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**National Focal Point Romania: Center for Legal Resources**

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# 1. ASYLUM, IMMIGRATION AND INTEGRATION

## 1.1 General information on asylum, immigration and integration

### 1.1.1 Policy and institutional developments

The *Strategia Națională privind Imigrația pentru Perioada 2011-2014* (National Strategy concerning Immigration for 2011-2014) has been adopted through the *Hotărârea de Guvern* (Government Decision) No.498/2011.<sup>1</sup>

The Romanian Office for Immigration (ROI) (*Oficiul Român pentru Imigrări*) reports that there are no additional changes in terms of policies and institutional mechanisms concerning asylum, migration, integration and general regime of foreigners including visa policy for the reported period.<sup>2</sup>

In 2010, the Labour Inspection (LI) (*Inspekția Muncii*) developed a joint plan together with ROI concerning cooperation on combating the exploitation of illegal migrants on the labour market- Plan for operational cooperation concerning the combating of illegal migration and black market work of foreigners (*Plan de cooperare operativă pentru combaterea migrației ilegale și a muncii la negru a străinilor*).<sup>3</sup> In its official answer, the LI notes certain difficulties registered during the execution of the controls of various employers.<sup>4</sup>

These difficulties refer to:

- the lack of knowledge of Romanian language or of a language of international communication by the foreigners employed in Romania which impedes upon the communication of their rights as employees;
- incomplete carrying out by Romanian employers of the procedures referring to the registration of the work contracts for the foreigners or of personnel lending from foreign companies;
- lack of legislation allowing the LI to control the labour mediation firms registered in Romania;
- neglecting the work contract provisions by the Romanian employers.

### 1.1.2 Legislative developments

A new Migration Act (*Legea Imigrației*) no. 157/2011 entered into force on 31 July 2011.<sup>5</sup> The new law amends and supplements pre-existing legislation, namely the 2002 Aliens Act.<sup>6</sup> According to the Government's Explanatory Note (*Expunere de motive*),<sup>7</sup> the main

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<sup>1</sup> Romania/ National Strategy concerning Immigration for 2011-2014 (*Strategia Națională privind Imigrația pentru perioada 2011-2014*) available at <http://www.monitoruljuridic.ro/monitorul-oficial/391/2011-06-03/>. All hyperlinks were last accessed on 29.10.2011.

<sup>2</sup> Romanian Office for Immigration, Letter no. 1727914 dated 15 September 2011 (response to request for information) on file with the national FRANET expert.

<sup>3</sup> *Idem*.

<sup>4</sup> Labour Inspection, Letter No. 9933/DCRMEM/30.08.2011 dated 30 August 2011 (response to request for information) on file with the national FRANET expert.

<sup>5</sup> Romania/ Act no. 157 of 11 July 2011 for the amendment and supplementation of legislation regarding aliens' regime in Romania (*Legea nr. 157 din 11 iulie 2011 pentru modificarea și completarea unor acte normative privind regimul străinilor în România*). Text in Romanian available at [http://ori.mai.gov.ro/api/media/userfiles/Legea%20157%202011\(1\).pdf](http://ori.mai.gov.ro/api/media/userfiles/Legea%20157%202011(1).pdf).

<sup>6</sup> Romania/ Government Emergency Ordinance no. 194 of 12 December 2002 regarding the aliens' regime in Romania (*Ordonanța de urgență a Guvernului nr. 194 din 12 decembrie 2002 privind regimul străinilor în România*).

objective was to implement several EU Directives in Romanian legislation.<sup>8</sup> One of the main changes introduced are specific rules regarding the posting of workers and the establishment of a long-term visa for such purposes (new Article 44<sup>1</sup> of the Aliens' Act).<sup>9</sup>

Relevant NGOs, active in the field considered that:

*"The new law includes a series of positive amendments prominent among which are: rules regarding the Schengen Area, improved access to and participation in the labour market for highly qualified migrant workers, the right to work granted to aliens tolerated on the national territory, harmonization of the legal framework regarding family reunification, the possibility to change the purpose of the visa while present in the country, procedures that facilitate migrants' access to basic services and encourages their integration through a more simple access to education, professional training and the labour market, protection and increased assistance granted to migrants belonging to vulnerable groups or who are victims of human trafficking."*<sup>10</sup>

Another positive element worth mentioning is the reduction of the length of detention pending removal, which used to be the longest in the European Union, from two years to a maximum of 18 months.<sup>11</sup> In accordance with Article 15(5) of the Return Directive, the Aliens Act, as amended in 2011, provides for a detention period for the purpose of removal of no more than six months.<sup>12</sup> This period can be extended by a court of law only for an additional period of maximum 12 months and in exceptional circumstances (i.e., obstruction of the removal process by the alien himself or delayed receipt of the required documentation from third countries).<sup>13</sup>

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<sup>7</sup>Romania, Ministry of Administration and Internal Affairs (*Ministerul Administrației și Internelor*) (2011), Explanatory Note (*Expunere de motive*), available at [www.mai.gov.ro/Documente/Transparența%20decizională/EM%20proiect%20lege%20complet%20act%20norm%20regim%20straini%20.pdf](http://www.mai.gov.ro/Documente/Transparența%20decizională/EM%20proiect%20lege%20complet%20act%20norm%20regim%20straini%20.pdf).

<sup>8</sup> Transposition of Council Directive 2003/86/EC on the right to family reunification, OJ 2003 L 251; of Council Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, OJ 2009, L 155 (*Blue Card Directive*); of Directive 2009/52/EC of the European Parliament and of the Council providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, OJ 2009 L 168 (*Employers Sanctions Directive*); of Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, OJ 2004 L 16 (*Long-Term Residence Directive/Third Country Nationals Directive*); and of Council Directive 2001/51/EC Supplementing the Provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, OJ 2001 L 187. Partial transposition, with the exception of Article 13(4) on free legal assistance, of Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ 2008 L 348 (*Return Directive*).

<sup>9</sup> Directive 96/71/EC of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services, OJ 1996 L 018.

<sup>10</sup> Romania, ARCA – Romanian Forum for Refugees and Migrants (*ARCA – Forumul Român pentru Refugiați și Migranți*), the National Romanian Council for Refugees (*Consiliul Național Român pentru Refugiați*), Save the Children Romania (*Salvați Copiii România*), Jesuits Refugee Services (JRS) – Romania (*Serviciul Iezuiților pentru Refugiați din România*), the Soros Foundation Romania (*Fundația Soros România*) (2011), 'Noi reglementări referitoare la regimul străinilor', Press release, 11 August 2011, available at [www.soros.ro/ro/program\\_articol.php?articol=296#](http://www.soros.ro/ro/program_articol.php?articol=296#).

<sup>11</sup> See Figure 1.3. Maximum length of detention, by country (month), European Union Agency for Fundamental Rights (FRA) (2010), 'Fundamental Rights: challenges and achievements in 2010', p. 36, available at [http://fra.europa.eu/fraWebsite/attachments/annual-report-2011\\_EN.pdf](http://fra.europa.eu/fraWebsite/attachments/annual-report-2011_EN.pdf).

<sup>12</sup> Art. 97 (5) of the Aliens Act.

<sup>13</sup> Art. 97 (6) of the Aliens Act.

Legislative amendments were also adopted in the area of asylum, with the enactment of a new law on 24 December 2010.<sup>14</sup> Among others, the new amendments make possible the granting of a personal ID number for asylum seekers in order to get primary and emergency medical care, adequate medical assistance for asylum seekers with special needs, access to the labour market after one year in the asylum procedure and access to education for minors, thus making the link between the rights previously granted at least in theory and their actual realization within the Romanian system, where such a personal identification number is imperative.<sup>15</sup> The law also facilitates family reunification.<sup>16</sup>

### 1.1.3 National case law

Relevant NGOs identified a limited number of cases of importance for existing legislation. The Bucharest Court of Appeals (*Curtea de Apel București*) refused to place in custody for removal a stateless person expelled from Romania by virtue of a court order. The Court of Appeals observed that no steps had been taken in view of the transfer to the country of residence and took into account the length of detention (one and a half years).<sup>17</sup>

The same Court of Appeals also ordered the release from custody of an illegal immigrant who had entered Romania after that person had been declared “undesirable” and banned from the national territory. The Court noted that the illegal immigrant in question was married to a Romanian citizen and had a child.<sup>18</sup>

For additional case law, please see Annex 4 attached.<sup>19</sup>

### 1.1.4 Statistical data made available in the reference period

Limited current statistical data is available upon request. The ROI reports that, in Romania, at 31.12.2010 there were 59,559 foreign citizens with legal residence, and at 30.06.2011 there were 59,566.<sup>20</sup> ROI mentions that, in 2010, there were 37 minors who were granted a form of protection (30 received the refugee status and seven received subsidiary protection) whereas in 2011 there were 21 (16 received the refugee status and five received subsidiary protection).<sup>21</sup>

The ROI reports<sup>22</sup> that in the first 11 months of 2011 there were 324 persons registered under forced repatriations, out of which 38 women and 286 men. In this number were included six minors, out of which two were unaccompanied minors. For the same period, 122 persons were voluntarily repatriated (with certificates of repatriation): here were 18 women and 104 men; the number includes eight minors. Also, there were 469 foreigners taken under public custody (including here 18 women and 451 men, no minors).

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<sup>14</sup> Romania/ Act no. 280 of 24 December 2010 for the amendment and supplementation of the Act no. 122/2006 regarding asylum in Romania (*Legea nr. 280 din 24 decembrie 2010 pentru modificarea și completarea Legii nr. 122/2006 privind azilul în România*).

<sup>15</sup> Art. 17 (1) (o).

<sup>16</sup> Art. 71 (3).

<sup>17</sup> JRS-Romania letters dated 9 and 12 September 2011 (response to request for information) on file with the Romanian Franet expert.

<sup>18</sup> *Idem*.

<sup>19</sup> High Court of Cassation and Justice, Section for administrative and tax litigation, Decision No. 4934 of 11 November 2010 (*Înalta Curte de Casație și Justiție, Secția de contencios administrative și fiscal, Decizia nr. 4934 din 11 noiembrie 2010*); European Court of Human Rights (ECtHR), *Geleri v. Romania*, No. 33118/05, 15 February 2011; Bucharest Court of Appeals, Section VIII – administrative and fiscal litigation, Civil Judgment No. 3943 of 2 June 2011 (*Curtea de apel București, Secția a VIII-a contencios administrative și fiscal, Sentința civilă nr. 3943 din 2 iunie 2011*).

<sup>20</sup> Romanian Office for Immigration, Letter no. 1727914 dated 15 September 2011 (response to request for information) on file with the national FRANET expert.

<sup>21</sup> *Idem*.

<sup>22</sup> Romanian Office for Immigration, Letter No.1739721 dated 21 December 2011 (response to request for information) on file with the NFP

There is no information available concerning the number of unaccompanied minors seeking asylum who disappeared during or after the completion of asylum procedures in 2010 and 2011.

The ROI reports a decrease with 5.01% of requests for work permits for the period 1.01.2011-30.04.2011<sup>23</sup> in comparison to the same period of 2010.<sup>24</sup> The highest increases in the numbers of requests were registered for citizens from Nepal (+2,100%), Republic of South Korea (+172.22), and the Philippines (+133.3%). The most frequent occupations for which these requests were submitted were in the area of child-care, 97 (11.63%); construction workers, 56 (6.71%); and carpenters, (excluding restoration workers) 50 (6%). The highest increases were registered in the counties of Iași (410%), Arad (300%), and Brașov (142.86%).

