, the child will be interviewed in the presence of his/her guardian, whenever the child's level of psychological development allows this.<sup>141</sup> The interviewing officer will take into account the child's level of intellectual development.<sup>142</sup> The child and the guardian are informed about the

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on asylum in Romania] (18.05.2006). Subsidiary protection is available for a person who has reason to believe that in case of return to the country of origin, he/she will undergo significant risk of death penalty, torture, inhuman or degrading treatment, or any serious and individual threat to his/her life or personal integrity following generalised violence in conflict situations – art. 26 Romania/*Legea azilului* [Law 122/2006 on asylum in Romania] (18.05.2006). Temporary humanitarian protection may also be granted to persons coming from war zones – art. 29 Romania/*Legea azilului* [Law 122/2006 on asylum in Romania] (18.05.2006).

<sup>135</sup> Art. 131 (1) (f) Romania/*Ordonanța de Urgență privind regimul străinilor* [Government Ordinance 194/2002 on the status of aliens in Romania] (5.06.2008).

<sup>136</sup> Art.75((2) and 84 of Romania/*Legea azilului* [Law 122/2006 on asylum in Romania] (04.05.2006).

<sup>137</sup> *România si Conventia ONU cu privire la drepturile copilului, al treilea si al patrulea raport periodic, 2007*, available at: [http://www.copii.ro/Files/Raport%20Geneva\\_200710164458906.pdf](http://www.copii.ro/Files/Raport%20Geneva_200710164458906.pdf) (03.07.2008).

<sup>138</sup> Art 23 Romania/*Lege privind protecția și promovarea drepturilor copilului* [Law 272/2004 on the protection and promotion of the rights of the child] (23.06.2004)

<sup>139</sup> Art. 24 (4) Romania/*Lege privind protecția și promovarea drepturilor copilului* [Law 272/2004 on the protection and promotion of the rights of the child] (23.06.2004).

<sup>140</sup> Art 72,73 Romania/*Lege privind protecția și promovarea drepturilor copilului* [Law 122/2006 on asylum in Romania] (18.05.2006). See also response of the ROI no. 2211634/04.06.2008, on file with Fralex expert.

<sup>141</sup> Art. 47 (3) Romania/*Legea azilului* [Law 122/2006 on asylum in Romania] (18.05.2006).

<sup>142</sup> Art. 47 (4) Romania/*Legea azilului* [Law 122/2006 on asylum in Romania] (18.05.2006).

- purpose and consequences of the interview.<sup>143</sup> In all cases, interpreters will be provided.<sup>144</sup>
- [95]. Unaccompanied children found on Romanian territory will be taken into care under the same conditions as Romanian children.<sup>145</sup> Consequently, they will be eligible for special child protection measures and integration programmes. Children who have applied for asylum have the right to education in conditions similar to Romanian children,<sup>146</sup> have the right to free medical care,<sup>147</sup> and the right to be involved in activities aimed at cultural integration.<sup>148</sup>
- [96]. Integration programmes for trafficked children are implemented by specialised child welfare services. The stages of the programme are: complex assessment of the situation of the child, drafting of an individual intervention plan which comprises certain specific indicators (medical and psychological recovery, insertion/reinsertion into the education system or support for vocational training, reintegration into the family of origin or a foster family, other protection measures, legal advice, etc), implementation and constant monitoring.<sup>149</sup>
- [97]. Children with disabilities will be referred to specialised child welfare staff and will receive specialised assistance.<sup>150</sup> A child who belongs to a national, ethnic,

<sup>143</sup> Art. 47 (2) Romania/*Legea azilului*, [Law 122/2006 on asylum in Romania] (18.05.2006).

<sup>144</sup> Art. 17 (1) (c) Romania/*Legea azilului* [Law 122/2006 on asylum in Romania] (18.05.2006).