There were no registered complaints by LI concerning work discrimination of foreign nationals due to nationality, religion, or language.<sup>25</sup>

### 1.1.5 Research and studies

A study conducted by the Migrant Integration Policy Group (MIPEX) concerning migrant integration added Romania at the list of the countries monitored within the project. The results registered a score of 45 for Romania (with 0 minim - 100 maxim), with a reported strong legislation concerning anti-discrimination. The weakest score registered concerned political participation of the migrants; this is the weakest score compared to similar countries in CEE.<sup>26</sup> MIPEX analyses also the Romanian policies concerning the access to nationality, and political participation. The access to Romanian nationality is rather restricted particularly in regard to the children of migrants who are born on the Romanian territory. Educational policies do address the needs of migrant pupils, but the support provided by the Romanian state towards preparation for the citizenship test is the weakest compared to all other countries in Central and Eastern Europe. Political participation of migrants is also reduced: residents of countries outside the EU cannot vote or become members of a political party.

The Soros Foundation Romania published on 28 April 2011 the study titled *Studiu asupra fenomenului imigrației în România. Integrarea străinilor în societatea românească* (Study concerning immigration to Romania. Foreigners' integration within the Romanian society).<sup>27</sup> This study investigates the current level of information within the Romanian society about legal and illegal migrants from third countries, population perceptions concerning this group, and collects information concerning the integration of this group within Romanian society.

The National Association of Specialists in Human Resources, (NASHR) (*Asociația Națională a Specialiștilor în Resurse Umane*) developed and published a brochure concerning the procedures on the recognition of diplomas and professional qualifications of refugees and persons with subsidiary protection.<sup>28</sup>

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<sup>23</sup> ROI (2011), *Informare Statistică referitoare la numărul autorizațiilor de muncă eliberate în perioada 01.01.2011 30.04.2011* (Statistical Bulletin concerning the number of work permits issued between 01.01.2011 and 30.04.2011, (30.09.2011), available at [http://ori.mai.gov.ro/api/media/userfiles/AM\\_4\\_luni.pdf](http://ori.mai.gov.ro/api/media/userfiles/AM_4_luni.pdf).

<sup>24</sup> Romanian Office for Immigration Letter no. 1727914 dated 15 September 2011 (response to request for information) on file with the national FRANET expert.

<sup>25</sup> Labour Inspection, Letter No. 9933/DCRMEM/30.08.2011 dated 30 August 2011 (response to request for information) on file with the national FRANET expert.

<sup>26</sup> Results available at <http://www.mipex.eu/romania> (30.09.2011) (and the press release of the Soros Foundation available in Romanian language at [http://soros.ro/ro/program\\_articol.php?articol=262](http://soros.ro/ro/program_articol.php?articol=262)).

<sup>27</sup> Soros Foundation, I. Alexe and B. Paunescu (2010) *Studiu asupra fenomenului imigrației în România. Integrarea străinilor în societatea românească* (Study concerning immigration to Romania. Foreigner's integration within the Romanian society), available at [http://www.soros.ro/ro/program\\_articol.php?articol=273](http://www.soros.ro/ro/program_articol.php?articol=273).

<sup>28</sup> Romanian Office for Immigration, Letter no. 1727914 dated 15 September 2011 (response to request for information) on file with the NFP

### 1.1.6 Promising ‘good’ practices

ROI finances a number of projects through funds provided by the European Fund for Refugees. They address issues such as provision of services of legal assistance and translation for the asylum seekers, provided by the Foundation Romanian National Council for Refugees, (RNCR)(*Fundația Consiliul Național Român pentru Refugiați*) project number ERF/09.01/01.01, implemented between 29.03.2010 and 29.03.2011; providing social and leisure services and psychological assistance for asylum seekers and vulnerable persons, provided by ICAR Foundation, project number ERF/09.01/02.01, implemented between 29.03.2010 and 29.07.2011, or information sessions for authorities concerning the issues on asylum, conducted by RNCR, project number ERF/09.01/06.01, implemented between 29.03.2010 and 29.03.2011). The project conducted by the ICAR is particularly interesting, primarily due to its focus on the provision of social and leisure services, but specifically psychological assistance to asylum seekers and vulnerable persons. The target group consists of persons that have suffered trauma (either in a different country or within a different context): addressing trauma through psychological services is often a first step in helping these persons recover and start integrating in the society.<sup>29</sup>

No promising practices on access to education or health for irregular migrants, or absence of reporting obligations for service providers, or prohibition of detection practices of the police in the neighbourhood of service providers had been identified.

ROI reports as well about a project implemented by ICAR Foundation, project financed through the European Fund for Refugees, project aimed to “improve the quality of life of the two target groups: asylum seekers from Bucharest, Galați, Rădăuți, Șomcuta Mare and Timișoara and the vulnerable persons from among these groups”. Within this project minors were provided with “school and professional counselling, extracurricular education and additional homework preparation upon request. Minors with behavioral problems, adaptation difficulties, victims of abuse, etc. will receive adequate psychological counselling.”<sup>30</sup>

### 1.1.7 Key issues in public debate

As noted in a recent study on the phenomenon of immigration in Romania,

*“the immigrant population is a young population and, in addition, an active population on the labour market, with productive potential...”<sup>31</sup>*

Though most of the immigrant population is represented by persons able and willing to work, the public debate only recently focussed on the issue of illegal work by migrants. On the one hand, the Romanian Government published an Annual Report for 2010 including specific reports on combating undeclared work by foreign nationals. The reports, drawn by the Labour Inspection Unit and the Romanian Office for Immigration, present a detailed and quantitative analysis of this phenomenon.<sup>32</sup>

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<sup>29</sup> Information available on project at: <http://ori.mai.gov.ro/detalii/pagina/ro/Programul-general/180>.

<sup>30</sup> Romanian Office for Immigration, Letter no. 1727914 dated 15 September 2011 (response to request for information) on file with the NFP

<sup>31</sup> Soros Foundation, I. Alexe and B. Paunescu (2010) *Studiu asupra fenomenului imigrației în România. Integrarea străinilor în societatea românească* (Study concerning immigration to Romania. Foreigner’s integration within the Romanian society), electronic edition available at [http://arps.ro/documente/studiu\\_privind\\_fenomenul\\_imigratiei.pdf](http://arps.ro/documente/studiu_privind_fenomenul_imigratiei.pdf). The study was co-sponsored by the Romanian Immigration Office (*Oficiul Român pentru Imigrări*, ORI), the Ministry of Administration and Interior (*Ministerul Administrației și Internelor*), the Soros Foundation Romania (*Fundația Soros România*) and the Romanian Association for the Promotion of Health (*Asociația Română pentru Promovarea Sănătății*, ARPS).

<sup>32</sup> Romania, Romanian Government (*Guvernul României*) (2011), *Raport anual 2010: Monitorizarea controalelor privind combaterea fenomenului muncii nedecarate din România*, available at [www.gov.ro/upload/articles/112719/raport2011-final.pdf](http://www.gov.ro/upload/articles/112719/raport2011-final.pdf). See also the Letter No.

On the other hand, the labour legislation was amended in order to strengthen the mechanisms for fighting against illegal work by migrants. The new Migration Act (*Legea Imigrației*) no. 157/2011 also amended the Government Emergency Ordinance no. 56 of 20 June 2007 concerning employment and posting of foreign workers in Romania (*Ordonanța de urgență nr. 56 din 20 iunie 2007 privind încadrarea în muncă și detașarea străinilor pe teritoriul României*). Among the most significant amendments are new categories on the list of sanctions imposed on employers benefiting from the work of migrants who do not have a work permit or a residence permit for work purposes, or whose residence and work documents expired.<sup>33</sup> These amendments are linked to adjustments in labour law meant to eradicate undeclared work. Thus, a new Labour Code entered into force on 2 May 2011.<sup>34</sup> It provides that employment of more than five illegal workers, defined as workers employed without respecting the legal procedures, is a criminal offence and may be punished with imprisonment.<sup>35</sup>

### 1.1.8 Information on trends until 2011

In terms of policy and institutional developments, in 2011 the attention for the issues on asylum increased. The development of the national strategy on immigration signals a preoccupation of the authorities for immigrants in Romanian society though integration does not seem to be the underlying thread of the Strategy.<sup>36</sup>

The data of the immigrants requesting work permits in Romania suggests that in comparison to 2010, in 2011 there is a stabilization of the trend on labour related legal migration. It is though interesting to note that the occupations for which these requests are registered are primarily occupations where Romanian emigration is directed.

### 1.1.9 Identification of future challenges

One big challenge for the near future concerns the repressive policy adopted in view of curtailing illegal immigration. Article 138 of the Aliens Act provides that the foreign national facing an expulsion or removal order, or an interdiction to remain on the national territory, and who refuses “in bad faith” to obey such order or interdiction, shall be punished with a penalty from six months to five years of imprisonment. This provision has not been amended by the new Law No. 157/2011. Nevertheless, it does not appear compatible with EU law as interpreted by the Court of Justice of the European Union (CJEU) in its most recent jurisprudence.<sup>37</sup> The expression “in bad faith” is rather elusive and cannot be reconciled with the prohibition of imprisonment on the only ground that the third-country national remains on the territory of the State without valid grounds.

Another challenge faced by the Romanian authorities concerns the application of the Dublin II Regulation.<sup>38</sup> As demonstrated by ECHR case-law, there can be no absolute presumption that EU Member States are “safe countries.”<sup>39</sup> Accordingly, when transferring an asylum seeker to another EU Member State, Romanian authorities must make sure that the authorities

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9933/DCRMEM/30.08.2011 of the Labour Inspection Unit (*Inspekția Muncii*) dated 30 August 2011 (response to request for information) on file with the national Franet expert.

<sup>33</sup> Art. 280<sup>1</sup>.

<sup>34</sup> Act no. 40 of 31 March 2011 for the amendment and supplementation of the Labour Act no. 53/2003 (*Legea nr. 40 din 31 martie 2011 pentru modificarea și completarea Legii nr. 53/2003 – Codul muncii*), Official Gazette no. 225 of 31 March 2011.

<sup>35</sup> Art. 279<sup>1</sup> (3).

<sup>36</sup> See

[http://www.mai.gov.ro/Documente/Transparenta%20decizionala/Anexa\\_Strategie%20imigratie.pdf](http://www.mai.gov.ro/Documente/Transparenta%20decizionala/Anexa_Strategie%20imigratie.pdf).

<sup>37</sup> CJUE, C-61/11, *Hassen El Dridi, alias KarimSoufi*, 28 April 2011.

<sup>38</sup> Council Regulation (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ 2003 L 50 (*Dublin II Regulation*).

<sup>39</sup> European Court of Human Rights (ECtHR), [GC], *M.S.S. v. Belgium and Greece*, No. 30696/09, 21 January 2011.



of the other Member State are reasonably in a position to process the asylum application without delay and according to international law requirements. It is notable that Romania suspended any transfers towards Greece on the basis of the Dublin II Regulation in February 2011.<sup>40</sup> Besides the genuine concern regarding the capacity of assessing situation on other Member States, an additional question is the sufficient administrative capacity of national authorities to cope with a larger inflow of asylum seekers in case of Dublin II.

Finally, Romania may face new difficulties in the future in order to ensure decent living conditions in custody centres for asylum seekers and aliens waiting for removal from the national territory. Certainly, European monitoring bodies have recently found with respect to the custody facility at the Otopeni airport that such conditions substantially improved and are now compatible with human dignity.<sup>41</sup> Nevertheless, the situation may rapidly deteriorate if Romania faces a massive influx of migrants, especially after the country's accession to the Schengen area. No other independent monitoring could be identified. The recent amendments to the area of migration brought by Law 157/2011, new Article 98(5) added an explicit provision stating that:

*“national, international and non-governmental organizations and bodies with attributes in the field of migration, authorized and accredited according to the law, are ensured the possibility to visit the centres, on the basis of protocols closed with the Romanian Immigration Office or a previous authorization. In exceptional situations and thoroughly motivated the possibility of visit can be ensured in a 48 hour term.”*

Thus, unannounced visits are not possible.