<sup>145</sup> Art. 131 (1) (b) Romania/*Ordonanța de Urgență privind regimul străinilor* [Government Ordinance 194/2002 on the status of aliens in Romania] (5.06.2008); art. 17 (4) Romania/*Legea azilului* [Law 122/2006 on asylum in Romania] (18.05.2006).

<sup>146</sup> Art. 17 (1) (p) Romania/*Legea azilului* [Law 122/2006 on asylum in Romania] (18.05.2006).

<sup>147</sup> Art. 17 (1) (m) Romania/*Legea azilului* [Law 122/2006 on asylum in Romania] (18.05.2006).

<sup>148</sup> Art. 17 (1) (i) Romania/*Legea azilului* [Law 122/2006 on asylum in Romania] (18.05.2006).

<sup>149</sup> Romania/*Hotărârea de Guvern 1443-2004 privind metodologia de repatriere a copiilor români neînsoșiți și asigurarea măsurilor de protecție specială în favoarea lor* [Government Decision 1443/2004 concerning the methodology for the return of the unaccompanied Romanian child and ensuring special protection measures in their favour] (2.09.2004); Romania/*Ordin pentru aprobarea Normelor metodologice privind întocmirea Planului de servicii și a Normelor metodologice privind întocmirea Planului individualizat de protecție* [Order 286/28.07.2006 of the National Authority for the Protection of Children's Rights approving the methodology for drafting the plan for services and the individualised protection plan]. Also, Response of the NAPCR no. 5483/13.06.2008, on file with Fralex national expert.

<sup>150</sup> See Response of the National Authority for the Protection of Children's Rights no. 5483/13.06.2008, on file with Fralex national expert.

religious or linguistic minority has the right to his/her own religious and cultural life.<sup>151</sup>

- [98]. Victims of trafficking are entitled to legal aid in order to be able to exercise their rights during criminal investigations and trials, and in order to file claims for damages.<sup>152</sup> All those interacting in a professional capacity with the victims of trafficking have a duty to inform them and their legal guardians about their right to legal aid during any criminal or civil legal proceedings,<sup>153</sup> courts are also under a duty to appoint a lawyer to assist victims of trafficking.<sup>154</sup>

## G. Prosecution

- [99]. During the criminal investigation or trial, if there is evidence that disclosure of the identity or address of the witness will jeopardise his/her life, physical integrity or freedom, the witness can be assigned a different identity and may testify by means of audio/video link.<sup>155</sup> As a rule, court sessions on child trafficking are closed to the general public.<sup>156</sup> Confrontations with the perpetrator are not prohibited by law. Currently, there are no legal provisions requiring that the police/prosecutor/court conducts the procedures in a child sensitive-manner.
- [100]. Any person has the right of access to justice.<sup>157</sup> Border police officers, police officers, prosecutors and courts are under a duty to inform any victim of human trafficking and his/her guardian about their right to press charges against the trafficker(s), as well as the right to file a claim for compensation.<sup>158</sup> Employees

<sup>151</sup> Romania/*Lege 272/2004 privind protecția și promovarea drepturilor copilului* [Law 272/2004 concerning the protection and promotion of the rights of the child] (23.06.2004).

<sup>152</sup> Art. 44 Romania/*Lege 678/2001 privind prevenirea și combaterea traficului de persoane* [Law 678/2001 on the prevention and combating of trafficking in human beings], amended (16.10.2005).

<sup>153</sup> Art. 4 (c) Romania/*Lege privind unele măsuri pentru asigurarea protecției victimelor infracțiunilor* [Law 211/2004 concerning some measures for the protection of victims of crimes], amended (26.10.2007)

<sup>154</sup> Art. 173 (3) Romania/*Codul de procedură penală* [Criminal Procedure Code], amended (26.03.2008).

<sup>155</sup> Art. 86.1 – 86.4, Romania/*Codul de procedură penală* [Criminal Procedure Code] (28.03.2008).

<sup>156</sup> Art. 24 (1) Romania/*Lege 678/2001 privind prevenirea și combaterea traficului de persoane* [Law 678/2001 on prevention and combating trafficking in human beings, amended] (16.10.2005).

<sup>157</sup> Art. 24, Romania/*Constituția României* [Romanian Constitution] (23.11.2003).

<sup>158</sup> Art. 46 (1) Romania/*Hotărârea de Guvern 299/2003 privind Regulamentul de aplicare a Legii 678/2001* [Government Decision 299/2003 approving the regulation issued for the application of Law 678/2001 concerning prevention and combating the trafficking in human beings] (13.03.2003). Art. 4 (c) Romania/*Lege privind unele măsuri pentru asigurarea protecției victimelor infracțiunilor* [Law 211/2004

of specialised centres,<sup>159</sup> police officers, prosecutors and courts are under a duty to inform any victim of human trafficking and his/her guardian about their right to legal aid during any criminal or civil law suit. If the victim is a child, the prosecutor can start *ex officio* a suit to claim compensation.<sup>160</sup> During a criminal trial, when the injured party is a child, the court is under a duty to decide *ex officio* on the subject of compensation.<sup>161</sup>

- [101]. Victims of trafficking are eligible for civil damages paid by the perpetrator and financial compensation offered by the state, regardless of whether the crime took place in Romania or on the territory of another state.<sup>162</sup>
- [102]. See Annex 1 for the number of final convictions on child trafficking cases, by year.

## H. Miscellaneous

### H.1. Limitations in gathering statistical data

- [103]. Currently, each state agency has its own system of data collection and own indicators, which seldom coincide with indicators used by partner agencies. Poor inter-agency communication causes some data to be recorded twice by different agencies, thus affecting the accuracy of the statistics. This results in difficulty in obtaining precise data on some issues related to assistance of victims of trafficking and prosecution of trafficking in children. For instance, the NAPCR does not collect data about the investigation and prosecution of trafficking in children, while the police and prosecution database presents the total number of all trafficking cases, without making a distinction between adult

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concerning some measures for the protection of victims of crimes], amended (26.10.2007).

<sup>159</sup> Art. 54 (2) Romania/*Hotărârea de Guvern 299/2003 privind Regulamentul de aplicare a Legii 678/2001* [Government Decision 299/2003 approving the regulation issued for the application of Law 678/2001 concerning prevention and combating the trafficking in human beings] (13.03.2003);

<sup>160</sup> Art. 17(1), art. 18, Romania/*Codul de procedură penală* [Criminal Procedure Code] (28.03.2008)

<sup>161</sup> Art. 17 (3) Romania/*Codul de procedură penală* [Criminal Procedure Code] (28.03.2008)

<sup>162</sup> Art. 34.1 – 34.26 Romania/*Lege privind unele măsuri pentru asigurarea protecției victimelor infracțiunilor* [Law 211/2004 concerning some measures to ensure protection for crime victims] (26.10.2007). The section incorporates into the Romanian legislation Council Directive 2004/80/CE of 29.04.2004 regarding compensation for victims of crimes.

and child victims.<sup>163</sup> Some data (such as number of persons receiving legal assistance or amount of compensation) are not yet gathered by any institution.<sup>164</sup>

## H.2. Regulations pending approval

- [104]. A proposal to amend Law 678/2001 on preventing and combating trafficking in human beings is currently open for public debate.<sup>165</sup> The proposal officially introduces the term of ‘victim of trafficking’,<sup>166</sup> and offers the possibility for such victims to reside in ‘protected accommodation’,<sup>167</sup> managed by the local child welfare and social assistance directorates. Victims of trafficking who, while under the control of their traffickers, practiced prostitution or begging, or crossed the border illegally will not be prosecuted for these offences.<sup>168</sup> This is important as begging (defined as ‘the act of repeatedly appealing to public mercy, asking for material support’) and prostitution (defined as ‘the act of procuring the means for living by engaging in sexual relations with other persons’) are criminal offences under the Romanian Criminal Code.<sup>169</sup>
- [105]. Therefore, any child who might wish to come forward to complain that he/she has been a victim of human trafficking and has been forced to beg or practice prostitution has reasons to fear that he/she could be indicted for committing such offences. All responsibilities to create and maintain a national, centralised database on human trafficking are assigned to the NATP.
- [106]. A national mechanism for inter-agency referral of victims of trafficking is also available for public debate on the site of the NATP.<sup>170</sup> The aim of the draft order is to create a single, common inter-agency referral and cooperation mechanism concerning victims of trafficking, thus facilitating efficient and effective intervention and assistance in situations involving trafficking.