## 1.2 Specific information

### 1.2.1 Administration of the European Refugee Fund in 2011

In the table below official data for regular 2011 funds.<sup>42</sup>

	Total regular ERF for 2011	Percentage of 2010 regular ERF executed in 2011
EU contribution	RON 1,675,985 <sup>43</sup>	76%
National contribution	RON 455,591	
	Total emergency ERF 2011	Percentage of 2010 emergency ERF executed in 2011
EU contribution	0	0

<sup>40</sup> Romania, Romanian Office for Immigration (*Oficiul Român pentru Imigrări*, ORI) (2011), ‘România suspend transferurile către Grecia în baza Regulamentului Dublin II’, Press release, 15 March 2011, available at [www.ori.mai.gov.ro/stiri/citeste/ro/18/15-martie-2011](http://www.ori.mai.gov.ro/stiri/citeste/ro/18/15-martie-2011).

<sup>41</sup> ECtHR, *Al-Agha v. Romania*, No. 40933/02, 12 January 2010, para.70; *AbouAmer v. Romania*, No. 14521/03, 24 May 2011, para. 30. See also Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2004), *CPT Report regarding the visits effected in Romania from 16 to 25 September 2002 and from 9 to 11 February 2003*, Strasbourg, Council of Europe, 2 April 2004, available at [www.cpt.coe.int/documents/rom/2004-10-inf-fra.htm](http://www.cpt.coe.int/documents/rom/2004-10-inf-fra.htm).

<sup>42</sup> Romanian Office for Immigration Letter no. 1727914 dated 15 September 2011 (response to request for information) on file with the national Franet expert.

<sup>43</sup> The exchange rate for the Romanian official currency was €1 = RON 4.3575 on 30 September 2011 according to the European Central Bank ([www.ecb.int/stats/exchange/eurofxref/html/eurofxref-graph-ron.en.html](http://www.ecb.int/stats/exchange/eurofxref/html/eurofxref-graph-ron.en.html)).



National contribution	0	
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### 1.2.2 Appeals of negative decisions by asylum authorities in 2011

In the table below appeals of negative decisions indicating the corresponding legal provision(s).<sup>44</sup>

There have been 256 appeals against negative decisions adopted by the relevant Romanian authorities in 2011.<sup>45</sup>

	<b>Regular Procedure</b>	<b>Dublin II procedure</b>	<b>Admissibility procedure (e.g. "safe" 3rd country)</b>	<b>Accelerated procedure (e. g. manifestly unfounded applications)</b>	<b>Comments</b>
Time limit for lodging an appeal	ten days (Article 55(1))	two days (Article 121)	Same as for the regular procedure (e.g., request for access to a new procedure, Article 93(1))	two days (Article 80(1))	
Right to remain in the country Please fill in: - Automatic, - Upon request, - No right	Automatic (Article 55(2)) if application filed within the legal time limits	Automatic (Article 121) only during the period specified by law for the filing of the application	Upon request in the case of appeal against a decision rejecting the access to a new asylum procedure (Article 93(4))	Automatic (Article 80(1)) if application filed within the legal time limits	This right exists also in case of appeal proceedings if appeal lodged within time limits (regular procedure, Article 66(4)).
Hearing by national authority (YES/NO)	YES, but only at the request of the court (Article 63)	NO	NO	NO	
Hearing by UNHCR (YES/NO)	NO	NO	NO	NO	

### 1.2.3 Monitoring of forced returns, and independence of monitoring bodies

According to the Government Decision No. 639 of 20 June 2007 regarding the organisational structure and the role of the Romanian Immigration Office (*Hotărârea de Guvern nr. 639 din*

<sup>44</sup> All references are to the Asylum Act (2006), as subsequently amended and supplemented. Text in Romanian available at <http://ori.mai.gov.ro/api/media/userfilesfile/Legislatie/Legislatie%20nationala/Legea%20122%20din%202006%20privind%20azilul%20in%20Romania.pdf>. The unofficial English translation is also available at [http://ori.mai.gov.ro/api/media/userfilesfile/Legislatie/Legislatie%20nationala/L\\_122\\_2006\\_EN.pdf](http://ori.mai.gov.ro/api/media/userfilesfile/Legislatie/Legislatie%20nationala/L_122_2006_EN.pdf).

<sup>45</sup> Romanian Office for Immigration Letter no. 1727914 dated 15 September 2011 (response to request for information) on file with the national FRANET expert.

20 iunie 2007 privind structura organizatorică și atribuțiile Oficiului Român pentru Imigrări), as subsequently amended, the ROI exercises the powers conferred by law in matters of removal of foreign nationals from the Romanian territory, including monitoring activities. Article 8.6 of the Returns Directive has been implemented through Article 91.3 of the Aliens Act. Since Law No. 157/2011 entered into force, the ROI made no removals on this legal basis.<sup>46</sup>

The Romanian Office for Immigration cannot be defined as independent in terms of its statutory establishment provisions and other relevant factors. Pursuant to Article 1 of the Government Emergency Ordinance No. 55/2007 of 20 June 2007 and to Article 1(1) of the Government Decision No. 639/2007, the Romanian Immigration Office is an organ of the central public administration with legal personality, subordinated to the Ministry of Administration and Internal Affairs (MAIA) (*Ministerul Administrației și Internelor*). The ROI exercises governmental powers in the field of immigration and asylum.

The ROI publishes reports regularly almost every year. No report on returns governed by Article 8.6 of the Return Directive has yet been established.

#### 1.2.4 Alternatives to detention pending removal

The following table describes alternatives to detention foreseen in the Romanian legislation. As it results from this table, the only alternative measure is the status of tolerance on the Romanian territory granted in those situations where removal is not possible. Thus, the law provides that the status of a “tolerated person” is applied to an alien who no longer has the right to stay in the country but cannot leave for “objective reasons”, such as unclear nationality or the lack of flight connections. Tolerated persons have limited social or economic rights. They are obliged to reside within the area of territorial jurisdiction of the ROI’s unit having granted the tolerated status according to Article 104(7) of the Aliens Law and must report every 60 days or whenever the alien is required to do it according to Article 104(6) of the Aliens Law.<sup>47</sup>

	Does it exist ? (Y/N)	Legal Source (exact provision)	Number of decisions imposing alternative to detention for 2011	Comments
Duty to surrender documents	N	-	-	
Residence Restrictions	N	-	-	
Bail / sureties	N	-	-	
Regular Reporting	N			

<sup>46</sup> Romanian Office for Immigration Letter no. 1727914 dated 15 September 2011 (response to request for information) on file with the national FRANET expert.

<sup>47</sup> Romanian Office for Immigration Letter no. 1727914 dated 15 September 2011 (response to request for information) on file with the national Franet expert.

Designated residence & counselling	N			
Electronic Monitoring	N			
Other	Y	Toleration regime Articles 102-104 of the Aliens Act	2	When escort to the country of origin or to another country accepting the alien on its soil is not possible within a 24-hour deadline and where there is no reason for placement in public custody, the alien's presence on the Romanian territory may be tolerated. The alien is obliged to reside within the jurisdiction of the Romanian Immigration Office unit which granted the toleration status and to report every 60 days or every time he or she is asked to do it.

### 1.2.5 Deprivation of liberty for families with children in return procedures

A new paragraph 3 has been inserted in Article 101 of the Aliens Act by Law No. 157/2011 according to which "families taken into custody will be provided with separate housing in order to ensure an appropriate level of intimacy." Families with children are hosted in the same closed facilities as all other aliens in return procedures, though minimal adaptations as to separate rooms are reported by NGOs. However, NGOs consider that custodial detention is unfit for children, even when accompanied by their parents, due to improper conditions of assistance for such vulnerable groups.<sup>48</sup>

At the same time, a new paragraph 3<sup>1</sup> added in Article 82 provides that the deadline for leaving the Romanian territory in case of illegal stay is extended for families with children attending school.

Children placed with their parents in custodial detention pending removal have access to compulsory education according to Article 99(7) of the Aliens Act. The administration of each detention centre cooperates with nearby schools. Children placed in custodial centres go to school with Romanian children, but do not receive grades. As a general practice, the ROI relies upon NGOs to implement policies with respect to families with children detained in return procedures.<sup>49</sup> NGOs specialised in the field (such as "Save the Children" Romania) intervene in detention centres, depending upon the number of children, and develop various

<sup>48</sup> JRS-Romania letter dated 9 September 2011 (response to request for information) on file with the national FRANET expert.

<sup>49</sup> Romanian Office for Immigration Letter no. 1727914 dated 15 September 2011 (response to request for information) on file with the national Franet expert.

activities in support of this population, including by offering support in view of enabling access to education.<sup>50</sup>

The information in the table below was provided by the ROI.<sup>51</sup> No detention statistics are publicly available.

Families with children were detained in 2011	Y
If YES, in closed facilities hosting only families with children	Y
If YES, In closed facilities hosting families with children and other immigrants	N
If YES, In police detention centres	N
Other, please explain	N/A

Article 99 of the Aliens Act provides that minors detained in special facilities have free access to compulsory education, yet, there are no clear mechanisms to explain how this is ensured. No evolution has been reported in this respect.

Official exact title EN	Official title (original lang.)	Full reference
<b>Act no. 157 of 11 July 2011 for the amendment and supplementation of legislation regarding aliens' regime in Romania</b>	<i>Legea no. 157 din 11 iulie 2011 pentru modificarea și completarea unor acte normative privind regimul străinilor în România</i>	Romania, Act no. 157 of 11 July 2011 for the amendment and supplementation of legislation regarding aliens' regime in Romania ( <i>Legea no. 157 din 11 iulie 2011 pentru modificarea și completarea unor acte normative privind regimul străinilor în România</i> ), published in the Official Gazette No. 533 of 28 July 2011, available in Romanian at <a href="http://ori.mai.gov.ro/api/media/userfiles/Legea%20157%202011(1).pdf">http://ori.mai.gov.ro/api/media/userfiles/Legea%20157%202011(1).pdf</a> .
<b>Act no. 280 of 24 December 2010 for the amendment and supplementation of the Act no. 122/2006 regarding asylum in Romania (Asylum Act)</b>	<i>Legea nr. 280 din 24 decembrie 2010 pentru modificarea și completarea Legii nr. 122/2006 privind azilul în România</i>	Act no. 280 of 24 December 2010 for the amendment and supplementation of the Act no. 122/2006 regarding asylum in Romania ( <i>Legea nr. 280 din 24 decembrie 2010 pentru modificarea și completarea Legii nr. 122/2006 privind azilul în România</i> ), Official Gazette No. 888 of 30 December 2010, available in Romanian at <a href="http://ori.mai.gov.ro/api/media/userfilesfile/Legislatie/Legislatie%20nationala/Legea%20122%20din%202006%20privind%20azilul%20in%20Romania.pdf">http://ori.mai.gov.ro/api/media/userfilesfile/Legislatie/Legislatie%20nationala/Legea%20122%20din%202006%20privind%20azilul%20in%20Romania.pdf</a> , and in English at <a href="http://ori.mai.gov.ro/api/media/userfilesfile/Legislatie/Legislatie%20nationala/L_122_2006_EN.pdf">http://ori.mai.gov.ro/api/media/userfilesfile/Legislatie/Legislatie%20nationala/L_122_2006_EN.pdf</a> .
<b>Act no. 40 of 31 March 2011 for the amendment and supplementation of the Labour Act no. 53/2003</b>	<i>Legea nr. 40 din 31 martie 2011 pentru modificarea și completarea Legii nr. 53/2003 – Codul muncii</i>	Act no. 40 of 31 March 2011 for the amendment and supplementation of the Labour Act no. 53/2003 ( <i>Legea nr. 40 din 31 martie 2011 pentru modificarea și completarea Legii nr. 53/2003 – Codul muncii</i> ), Official Gazette no. 225 of 31 March 2011
<b>Annual Report 2010:</b>	<i>Raport anual 2010: Monitorizarea</i>	Romania, Romanian Government

<sup>50</sup> JRS-Romania letter dated 9 September 2011 (response to request for information) on file with the national FRANET expert.