<sup>163</sup> Response of the NAPCR no. 5483/13.06.2008, on file with the national Fralex expert.

<sup>164</sup> Response of General Prosecutor’s Office, Division of Investigation of Organised Crimes and Terrorism, no 1612-2008 from 24.06.2008, on file with national Fralex expert.

<sup>165</sup> Available on the site of the Romanian Ministry of Internal Affairs and Administration Reform at [http://www.mira.gov.ro/Documente/Transparenta%20decizionala/Legea%20678\\_2001.pdf](http://www.mira.gov.ro/Documente/Transparenta%20decizionala/Legea%20678_2001.pdf) (02.07.2008).

<sup>166</sup> Defined as ‘any person, passive subject of crimes described at [previous articles], who suffered a physical or moral injury or material damage, regardless of whether the person chooses to be involved in the criminal investigation or trial’.

<sup>167</sup> Defined as ‘a type of social accommodation which provides trafficking victims with a protected family-type environment and assistance for social reinsertion’.

<sup>168</sup> The draft still leaves out children who commit other offences (theft, burglary, shop-lifting) while under the control of the traffickers.

<sup>169</sup> Art. 326 and 328 Romania/*Codul Penal* [Criminal Code] (28.03.2008)

<sup>170</sup> [http://anitp.mira.gov.ro/ro/docs/norme\\_identificare\\_referire.pdf](http://anitp.mira.gov.ro/ro/docs/norme_identificare_referire.pdf) (02.07.2008)

## I. Good practices

- [107]. Since 2004, the NAPCR has been financing National Interest Projects aimed at developing and improving means and instruments for the assistance of child victims of trafficking. The 12 specialised transit centres for children were created as a result of such a project, as were a range of internal instruments and procedures related to service provision, psychological counselling, back-to-school programmes and family reintegration of child victims of trafficking.<sup>171</sup>
- [108]. The National Institute of Magistracy has organised training on trafficking in human beings for judges and prosecutors.<sup>172</sup> Training curricula included: methods and tactics for combating trafficking in human beings, good practice and international cooperation, recruitment methods, the distinction between trafficking in human beings and procurement for prostitution, particularities of trafficking children, psychology of the child victim, victim assistance, cooperation with NGOs, protection of the child against abduction or any form of trafficking.<sup>173</sup>

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<sup>171</sup> Information available on the site of the National Authority for the Protection of Children's Rights, at <http://www.copii.ro/content.aspx> (02.07.2008). See also 'An Assessment of Romania's Policies on Trafficking in Human Beings', UNICEF, 2006.

<sup>172</sup> Response 18653/1154/2008 of the Superior Council of Magistracy, on file with the national Fralex expert.

<sup>173</sup> Response 18653/1154/2008 of the Superior Council of Magistracy, on file with the National Fralex expert.

Annex 1 - Tables and Statistics<sup>174</sup>

	2000	2001	2002	2003	2004	2005	2006	2007
Number of children being granted temporary stay on grounds of trafficking	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Number of trafficked children receiving full health care services, including psychosocial care and rehabilitation (e.g. not just emergency treatment)	N/A	N/A	N/A	N/A	N/A	77	73	261 <sup>175</sup>
Number of trafficked children receiving education/training, in particular secondary education and vocational training	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Number of trafficked children receiving legal assistance (e.g. for	N/A	N/A	N/A	N/A	N/A	191	230	244

<sup>174</sup> Statistical data reflect the responses to requests for information which had been filed with the following institutions: Romanian Office for Immigration, National Authority for the Protection of the Rights of the Child, National Authority against Trafficking of Persons, Superior Council of Magistracy, General Prosecutor Office, Romanian Police Inspectorate, Romanian Border Police Inspectorate, Police Department for Organised Crime.