<sup>51</sup> Romanian Office for Immigration Letter no. 1727914 dated 15 September 2011 (response to request for information) on file with the national FRANET expert.

<b>Monitoring of controls regarding the fight against illegal work in Romania</b>	<i>controalelor privind combaterea fenomenului muncii nedeclarate din România</i>	(Guvernul României) (2011), <i>Raport anual 2010: Monitorizarea controalelor privind combaterea fenomenului muncii nedeclarate din România</i> , available at <a href="http://www.gov.ro/upload/articles/112719/raport_2011-final.pdf">www.gov.ro/upload/articles/112719/raport_2011-final.pdf</a> .
<b>Bucharest Court of Appeals, Section VIII – administrative and fiscal litigation, Civil Judgment No. 3943 of 2 June 2011</b>	<i>Curtea de apel București, Secția a VIII-a contencios administrativ și fiscal, Sentința civilă nr. 3943 din 2 iunie 2011</i>	Bucharest Court of Appeals, Section VIII – administrative and fiscal litigation, Civil Judgment No. 3943 of 2 June 2011 ( <i>Curtea de apel București, Secția a VIII-a contencios administrativ și fiscal, Sentința civilă nr. 3943 din 2 iunie 2011</i> ).
<b>CJUE, C-61/11, <i>Hassen El Dridi, alias Karim Soufi</i>, 28 April 2011</b>	-	Court of Justice of the European Union (CJUE), C-61/11, <i>Hassen El Dridi, alias Karim Soufi</i> , 28 April 2011.
<b>Council Directive 2001/51/EC of 28 June 2001 Supplementing the Provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985</b>	-	Council Directive 2001/51/EC of 28 June 2001 Supplementing the Provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, OJ 2001 L 187.
<b>Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents</b>	-	Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ 2004 L 16 ( <i>Long-Term Residence Directive/Third Country Nationals Directive</i> ).
<b>Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification</b>	-	Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ 2003 L 251.
<b>Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment</b>	-	Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, OJ 2009, L 155 ( <i>Blue Card Directive</i> ).
<b>Council of Europe, Report to the Romanian Government regarding the visits effected in Romania by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 16 to 25 September 2002 and from 9 to 11 February 2003</b>	<i>Conseil de l'Europe, Rapport au Gouvernement de la Roumanie relatif aux visites effectuées en Roumanie par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 16 au 25 septembre 2002 et du 9 au 11 février 2003</i>	Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2004), <i>CPT Report regarding the visits effected in Romania from 16 to 25 September 2002 and from 9 to 11 February 2003</i> , Strasbourg, Council of Europe, 2 April 2004, available at <a href="http://www.cpt.coe.int/documents/rom/2004-10-inf-fra.htm">www.cpt.coe.int/documents/rom/2004-10-inf-fra.htm</a> .
<b>Directive 2008/115/EC of the European Parliament and of the</b>	-	Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards

<b>Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals</b>		and procedures in Member States for returning illegally staying third-country nationals, OJ 2008 L 348 ( <i>Return Directive</i> ).
<b>Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals</b>	-	Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, OJ 2009 L 168 ( <i>Employers Sanctions Directive</i> ).
<b>Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services</b>	-	Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, OJ 1996 L 018.
<b>ECtHR, [GC], <i>M.S.S. v. Belgium and Greece</i>, No. 30696/09, 21 January 2011</b>	-	European Court of Human Rights (ECtHR), [GC], <i>M.S.S. v. Belgium and Greece</i> , No. 30696/09, 21 January 2011.
<b>ECtHR, <i>Abou Amer v. Romania</i>, No. 14521/03, 24 May 2011</b>	-	ECtHR, <i>Abou Amer v. Romania</i> , No. 14521/03, 24 May 2011.
<b>ECtHR, <i>Al-Agha v. Romania</i>, No. 40933/02, 12 January 2010</b>	-	ECtHR, <i>Al-Agha v. Romania</i> , No. 40933/02, 12 January 2010.
<b>ECtHR, <i>Geleri v. Romania</i>, No. 33118/05, 15 February 2011</b>		European Court of Human Rights (ECtHR), <i>Geleri v. Romania</i> , No. 33118/05, 15 February 2011.
<b>Explanatory Note</b>	<i>Expunere de motive</i>	Romania, Ministry of Administration and Interior ( <i>Ministerul Administrației și Internelor</i> ) (2011), Explanatory Note ( <i>Expunere de motive</i> ), available at <a href="http://www.mai.gov.ro/Documente/Transparenta%20decizionala/EM%20proiect%20lege%20complet%20acte%20norm%20regim%20straini%20.pdf">www.mai.gov.ro/Documente/Transparenta%20decizionala/EM%20proiect%20lege%20complet%20acte%20norm%20regim%20straini%20.pdf</a> .
<b>Fundamental Rights: challenges and achievements in 2010</b>	-	European Union Agency for Fundamental Rights (FRA) (2010), 'Fundamental Rights: challenges and achievements in 2010', available at <a href="http://fra.europa.eu/fraWebsite/attachments/annual-report-2011_EN.pdf">http://fra.europa.eu/fraWebsite/attachments/annual-report-2011_EN.pdf</a> .
<b>Government Emergency Ordinance no. 194 of 12 December 2002 regarding the aliens' regime in Romania</b>	<i>Ordonanța de urgență a Guvernului nr. 194 din 12 decembrie 2002 privind regimul străinilor în România</i>	Government Emergency Ordinance no. 194 of 12 December 2002 regarding the aliens' regime in Romania ( <i>Ordonanța de urgență a Guvernului nr. 194 din 12 decembrie 2002 privind regimul străinilor în România</i> ), last published in the Official Gazette No. 421 of 5 June 2008.

<b>High Court of Cassation and Justice, Section for administrative and tax litigation, Decision No. 4934 of 11 November 2010</b>	<i>Înalta Curte de Casație și Justiție, Secția de contencios administrativ și fiscal, Decizia nr. 4934 din 11 noiembrie 2010</i>	High Court of Cassation and Justice, Section for administrative and tax litigation, Decision No. 4934 of 11 November 2010 ( <i>Înalta Curte de Casație și Justiție, Secția de contencios administrativ și fiscal, Decizia nr. 4934 din 11 noiembrie 2010</i> )
<b>New rules regarding the aliens' regime</b>	Noi reglementări referitoare la regimul străinilor	ARCA – Romanian Forum for Refugees and Migrants ( <i>ARCA – Forumul Român pentru Refugiați și Migranți</i> ), the National Romanian Council for Refugees ( <i>Consiliul Național Român pentru Refugiați</i> ), Save the Children Romania ( <i>Salvați Copiii România</i> ), Jesuits Refugee Services (JRS) – Romania ( <i>Serviciul Iezuiților pentru Refugiați din România</i> ), the Soros Foundation Romania ( <i>Fundația Soros România</i> ) (2011), 'Noi reglementări referitoare la regimul străinilor', Press release, 11 August 2011, available at <a href="http://www.soros.ro/ro/program_articol.php?articol=296#">www.soros.ro/ro/program_articol.php?articol=296#</a> .
<b>Study on the Phenomenon of Immigration in Romania – Integration of Migrants in the Romanian Society</b>	<i>Studiu asupra fenomenului imigrației în România. Integrarea străinilor în societatea românească</i>	Alexe, I., et al. (2011) <i>Study on the Phenomenon of Immigration in Romania – Integration of Migrants in the Romanian Society</i> , available at <a href="http://arps.ro/documente/studiu_privind_fenomenul_imigratiei.pdf">http://arps.ro/documente/studiu_privind_fenomenul_imigratiei.pdf</a> .



## 2 BORDER CONTROL AND VISA POLICY

### 2.1 General information on border control and visa policy

#### 2.1.1 Policy and institutional developments

In June 2011, a Department for Schengen, European and International Affairs was created within the Romanian Ministry of Administration and Internal Affairs (MAIA) (*Ministerul Administrației și Internelor*) (MAI).<sup>52</sup> The role of the department is to ensure all requirements for accessing the Schengen Treaty are met. The department will coordinate the activity of all institutions and authorities with relevant attributions.

In January 2011, Romania has established the National Visa Information System (NVIS) (*Sistemul național de informații privind vizele*) (SNIV),<sup>53</sup> in accordance with Council Decision 2004/512/CE establishing the VISA Information System (VIS),<sup>54</sup> Regulation (EC) No. 767/2008 of the European Parliament and of the Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas<sup>55</sup> and Council Decision 2008/633/JAI concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences.<sup>56</sup>

NVIS allows for the exchange of visa data between national authorities and other Member States, in order to improve the enforcement of a common visa policy, as well as cooperation in the area.

The law designates the Romanian Ministry of Foreign Affairs (MFA) (*Ministerul Afacerilor Externe*) (MAE), through the National Visa Centre (NVC) (*Centrul Național de Vize*) (CNV) – the central access point, and the MAIA, through the Romanian Office for Immigration (ROI) (*Oficiul Român pentru Imigrări*) (ORI), as national authorities responsible with the management of NVIS, data that will be introduced in NVIS, procedure and conditions of access to information contained by NVIS, security and data protection measures.

#### 2.1.2 Legislative developments

A recently adopted law brought amendments to the visa procedure to ensure support for foreigners seeking to work legally in Romania.<sup>57</sup> Provisions of the Aliens Act were amended to clearly state the situations when aliens may be taken into public custody, as well as some safeguards to limit the duration of detention.<sup>58</sup> If ROI concludes that the alien taken into

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<sup>52</sup> Romania/Government Decision 656/2011, 30 June 2011.

<sup>53</sup> Romania/Law no. 271/2010 to regulate the establishment, organisation and functioning of the National visa information system, as well as Romania's participation to the Visa Information System (*Legea nr. 272/2010 pentru înființarea, organizarea și funcționarea Sistemului național de informații privind vizele și participarea României la Sistemul de informații privind vizele*), 22 December 2010.

<sup>54</sup> Council Decision 2004/512/CE of 8 June 2004 establishing the VISA Information System (VIS) OJ 2004 L 213, 15.6.2004, p. 5.

<sup>55</sup> Regulation (EC) No. 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas, OJ 2008 L 218.

<sup>56</sup> Council Decision 2008/633/JAI of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences, OJ 2008, L 218.

<sup>57</sup> Romania/Law no. 157/2011 to amend legislation on foreigners (*Legea nr. 157/2011 pentru modificarea și completarea unor acte normative privind regimul străinilor în România*), 28 July 2011.

<sup>58</sup> Ibid, Article 132.

public custody cannot be removed from the Romanian territory, he/she will be granted a “tolerated” status.<sup>59</sup> Third country nationals residing temporary on Romanian territory for whom the right of residence had been prolonged (either being “tolerated” or having similar standing or in custody) will be provided with a National Personal Code (*cod numeric personal*) upon request and in justified cases.<sup>60</sup> The National Personal Code grants access to work but the legal provisions are not clear enough to allow to infer if it triggers access to health or other services. Other provisions of the law aim at ensuring protection of personal data concerning migrants who enter Romania.

Specific legislation grants access to healthcare services for third country nationals victims of human trafficking<sup>61</sup> or for asylum seekers.<sup>62</sup>

Law 80/2011, adopted in June, provides for third country nationals that are family members of EU nationals and who apply for right of stay in Romania.<sup>63</sup> Such family members may be exempted from applying for a visa when joining a EU national residing in Romania or if she/he has already obtained the status of resident family member in another Member State.<sup>64</sup> The law also states the conditions for obtaining the right of residence, including permanent residence in Romania, in consideration of this particular status, and covers situations such as unemployment, death of the family member who is an EU national or divorce.

### **2.1.3 National case law**

Nothing to report.

### **2.1.4 Statistical data made available in the reference period**

The Romanian Office for Immigration provided data with respect to the number of complaints against measures consisting in refusal to grant visas, revocation and cancellation of visas or residence permits. In 2010, there have been 1,235 such complaints. Data with respect to the situation in 2011 will only be available at the beginning of 2012.<sup>65</sup>

### **2.1.5 Research and studies**

No research or study regarding specifically the issue of border control and visas has been provided in the reported period of time. Specific requests for information have been addressed both to the MAIA, the Romanian Office for Immigration<sup>66</sup> and to relevant NGOs.<sup>67</sup>

### **2.1.6 Promising ‘good’ practices**

Law No. 157/2011 also provides for the implementation of the Schengen acquis. Notably, it creates the necessary legal framework ensuring the direct effect in Romania of the Visa

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<sup>59</sup> *Ibid*, Article 141.

<sup>60</sup> *Ibid*, Article 144<sup>1</sup>.

<sup>61</sup> Art. 38 of Romania, Law 230/2010 to modify and complete Law 678/2001 on prevention and combating trafficking in persons (*Legea 230/2010 pentru modificarea si completarea Legii 678/2001 privind prevenirea si combaterea traficului de persoane*), 6 December 2010.

<sup>62</sup> Law No.122 of 4 May 2006 regarding asylum in Romania, Art.17.(1).(m), as amended by Government Emergency Ordinance No.55 of 20 June 2007, published in the Official Journal No.424 of 26 June 2007..

<sup>63</sup> Romania/Law no. 80/2011 to amend Government Emergency Ordinance no. 102/2005 regarding free movement within Romania of EU and EEA citizens (*Legea nr. 80/2011 pentru modificarea și completarea OUG nr. 102/2005 privind libera circulație pe teritoriul României a cetățenilor statelor membre ale Uniunii Europene și Spațiului Economic European*), 6 June 2011.

<sup>64</sup> *Ibid*, Article 6.

<sup>65</sup> Romanian Office for Immigration Letter no. 1727914 dated 15 September 2011 (response to request for information) on file with the national Franet expert.

<sup>66</sup> CRJ Letter no. 299 of 18 August 2011 (request for information).

<sup>67</sup> E-mail sent to JRS-Romania, CNRR – National Romanian Council for Refugees and ARCA – Romanian Forum for Refugees and Migrants on 1 September 2011 (request for information).

Code.<sup>68</sup> The law was adopted through a transparent process organised by the MAIA. A platform for dialogue which enabled the participation to this process of relevant components of the civil society, including judges and lawyers specialized in this practice area.<sup>69</sup> The vast majority of the proposals and observations made, especially by NGOs, were incorporated into the new legislation. This is an example of promising practices as to decision making. Furthermore, it has the benefit of raising awareness in the community with respect to such sensitive issues as border controls, visas and migration in general. Please see also Annex 3.

### 2.1.7 Key issues in public debate

The key issue in public debate is Romania's accession to the Schengen area, which will definitively abolish controls at the borders with other Member States. The evaluation procedure is currently completed from the technical point of view. In fact, the last report in the field of implementation of the Schengen Information System (SIS) was adopted on 28 January 2011.<sup>70</sup>

The European Parliament voted in favour of Romania's accession to the Schengen area on 8 June 2011.<sup>71</sup> On 9 June 2011, the Council of the European Union concluded that Romania was appropriately prepared for the application of the Schengen acquis. This marks the end of the evaluation stage in terms of preparedness.<sup>72</sup> The next and final step is the decision of the Council of the European Union on Justice and Home Affairs. This decision was postponed due to the opposition of certain Member States who consider that Romania has not made enough progress in justice reform and the fight against corruption. The Council reverted to the question of Romania's (and Bulgaria's) Schengen accession at the meeting held on 22 September 2011, but was not able to take a decision at this stage.<sup>73</sup>

Another key issue in the public debate is Romania's relation with the Republic of Moldova. In November 2010, the two countries signed the Treaty on the regime of the common border.<sup>74</sup> This technical agreement governs all border-related issues, including the

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<sup>68</sup> Regulation (EC) No. 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (*Visa Code*), OJ 2009 L 243/1.

<sup>69</sup> See Romania, ARCA – Romanian Forum for Refugees and Migrants (*ARCA – Forumul Român pentru Refugiați și Migranți*), the National Romanian Council for Refugees (*Consiliul Național Român pentru Refugiați*), Save the Children Romania (*Salvați Copiii România*), Jesuits Refugee Services (JRS) – Romania (*Serviciul Iezuiților pentru Refugiați din România*), the Soros Foundation Romania (*Fundația Soros România*) (2011), 'Propuneri și sugestii legate de proiectul de lege pentru modificarea și completarea unor acte normative privind regimul străinilor în România', available at [www.jrsromania.org/docs/Propuneri%20si%20sugestii%20regimul%20strainilor%20in%20Romania.pdf](http://www.jrsromania.org/docs/Propuneri%20si%20sugestii%20regimul%20strainilor%20in%20Romania.pdf).

<sup>70</sup> Romania, Ministry of Administration and Internal Affairs, Schengen Directorate (*Ministerul Administrației și Internelor, Direcția Schengen*), 'Buletin informativ – Adoptarea raportului de evaluare Schengen a României în domeniul SIS/SIRENE', Press release, 28 January 2011, available at [www.schengen.mai.gov.ro/index09.htm](http://www.schengen.mai.gov.ro/index09.htm).

<sup>71</sup> Romania, Ministry of Administration and Internal Affairs, Schengen Directorate (*Ministerul Administrației și Internelor, Direcția Schengen*), 'Parlamentul European, pentru aderarea României la Spațiul Schengen', Press release, 8 June 2011, available at [www.schengen.mai.gov.ro/index09.htm](http://www.schengen.mai.gov.ro/index09.htm).

<sup>72</sup> Romania, Ministry of Administration and Internal Affairs, Schengen Directorate (*Ministerul Administrației și Internelor, Direcția Schengen*), 'Aprobarea Concluziilor Consiliului cu privire la finalizarea procesului de evaluare a stadiului de pregătire a României pentru aplicarea integrală a prevederilor acquis-ului Schengen', Press release, 9 June 2011, available at [www.schengen.mai.gov.ro/index09.htm](http://www.schengen.mai.gov.ro/index09.htm).

<sup>73</sup> Council of the European Union, Justice and Home Affairs, Press release no. 14464/11 of 22-23 September 2011 (provisional version), available at [www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/124713.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/124713.pdf).

<sup>74</sup> Treaty between Romania and the Republic of Moldova regarding the regime of the state border, cooperation and mutual assistance on border matters, done at Bucharest on 8 November 2010 (*Tratat între România și Republica Moldova privind regimul frontierei de stat, colaborarea și asistența mutuală în probleme de frontieră, semnat la București, la data de 8 noiembrie 2010*).

mechanisms to identify and to solve various problems, such as the illegal crossing of the border between the two States.<sup>75</sup> Efficient border controls at the frontier with the Republic of Moldova is one of the main conditions for Romania's accession to the Schengen area. Thus, on 30 September 2011 an official delegation made up of representatives from the Ministry of Foreign Affairs (*Ministrul Afacerilor Externe*) and diplomatic missions accredited in Bucharest attended the operation of a pilot project in the Republic of Moldova, at Romania's Consulate General in Cahul. This pilot project displayed the procedures to collect and process visa applications in full compliance with the Schengen standards. Added to the visa application processing flow presentation were the ways to collect biometric data.<sup>76</sup>

### 2.1.8 Information on trends until 2011

Romania has gradually adjusted the national legislation in line with the EU and Schengen acquis, striving to provide a balance between freedom of movement, human rights and the need to ensure security and prevent illegal migration.

Since 2007, Romania has had to implement provisions concerning the protection of personal data, Schengen Information System (SIS), air, land and sea borders and also concerning police cooperation and visa requirements. The Schengen evaluation reports corresponding to the evaluation missions have all been approved by the *Schengen Evaluation* work group in Brussels, and the final conclusion has been that Romania has reached an advanced status with regard to the implementation of the Schengen acquis and is, for the most part, ready to adhere to the Schengen area.<sup>77</sup>

### 2.1.9 Identification of future challenges

Romania's accession to the Schengen area will raise new challenges for the authorities in charge of border control and visa policy. The introduction of uniform Schengen visas will likely trigger a considerable number of demands for this kind of visas. At the same time, third-country nationals will enter Romania more easily in the absence of border controls. Residence permits issued by other Member States will allow them to stay on Romanian territory for three months within a time frame of six months.

As emphasised by the Romanian Government (*Guvernul României*) in an official document regarding the National Strategy for Immigration for the Period 2011-2014 (*Strategia națională privind migrația pentru perioada 2011-2014*), the status of Schengen State will mostly turn Romania into a transit State. This will likely trigger an increase in the number of illegal immigrants coming from Bulgaria and Greece (if Bulgaria joins the Schengen area at the same time or immediately after Romania) and who will take advantage of the possibility to cross the border with Hungary without controls. Moreover, another challenge in combating illegal immigration will consist in identifying and taking legal measures for the removal from the national/Schengen territory of third-country nationals who will have entered Romania by virtue of a uniform visa issued by authorities of other Member States and who will stay longer than allowed, since an efficient control of entry and residence on the territory of the Romanian State will not be possible due to the abolition of control at common borders.<sup>78</sup>

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<sup>75</sup> Romania, Ministry of Foreign Affairs (*Ministerul Afacerilor Externe*), 'România și Republica Moldova au semnat Tratatul privind regimul frontierei de stat, colaborarea și asistența mutuală în probleme de frontieră', Press release, 8 November 2010, available at [www.mae.ro/node/5893](http://www.mae.ro/node/5893).

<sup>76</sup> Romania, Ministry of Foreign Affairs (*Ministerul Afacerilor Externe*), 'Collection of biometric data in the flow of processing visa applications', Press release, 30 September 2011, available at [www.mae.ro/en/node/10478](http://www.mae.ro/en/node/10478).

<sup>77</sup> Romania, Ministry of Administration and Internal Affairs (*Ministerul Administrației și Internelor*) (2011), 'Adoptarea raportului de evaluare Schengen a României în domeniul SIS/SIRENE', Press release, 28 January 2011, available in Romanian at <http://www.schengen.mira.gov.ro/index09.htm>; Centrul Român de Politici Europene (2011b).

<sup>78</sup> Government Decision No. 498 of 18 May 2011 approving the National Strategy for Immigration for the Period 2011-2014 (*Hotărârea de Guvern nr. 498 din 18 mai 2011 pentru aprobarea Strategiei*

As a result of the Schengen accession, the number of transfers towards the responsible EU Member State under the Dublin II Regulation will probably also rise.

## 2.2 Specific information

### 2.2.1 Appeal against decisions on refusal / revocation / annulment of a visa (applicable from 5 April 2011)

Decisions on refusal/revocation/annulment of a visa may be appealed directly before the local Court of Appeal (Curtea de Apel).