<sup>175</sup> Of these, 186 children were victims of trafficking within Romanian borders (so-called internal trafficking). Letter of the National Authority for Protection of Children's Rights no. 5483/13.06.2008, on file with the national Fralex expert.

claiming compensation) <sup>176</sup>								
Number of final convictions based on trafficking cases, per year in general <sup>177</sup>	N/A	N/A	N/A	49	73	146	187	188
Total of amount of compensation paid to trafficked children, per year	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Average of amounts of compensation paid to trafficked children, per year	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Range of amount of compensation paid to trafficked children, per year	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

<sup>176</sup> Data shows total number of victims, including children, who have received legal assistance. Separate statistics are not available. See letter 1612/24.06.2008 of the Central Department for Organised Crime, on file with the national Fralex expert.

<sup>177</sup> Data shows total number of convictions per year for trafficking in human beings, including trafficking in children. Separate statistics relevant for child trafficking are not available. See letter 18653/1154/2008 of the Superior Council of Magistracy, on file with the national Fralex expert.



## Annex 2 – Statistical data on legal aid

	2005	2006	2007
Total number of victims of trafficking	1141	1336	1044
Out of which minors	252	308	244
Total of victims who received free legal aid	191	230	180

Source: Response of General Prosecutor's Office, Division of Investigation of Organised Crimes and Terrorism, no 1612-2008 of 24.06.2008

## Annex 3 –Children who have received various services between 2006-2008

Medical care	22
Legal advice	48
Psychological counselling	42
Help finding a home	4
Professional integration/reintegration	21
Integration/reintegration into the school system	22
Intervention in situations of crisis	9
Special protection measures	19
Family mediation	41
Assistance for obtaining new documents	3
Witness protection	5
Psychotherapy	1
Court representation	23
Financial support	11
Long-term treatment	1

Source: Response of the National Authority Against Trafficking in Persons, no. 1494484 (17.06.2008)

Annex 4 – Relevant case law<sup>178</sup>

Case title	Dosar Nr. 5214/2003, Sentința penală 877.2004
Decision date	25.06.2004
Reference details (type and title of court/body; in original language and English)	Tribunalul București, secția I penală [Bucharest Tribunal, Criminal Law section]
Key facts of the case (max. 500 chars)	Defendants T.N. and T.M. had been convicted for trafficking in minors after depriving a minor (N.C.E.) of her freedom, confiscating her ID documents and forcing her into prostitution.
Main reasoning/argumentation (max. 500 chars)	The court dismissed the arguments of the defendants who maintained that the victim was a prostitute renting a room from them and paying for transportation services.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The decision distinguishes between forced prostitution and prostitution and underlines the serious consequences of trafficking and forced exploitation of minors on their personal development.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The court sentenced the two defendants on grounds of Art.13 of Law 678-2001 to 13 and ten years imprisonment respectively, and the deprivation of certain rights for five years after their release (electoral and parental rights). The court also ordered the two defendants to pay moral damages in the amount of ROL 200,000,000 and ROL 100,000,000 (approx. EUR 5,000 and 2,500).

Case title	Dosar Nr. 5332/2003, Sentința penală 183F
Decision date	11.02.2005
Reference details (type and title of court/body; in original language and English)	Tribunalul București, secția I penală [Bucharest Tribunal, Criminal Law section]
Key facts of the case (max. 500 chars)	The defendant B.V. was indicted for depriving a minor, the defendant N.T., of her freedom, for having sexual relations with her, for procurement for prostitution and for trafficking her. As the victim disappeared after the arrest of the defendant, she did not testify.