According to ROI, 1,235 appeals have been filed in 2010.<sup>79</sup> During the first ten months of 2011, 407 appeals have been filed against decisions on refusal/revocation/annulment of a visa.<sup>80</sup> There are no official data on the percentage of positive and negative decisions.

### 2.2.2 Schengen evaluations

Has there been a Schengen evaluation in the field of borders		If yes, describe main concerns raised during the evaluations relating to fundamental rights – reference source	Briefly describe main remedies planned or taken by the authorities – reference source
In 2010	Y	N/A	N/A
In 2011	N		

Romania has received a total number of seven Schengen evaluation visits during 2009 and 2010. SCH-EVAL has carried out a total of three visits in 2010. The first visit took place during 27 March-1 April 2010 and its purpose was to evaluate terrestrial borders.<sup>81</sup> The last visit, to re-evaluate aerial and terrestrial borders, took place during 15-17 November 2010.<sup>82</sup> A Schengen evaluation mission targeting SIS/SIRENE took place during 6-10 December 2010.<sup>83</sup>

During the last visits, the SCH-EVAL recommendations have focused on strengthening security at borders and technical issues.<sup>84</sup> The final conclusions were that Romania is prepared to become a member of the Schengen Treaty.

None of the evaluation reports has raised concerns in connection to fundamental rights.<sup>85</sup>

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*națională privind migrația pentru perioada 2011-2014*), published in the Official Gazette No. 391 of 3 June 2011, available at <http://ori.mai.gov.ro/api/media/userfiles/HOTARARE%20nr.pdf>.

<sup>79</sup> Letter no. 1727914/15.09.2011 of ROI, on file with the FRANET national expert.

<sup>80</sup> Data obtained through the Court Content Document Management System.

<sup>81</sup> Romania, Ministry of Administration and Internal Affairs (*Ministerul Administrației și Internelor*) (2010), 'Vizita de Evaluare Schengen a României în Domeniul Frontierelor Terestre', Press release, 27 March 2010, available in Romanian at <http://www.schengen.mira.gov.ro/index09.htm>.

<sup>82</sup> Romania, Ministry of Administration and Internal Affairs (*Ministerul Administrației și Internelor*) (2010), 'Vizita de reevaluare Schengen a României în domeniul frontierelor aeriene și terestre', Press release, 22 November 2010.

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.* See also Centrul Român de Politici Europene (2011).

<sup>85</sup> Centrul Român de Politici Europene (2011) 'Lesson Learned, Failed Exam: What Do We Learn from the Schengen Accession Process – An Independent Evaluation', Bucharest, Centrul Român de Politici Europene, available in English at [http://www.crpe.ro/eng/library/files/romania%E2%80%99s\\_schengen\\_accession\\_process.pdf](http://www.crpe.ro/eng/library/files/romania%E2%80%99s_schengen_accession_process.pdf), p.5.

Starting with 2010, issues such as compliance with the Mechanism for Cooperation and Verification,<sup>86</sup> corruption and social non-integration of the Roma have been publicly linked to Romania's accession to Schengen,<sup>87</sup> but Romania's official stance has been that there is no connection between the Schengen criteria and the above mentioned issues.<sup>88</sup>

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<sup>86</sup> The Cooperation and Verification Mechanism was set by the European Commission to monitor country progress on accompanying measures following accession.

<sup>87</sup> Centrul Român de Politici Europene (2010) *'Ready for Schengen? Graduates, with indulgence'*, Policy Memo no.15, Sofia, Open Society Institute, available in English at [http://eupi.osi.bg/fce/001/0066/files/Schengen\\_Romania\\_EN\\_Oct2010.pdf](http://eupi.osi.bg/fce/001/0066/files/Schengen_Romania_EN_Oct2010.pdf), p. 9. See also România Liberă, 'Interloprii romi ne lasă în afara Schengen', 28 July 2010, <http://www.romanialibera.ro/actualitate/europa/interloprii-romi-ne-lasa-in-afara-schengen-194862.html>.

<sup>88</sup> Romania, Ministry for Justice (*Ministerul Justiției*), Press statement, 6 January 2011, available at <http://www.just.ro/Sections/Comunicate/Comunicatedecembrie2010/6ianuarie2011/tabid/1623/Default.aspx>.

Official exact title EN	Official title (original lang.)	Full reference
<b>Approval of the Council's Conclusions with respect to the completion of the evaluation process on Romania's readiness to fully apply the provisions of the Schengen acquis</b>	<i>Aprobarea Concluziilor Consiliului cu privire la finalizarea procesului de evaluare a stadiului de pregătire a României pentru aplicarea integrală a prevederilor acquis-ului Schengen</i>	Romania, Ministry of Administration and Interior, Schengen Directorate ( <i>Ministerul Administrației și Internelor, Direcția Schengen</i> ), 'Aprobarea Concluziilor Consiliului cu privire la finalizarea procesului de evaluare a stadiului de pregătire a României pentru aplicarea integrală a prevederilor acquis-ului Schengen', Press release, 9 June 2011, available at <a href="http://www.schengen.mai.gov.ro/index09.htm">www.schengen.mai.gov.ro/index09.htm</a> .
<b>Government Decision No. 498 of 18 May 2011 approving the National Strategy for Immigration for the Period 2011-2014</b>	<i>Hotărârea de Guvern nr. 498 din 18 mai 2011 pentru aprobarea Strategiei naționale privind migrația pentru perioada 2011-2014</i>	Government Decision No. 498 of 18 May 2011 approving the National Strategy for Immigration for the Period 2011-2014 ( <i>Hotărârea de Guvern nr. 498 din 18 mai 2011 pentru aprobarea Strategiei naționale privind migrația pentru perioada 2011-2014</i> ), published in the Official Gazette No. 391 of 3 June 2011, available at <a href="http://ori.mai.gov.ro/api/media/userfiles/HOTARARE%20nr.pdf">http://ori.mai.gov.ro/api/media/userfiles/HOTARARE%20nr.pdf</a> .
<b>Information bulletin – Adoption of Romania's Schengen evaluation report in the field of SIS/SIRENE</b>	<i>Buletin informativ – Adoptarea raportului de evaluare Schengen a României în domeniul SIS/SIRENE</i>	Romania, Ministry of Administration and Interior, Schengen Directorate ( <i>Ministerul Administrației și Internelor, Direcția Schengen</i> ), 'Buletin informativ – Adoptarea raportului de evaluare Schengen a României în domeniul SIS/SIRENE', Press release, 28 January 2011, available at <a href="http://www.schengen.mai.gov.ro/index09.htm">www.schengen.mai.gov.ro/index09.htm</a> .
<b>Proposals and suggestions related to the bill for the amendment and supplementation of certain laws regarding the aliens' regime in Romania</b>	<i>Propuneri și sugestii legate de proiectul de lege pentru modificarea și completarea unor acte normative privind regimul străinilor în România</i>	Romania, ARCA – Romanian Forum for Refugees and Migrants ( <i>ARCA – Forumul Român pentru Refugiați și Migranți</i> ), the National Romanian Council for Refugees ( <i>Consiliul Național Român pentru Refugiați</i> ), Save the Children Romania ( <i>Salvați Copiii România</i> ), Jesuits Refugee Services (JRS) – Romania ( <i>Serviciul Iezuiților pentru Refugiați din România</i> ), the Soros Foundation Romania ( <i>Fundația Soros România</i> ) (2011), 'Propuneri și sugestii legate de proiectul de lege pentru modificarea și completarea unor acte normative



		privind regimul străinilor în România', available at <a href="http://www.jrsromania.org/docs/Propuneri%20si%20sugestii%20regimul%20strainilor%20in%20Romania.pdf">www.jrsromania.org/docs/Propuneri%20si%20sugestii%20regimul%20strainilor%20in%20Romania.pdf</a> .
<b>Regulation (EC) No. 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas</b>	-	Regulation (EC) No. 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas ( <i>Visa Code</i> ), OJ 2009 L 243/1.
<b>Romania and the Republic of Moldova signed the Treaty regarding the regime of the State border, cooperation and mutual assistance in border-related matters</b>	<i>România și Republica Moldova au semnat Tratatul privind regimul frontierei de stat, colaborarea și asistența mutuală în probleme de frontieră</i>	Romania, Ministry of Foreign Affairs ( <i>Ministerul Afacerilor Externe</i> ), 'România și Republica Moldova au semnat Tratatul privind regimul frontierei de stat, colaborarea și asistența mutuală în probleme de frontieră', Press release, 8 November 2010, available at <a href="http://www.mae.ro/node/5893">www.mae.ro/node/5893</a> .
<b>The European Parliament, in favour of Romania's accession to the Schengen area</b>	<i>Parlamentul European, pentru aderarea României la Spațiul Schengen</i>	Romania, Ministry of Administration and Interior, Schengen Directorate ( <i>Ministerul Administrației și Internelor, Direcția Schengen</i> ), 'Parlamentul European, pentru aderarea României la Spațiul Schengen', Press release, 8 June 2011, available at <a href="http://www.schengen.mai.gov.ro/index09.htm">www.schengen.mai.gov.ro/index09.htm</a> .
<b>Treaty between Romania and the Republic of Moldova regarding the regime of the state border, cooperation and mutual assistance on border matters, done at Bucharest on 8 November 2010</b>	<i>Tratat între România și Republica Moldova privind regimul frontierei de stat, colaborarea și asistența mutuală în probleme de frontieră, semnat la București, la data de 8 noiembrie 2010</i>	Treaty between Romania and the Republic of Moldova regarding the regime of the state border, cooperation and mutual assistance on border matters, done at Bucharest on 8 November 2010 ( <i>Tratat între România și Republica Moldova privind regimul frontierei de stat, colaborarea și asistența mutuală în probleme de frontieră, semnat la București, la data de 8 noiembrie 2010</i> ).
<b>Law no. 271/2010 to regulate the establishment, organisation and functioning of the National visa information system, as well as Romania's participation to the Visa Information System</b>	<i>Legea nr. 272/2010 pentru înființarea, organizarea și funcționarea Sistemului național de informații privind vizele și participarea României la Sistemul de informații privind vizele</i>	Romania, Law no. 271/2010 to regulate the establishment, organisation and functioning of the National visa information system, as well as Romania's participation to the Visa Information System ( <i>Legea nr. 272/2010 pentru înființarea, organizarea și funcționarea Sistemului național de informații privind vizele și participarea României la Sistemul de informații privind vizele</i> ), 22 December 2010, M. Of. Part. I, 36/2011,
<b>Centrul Român de Politici</b>	Centrul Român de Politici	Centrul Român de Politici Europene

Europene (2010) ' <i>Ready for Schengen? Graduates, with indulgence</i> '.	Europene (2010) ' <i>Pregătiți pentru Schengen? Absolvenți cu indulgență</i> '.	(2010) ' <i>Ready for Schengen? Graduates, with indulgence</i> ', Policy Memo no.15, Sofia, Open Society Institute, available in English at <a href="http://eupi.osi.bg/fce/001/0066/files/Schengen_Romania_EN_Oct2010.pdf">http://eupi.osi.bg/fce/001/0066/files/Schengen_Romania_EN_Oct2010.pdf</a> .
Centrul Român de Politici Europene (2011), ' <i>Lesson learned, failed exam: What Do We Learn from the Schengen Accession Process – An Independent Evaluation</i> '	Centrul Român de Politici Europene Policy Memo nr. 20, ' <i>Cuiul lui Pepelea: ce învățăm din procesul de aderare la Schengen</i> '.	Centrul Român de Politici Europene (2011), ' <i>Lesson Learned, Failed Exam: What Do We Learn from the Schengen Accession Process – An Independent Evaluation</i> ', Bucharest, Centrul Român de Politici Europene, available in English at <a href="http://www.crpe.ro/eng/library/files/romania%E2%80%99s_schengen_accession_process.pdf">http://www.crpe.ro/eng/library/files/romania%E2%80%99s_schengen_accession_process.pdf</a>
Government Decision 656/2011 to amend Government Decision no.416/2007 concerning the structure and staff of the Ministry for Internal Affairs and Administration	Hotărârea Guvernului nr. 656/2001 pentru modificarea Hotărârii Guvernului nr. 416/2007 privind structura organizatorică și efectivele Ministerului Administrației	Romania, Government Decision 656/2011 to amend Government Decision no.416/2007 concerning the structure and staff of the Ministry for Internal Affairs and Administration ( <i>Hotărârea Guvernului nr. 656/2001 pentru modificarea Hotărârii Guvernului nr. 416/2007 privind structura organizatorică și efectivele Ministerului Administrației</i> ), 30 June 2011, Official Bulletin no.457/2011, part. I.

## 3 INFORMATION SOCIETY AND DATA PROTECTION

### 3.1 The implementation of a data protection regime

#### 3.1.1 Policy and institutional developments

In order to comply with the guarantees provided by the legislation on data protection, the Ministry of Administration and Internal Affairs (MAIA) (*Ministerul Administrației și Internelor*) adopted a set of internal norms and established a bureau in charge with data protection within all MAIA structures.<sup>89</sup> The bureau of the person in charge with protection of personal data (*Oficiul Responsabilului cu Protecția Datelor Personale*) monitors observance of rules regarding the use of private data and coordinates with specialized departments established in all central and regional MAIA units.

A draft code of conduct on civil servants using personal data in MAIA has been prepared and it is currently under review by the leadership of MAIA.<sup>90</sup>

#### 3.1.2 Legislative developments

The legislation on measures to facilitate international police cooperation had been adopted in order to secure protection of personal data during international cooperation among different national police units.<sup>91</sup> The same norm transposes according to MAIA the Council Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union of 18 December 2006 and Articles 5, 10, 13, 14 and 17-23 of Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime of 6 August 2008.<sup>92</sup>

The Government adopted the Employee Registry Government Decision no. 500/2011<sup>93</sup> regarding the general register for employees and the employers' and operators' obligation to prevent misuse of personal data. This Decision made in accordance with the Personal Data Protection Act 677/2001<sup>94</sup> brings entities handling personal data for the purpose of the general

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<sup>89</sup> Romania, Ministry of Administration and Internal Affairs, Instructions of the MAIA no. 27/2010 on the technical measures to ensure the security of working with personal data in the units/departments of MAIA.. *Instrucțiunile ministrului administrației și internelor nr.27/2010 privind măsurile de natură organizatorică și tehnică pentru asigurarea securității prelucrărilor de date cu caracter personal efectuate de către structurile/unitățile Ministerului Administrației și Internelor*, from 12 February 2010. Letter No. 3719828 of Ministry of Administration and Internal Affairs from 24 October 2011 on file with FRANET expert.

<sup>90</sup> Letter No. 3719828 of Ministry of Administration and Internal Affairs from 24 October 2011 on file with FRANET expert.

<sup>91</sup> Romania/Law 201/2010 on facilitating measures for international police cooperation, *Legea nr.201/2010 pentru modificarea și completarea Ordonanței de urgență a Guvernului nr.103/2006 privind unele măsuri pentru facilitarea cooperării polițienești internaționale* from 28 October 2010.

<sup>92</sup> Letter No. 3719828 of Ministry of Administration and Internal Affairs from 24 October 2011 on file with FRANET expert.

<sup>93</sup> Romania, Employee Registry Government Decision no. 500/2011 (*Decizia Guvernului nr. 500 din 18 mai 2011 pentru registrul general al angajaților*) available at [http://www.dreptonline.ro/legislatie/hg\\_500\\_2011\\_registrul\\_general\\_evidenta\\_salariatilor.php](http://www.dreptonline.ro/legislatie/hg_500_2011_registrul_general_evidenta_salariatilor.php).

<sup>94</sup> Romania, Personal Data Protection Act 677/2001 from 21 November 2001 (*Legea nr. 677 din 21 noiembrie 2001 pentru protecția persoanelor cu privire la prelucrarea datelor cu caracter personal și libera circulație a acestor date*).

employees register under the scope of this law; it defines operators and sets out their obligations in handling personal data.<sup>95</sup>

The national supervisory body, the National Authority for the Supervision of Personal Data Processing (NASPDP) (*Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal*, ANSPDCP) – issued a negative opinion regarding the draft emergency ordinance on the retention of data obtained or processed by electronic communication providers for public use, on 26 September 2011.<sup>96</sup> The draft, put forward by the Ministry for Communication and the Information Society (MCIS) (*Ministerul Comunicațiilor și Societății Informaționale*, MCSI) for the implementation of the Retention Directive 2006/24/EC is considered unacceptable due to its perceived similarities with Data Retention Law no. 298/2008 which was declared unconstitutional by the Constitutional Court in 2009.<sup>97</sup>

NASPDP registered its concerns relating to the retention for six months of traffic and phone call/electronic communication data, national security bodies access to data and the lack of clarity regarding the procedure for requesting and communicating relevant data.<sup>98</sup> In addition, the second authority with responsibilities for the implementation of the proposed law, the National Authority for Communication Administration and Regulation (NACAR) (*Autoritatea Națională pentru Administrarea și Reglementarea în Comunicații*, ANCOM), also issued a negative opinion and requested to be removed as a relevant authority for the purpose of the law according to comments made by Cătălin Marinescu (NACAR Chairman) to the press.<sup>99</sup>

The MCIS, the promoter of the law, insists it will go ahead and put the draft forward to the Government despite the strong objections raised. The Government is under pressure to resolve this issue as the European Commission has started an infringement procedure for the implementation of the Retention Directive.<sup>100</sup>

The NGOs ActiveWatch – Agenția de Monitorizare a Presei, Asociația pentru Apărarea Drepturilor Omului în România – Comitetul Helsinki (APADOR-CH), Asociația pentru Tehnologie și Internet (APTI) and Centrul pentru Jurnalism Independent (CJI) voiced their concerns regarding the perceived threat to the fundamental rights to private life, and freedom of speech. The NGOs have a similar view on the Retention Directive and recommended that the Government refuses to implement the Retention Directive and faces the infringement proceedings of the European Commission.

On 5 August 2011, NASPDP published a draft decision regarding the collection, storage and use of personal data used for identification purposes (including numeric codes, passport or other ID serial number, social security number etc.) aimed at eliminating abusive practices of personal data operators. Such activities can be undertaken by an operator in very limited circumstances: with the relevant person's express consent; by operation of law; or with NASPDP express permission and after it instituted adequate safeguards for the relevant person's rights. According to the text of the decision, adequate safeguards must have a pre-determined, expressly defined and legitimate purpose.<sup>101</sup>

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<sup>95</sup> [www.dataprotection.ro/?page=Protectia\\_datelor\\_personale\\_si\\_registrul\\_general\\_de\\_evidenta\\_a\\_salariilor&lang=ro](http://www.dataprotection.ro/?page=Protectia_datelor_personale_si_registrul_general_de_evidenta_a_salariilor&lang=ro).

<sup>96</sup> Draft available at <http://www.mcsi.ro/Legislatie/Proiecte-legislative-romanesti/Proiect-de-Ordonanta-de-urgenta-privind-retinerea>.

<sup>97</sup> Romania, Constitutional Court, Decision 1258 from 8 October 2009, *Decizia 1258 din 8 octombrie 2009 referitor la excepția de neconstituționalitate a prevederilor Legii nr. 298/2008*.

<sup>98</sup> See [http://www.dataprotection.ro/?page=stire\\_07092011&lang=ro](http://www.dataprotection.ro/?page=stire_07092011&lang=ro).

<sup>99</sup> See position available at: <http://www.avocatura.com/anspdc-ncu-este-de-acord-cu-noul-proiect-al-legii-big-brother-nici-ancom-nu-a-vrut-sa-avizeze-proiectul-s1465.html>. See also: <http://economie.hotnews.ro/stiri-telecom-10104816-autoritatea-nationala-pentru-protectia-datelor-personale-nu-este-acord-noul-proiect-legii-big-brother.htm>.

<sup>100</sup> See [www.dataprotection.ro/?page=stire\\_07092011&lang=ro](http://www.dataprotection.ro/?page=stire_07092011&lang=ro).

<sup>101</sup> See [www.dataprotection.ro/servlet/ViewDocument?id=742](http://www.dataprotection.ro/servlet/ViewDocument?id=742).

NASDP issued a draft decision clarifying the definition of personal data handling captured by audio and video surveillance under Personal Data Protection Act no. 677/2001 on 5 August 2011. According to this decision, personal data handling excludes real time caption of sound or image if data captured is not stored. The decision further gives detailed guidelines regarding legitimate reasons for audio or video surveillance and where and in what circumstances such practices are allowed.<sup>102</sup>

The new Government Decision no. 25/2011<sup>103</sup> approved the Methodology for the application of the Judicial Genetic Data Government Act no. 76/2008 for the set up and running of the national system for judiciary genetic data on 28 January 2011. The Decision provides for the legal framework for the application of Council's Decision 2008/615/JAI regarding the automatic transfer of genetic profiling in the context of trans-border cooperation for the purpose of combating terrorism and other criminal activities.<sup>104</sup>

Order no. 1106/2011 of the Ministry for Labour, Family and Social Protection (MLFSP) (*Ministerul Muncii, Familiei și Protecției Sociale*)(MMFPS)<sup>105</sup> set up the electronic register for persons with disabilities which will include personal information such as personal identity details, family information, education, profession, wages earned, rehabilitation and social integration steps recommended, and details regarding the disability. The register will be managed by the Ministry through its special Division for the protection of persons with disabilities.

The draft National Defence Strategy (issued in May 2010 by the Supreme Council for National Defence and the Office of the President of Romania) is still pending in Parliament. No further debates were triggered during the relevant period and there are no updates regarding the provision defining media as a security vulnerability which provoked controversy in 2010.

The draft Government Emergency Ordinance modifying and consolidating the Residence and Identity Documents Emergency Ordinance 97/2005<sup>106</sup> is still pending facing strong opposition from human rights groups as well as religious groups. During the relevant period, two members of the Chamber of Deputies put forward a proposed law to ban the use of biometric details in identification documents in Romania (May 2011).<sup>107</sup> The Government rejected the bill.<sup>108</sup>

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<sup>102</sup> See [www.dataprotection.ro/servlet/ViewDocument?id=743](http://www.dataprotection.ro/servlet/ViewDocument?id=743).

<sup>103</sup> Romania, Government Decision nr. 25/2011 from 5 January 2011 (*Hotărârea Guvernului nr. 25 din 5 ianuarie 2011 pentru aprobarea Normelor metodologice de aplicare a Legii nr. 76/2008 privind organizarea și funcționarea Sistemului Național de Date Genetice Judiciare și pentru crearea cadrului legal intern necesar aplicării Deciziei 2008/615/JAI a Consiliului din 23 iunie 2008 privind intensificarea cooperării transfrontaliere, în special în domeniul combaterii terorismului și a criminalității transfrontaliere, în ceea ce privește transferul automatizat al profilelor genetice*) available at <http://www.lexex.ro/Hotarare-Nr.25-din-05.01.2011-109839.aspx>.

<sup>104</sup> [www.juridice.ro/133532/norme-metodologice-de-aplicare-a-legii-privind-organizarea-si-functiunea-sistemului-national-de-date-genetice-judiciare.html](http://www.juridice.ro/133532/norme-metodologice-de-aplicare-a-legii-privind-organizarea-si-functiunea-sistemului-national-de-date-genetice-judiciare.html).