<sup>178</sup>

The relevant case law provided as examples was gathered by FRALEX National Expert independently. No case law was available officially.

Main reasoning/argumentation (max. 500 chars)	The court took into consideration the statements of some of the witnesses (who had sexual relations with the victim) and maintained that the victim did not display the specific behaviour of an abused or forced person, and that she willingly had sex with them. The court decided that the provisions of the Anti-trafficking Law were not applicable, and applied the amended provisions of the Criminal Code on procurement for prostitution.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The court noted that there was no medical examination of the victim to show that she was forced into prostitution and noted the declarations of the witnesses who had sexual relations with the victim and claimed that she 'was psychically in good shape.'
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The defendant was sentenced to seven years imprisonment for procurement for prostitution and was acquitted on the counts of sexual intercourse with a minor, depriving a person of her freedom and trafficking of minors.

Case title	Dosar Nr. 5419/2003, Sentința penală 1248
Decision date	1.10.2004
Reference details (type and title of court/body; in original language and English)	Tribunalul București, secția I penală [Bucharest Tribunal, Criminal Law section]
Key facts of the case (max. 500 chars)	The defendant C.I. had been indicted for rape and the co-defendant CEC had been indicted for trafficking of minors and intention to conduct procurement for prostitution. The victim G.V. had been raped and forced to prostitute herself by the defendants.
Main reasoning/argumentation (max. 500 chars)	The court discussed the gender and the age of the victim and underlined that all the future development of the victim will be influenced by the deeds of the perpetrators.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Negative impact of trafficking and sexual exploitation for the development of the personality of the victim.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	CI and CEC were sentenced to seven years imprisonment and three years suspension of electoral and parental rights. The court awarded moral damages to the victim of ROL 200,000,000 (EUR 5,000)

Case title	Dosar Nr. 53640/2004, Sentința penală 939
Decision date	28.06.2005
Reference details (type and title of court/body; in original language and English)	Tribunalul București, secția IIa penală [Bucharest Tribunal, Criminal Law section]

Key facts of the case (max. 500 chars)	The co-defendants C.I. and D.V. had been indicted for trafficking as provided by Art.12 and 13 of the Anti-trafficking Law for forcing into prostitution and trafficking women, including minors.
Main reasoning/argumentation (max. 500 chars)	The court found that as there was no evidence that the perpetrators were aware of the age of the victim it could not sanction the defendants for trafficking of minors but convicted the defendants for trafficking of persons according to Art. 12 of Law 678-2001.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Awareness about the actual age of the victim was assessed as an essential element in sanctioning trafficking.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The defendants were sentenced to six and three years of imprisonment respectively, and three years suspension of electoral and parental rights.

Case title	Dosar Nr. 418/2005, Sentința penală 923
Decision date	28.06.2005
Reference details (type and title of court/body; in original language and English)	Tribunalul București, secția IIa penală [Bucharest Tribunal, Criminal Law section]
Key facts of the case (max. 500 chars)	The defendants E.I. and E.C. had been indicted for trafficking of minors according to the Anti-trafficking Law, and for procurement for prostitution according to Art.329 of the Criminal Code. The victims were minors forced by the defendants to have sexual relations.
Main reasoning/argumentation (max. 500 chars)	The court took into consideration the testimonies of the defendants and of some of their clients alleging that the victims did not look like minors, and consequently maintained that the defendants did not know that the victims were minors. The defendants were acquitted for the indictments under the Anti-trafficking Law and were sanctioned only for procurement for prostitution.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	In order to apply the provisions of the Anti-trafficking Law the court requested evidences that the perpetrators were aware of the age of the victims.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The defendants were sentenced to four years imprisonment and two years suspension of electoral and parental rights on grounds of Art.329 of the Criminal Code (procurement for prostitution) and the indictment on counts of trafficking of minors was dismissed.