<sup>105</sup> Romania, Order no. 1106/2011 of the Ministry for Labour, Family and Social Protection (MLFSP) (*Ministerul Muncii, Familiei și Protecției Sociale*)(MMFPS (*Ordinul 1106/2011 pentru constituirea Registrului electronic privind persoanele cu handicap*), available at [http://legestart.ro/Ordinul-1106-2011-constituirea-registrelor-electronice-persoanele-handicap-\(MzcwNDM4\).htm](http://legestart.ro/Ordinul-1106-2011-constituirea-registrelor-electronice-persoanele-handicap-(MzcwNDM4).htm).

<sup>106</sup> Romania, Residence and Identity Documents Emergency Ordinance 97/2005 (*Ordonanța de urgență a Guvernului nr.97/2005 privind evidența, domiciliul, reședința și actele de identitate ale cetățenilor români și pentru completarea Ordonanței de urgență a Guvernului nr.102/2005 privind libera circulație pe teritoriul României a cetățenilor statelor membre ale Uniunii Europene și Spațiului Economic European*).

<sup>107</sup> Available at: [http://www.cdep.ro/pls/proiecte/upl\\_pck.proiect?idp=11878](http://www.cdep.ro/pls/proiecte/upl_pck.proiect?idp=11878) / all documents related to this proposal at: [http://www.cdep.ro/caseta/2011/05/03/pl11144\\_rp.pdf](http://www.cdep.ro/caseta/2011/05/03/pl11144_rp.pdf) and [http://www.cdep.ro/caseta/2011/03/29/pl11144\\_se.pdf](http://www.cdep.ro/caseta/2011/03/29/pl11144_se.pdf).

<sup>108</sup> Available at: <http://www.senat.ro/Legis%5CPDF%5C2011%5C11L047CA.pdf>.

The European Commission started infringement proceedings against Romania in June 2011 for failure to implement the E-privacy Directive. In order to comply with its obligations, at the beginning of October, the government put forward for public consultation a draft emergency ordinance<sup>109</sup> amending and supplementing Law 506/2004.<sup>110</sup> The amended Law will impose an obligation on the suppliers to inform the consumer of any threat to the privacy of their personal data and inform ANSPDCP of any personal data security breach.<sup>111</sup>

### **3.1.3 National case law**

Nothing to report.

### **3.1.4 Statistical data made available in the reference period**

Nothing to report.

### **3.1.5 Research and studies**

Nothing to report.

### **3.1.6 Promising 'good' practices**

Nothing to report.

### **3.1.7 Key issues in public debate**

Human rights and IT NGOs such as Active Watch – Agenția de Monitorizare a Presei, Asociația pentru Apărarea Drepturilor Omului în România – Comitetul Helsinki (APADOR-CH), Asociația pentru Tehnologie și Internet (APTI) and Centrul pentru Jurnalism Independent (CJI) organized debates on the merits of the proposed draft law on the retention of data obtained or processed by electronic communication providers for public use.<sup>112</sup> The NGOs voice concerns regarding the general nature of the duty to retain data directly linked to the private communications of the public. This duty applies to all communications, even if the author has not been convicted and is not subject to a criminal investigation. The NGOs argue that the proposed act would overturn the presumption of innocence and undermine the fundamental human rights to private life, privacy of personal communication and freedom of speech.

### **3.1.8 Information on trends until 2011**

There is a complex legal framework regulating this area of law with some outstanding issues yet to be resolved in bringing Romania in line with the European legislation. The civil society is involved to a certain extent in the process however increased awareness is needed.

### **3.1.9 Identification of future challenges**

The rush to implement the Data Retention Directive and the E-Privacy / Cookie Directives prompted by ongoing or expected action by the European Commission means that the new

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<sup>109</sup> The draft emergency ordinance is available on MCIS's website at <http://www.mcsi.ro/Transparenta-decizionala>, 7 October 2011, item 28.

<sup>110</sup> Romania, Electronic Communication Personal Data Processing Act 506/2004 from 17 November 2004 (*Legea nr. 506 din 17 noiembrie 2004 privind prelucrarea datelor cu caracter personal și protecția vieții private în sectorul comunicațiilor electronice*).

<sup>111</sup> See <http://economie.hotnews.ro/stiri-telecom-10348485-proiect-ordonanta-urgenta-consumatorii-trebuie-informati-cand-exista-risc-determinat-datele-personale-fie-compromise.htm>.

<sup>112</sup> Press release available at: [http://www.apador.org/show\\_report\\_nf.php?id=221](http://www.apador.org/show_report_nf.php?id=221).



legal provisions might not be thoroughly thought through or allow sufficient time for the necessary dialogue with those affected by the new legislation.

There are also likely to be practical challenges for the national supervisory authorities given limited resources in fulfilling its role in the application, monitoring and enforcement of data protection legislation.<sup>113</sup>

NASPDP stated its concern regarding a proposed emergency ordinance modifying the Health Reform Act<sup>114</sup> for the introduction of the social health insurance card on 25 November 2010. NASPDP recommended the following changes to the draft: restrict the type of data to be collected and stored on the health card (request to limit to information strictly necessary); eliminate use of the personal numeric code; set 18 as the minimum age for the issuance of the card; and ensure the confidentiality and security of the personal data entrusted to the entities participating in the process of implementation of the social health card.<sup>115</sup>

A future challenge might be maintaining the balance between data protection concerns and the right to information, given recent limitations to the freedom of expression and of the freedom of assembly as introduced by the New Criminal Code supposed to enter into force at a later still unknown date<sup>116</sup> and proposed legislation restricting the right to organize peaceful manifestations.<sup>117</sup>

## **3.2 Developments regarding body scanners**

### **3.2.1 Policy and institutional developments**

Nothing to report.

### **3.2.2 Legislative developments**

Nothing to report.

### **3.2.3 National case law**

Nothing to report.

### **3.2.4 Statistical data made available in the reference period**

Nothing to report.

### **3.2.5 Research and studies**

The only study identified for the reported period is Virginia, M (2010) 'Body Scanners and the Issue of the Breach of Fundamental Human Rights', which presents an argument against the introduction of body scanners for health reasons and on religious grounds.<sup>118</sup> The author discusses the impact of the new body scanner technology which shows the human body in great detail on the fundamental human rights to privacy, dignity and religious and ethical freedom. The article also highlights the potential harmful effects of this technology on the persons exposed to it and argues that new generation body scanners should be banned.

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<sup>113</sup> The most recent NASPDP report available on line is for 2009, Romanian version only at: <http://www.dataprotection.ro/servlet/ViewDocument?id=623>.

<sup>114</sup> Romania, Health Reform Law no. 95/2006 from 14 April 2006 (*Legea nr. 95 din 14 april 2006 privind reforma în domeniul sănătății*).

<sup>115</sup> See [http://www.dataprotection.ro/?page=stire\\_25112010&lang=ro](http://www.dataprotection.ro/?page=stire_25112010&lang=ro).

<sup>116</sup> The text of the new Criminal Code is available at: [http://www.just.ro/Sections/PrimaPagina\\_MeniuDreapta/noulcodpenal/tabid/940/Default.aspx](http://www.just.ro/Sections/PrimaPagina_MeniuDreapta/noulcodpenal/tabid/940/Default.aspx).

<sup>117</sup> Information available at: <http://www.juridice.ro/166106/legea-privind-organizarea-si-desfasurarea-adunarilor-publice-proiect.html>.

<sup>118</sup> Virginia, M (2010) 'Body Scanners and the Issue of the Breach of Fundamental Human Rights', *Sfera Politicii*, No. 154, [www.sferapoliticii.ro/sfera/154/art10-Antonescu.php](http://www.sferapoliticii.ro/sfera/154/art10-Antonescu.php).



### **3.2.6 Promising ‘good’ practices**

Nothing to report.

### **3.2.7 Key issues in public debate**

As highlighted in the article produced by M. Virginia, the public is concerned about the effects of body scanners’ use on human health. In addition, there are serious objections to this practice on religious grounds as there are to the introduction of biometric passports.

### **3.2.8 Information on trends until 2011**

Nothing to report as body scanners have not been introduced yet.

### **3.2.9 Identification of future challenges**

As identified under 3.2.7 above, given current reactions to introduction of biometric passports, it is possible that some religious groups will equally oppose the use of body scanners when this will be the case.

## **3.3 Developments regarding Passenger Name Records and data exchange applying the SWIFT banking system**

### **3.3.1 Policy and institutional developments**

NASDP view expressed in the response received to an official information request is that passenger data collection has a serious impact on fundamental human rights.<sup>119</sup> The Authority considers that the proposed Directive for the use of data from the passenger name records for the prevention, detection and criminal prosecution of terrorism and serious crime falls foul of the proportionality principle and the need for such a system has not been proven.

The Authority found that some financial institutions have failed to notify SWIFT data transfers and where such notifications were made, they did not necessarily include the minimum information required. The Authority has issued recommendations for the mending of such deficiencies.

### **3.3.2 Legislative developments**

The Romanian Senate (*Senatul*) has issued an opinion regarding the proposed Directive on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (COM (2011) 32 final) finding it in compliance with the subsidiarity principle but not in compliance with the proportionality principle for a number of reasons including:

- some of the new type of data requested for collection are viewed as unclear, and
- any decision with a serious impact should not be taken based on automatic processing of PNR only should be forbidden rather than set out as a working practice matter.<sup>120</sup>

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<sup>119</sup> Letter 22810 from 23.09.2011 of the Autoritatea Națională de Supraveghere a Prelucrării datelor cu Caracter Personal to FOIA request 20007 from 29.08.2011, on file with FRANET Romania.

<sup>120</sup> Full text of the Senate opinion available at:

[http://docs.google.com/viewer?a=v&q=cache:MbU6KTQBOaYJ:www.ipex.eu/IPEXL-WEB/dossier/files/download/082dbcc530db806d0130e05125d84143.do+romania+discutie+Passenger+Name+Records&hl=en&gl=uk&pid=bl&srcid=ADGEESh3AHSs5HbzDTY4dve-pKODCGB9pYRojat-gnwqmyP-uAB1z7dEhxPlXpokRFZ6ov\\_GKWVo1nEXdjViMdhAB5YHNO4CLsr216P\\_i3VMtVZqtjhVo8kRAu3-Quhxon6BQ\\_7QyPiO&sig=AHIEtbRgKMU0UFd-m4IaKxew\\_YGLI0Ftig](http://docs.google.com/viewer?a=v&q=cache:MbU6KTQBOaYJ:www.ipex.eu/IPEXL-WEB/dossier/files/download/082dbcc530db806d0130e05125d84143.do+romania+discutie+Passenger+Name+Records&hl=en&gl=uk&pid=bl&srcid=ADGEESh3AHSs5HbzDTY4dve-pKODCGB9pYRojat-gnwqmyP-uAB1z7dEhxPlXpokRFZ6ov_GKWVo1nEXdjViMdhAB5YHNO4CLsr216P_i3VMtVZqtjhVo8kRAu3-Quhxon6BQ_7QyPiO&sig=AHIEtbRgKMU0UFd-m4IaKxew_YGLI0Ftig)

### **3.3.3 National case law**

No relevant cases to report.

### **3.3.4 Statistical data made available in the reference period**

No statistical data on Passenger Name Record are available.

### **3.3.5 Research and studies**

Nothing to report, this topic is yet to become a public or academic issue.

### **3.3.6 Promising ‘good’ practices**

Nothing to report.

### **3.3.7 Key issues in public debate**

The press in Romania picked up on the issue in July 2010 in anticipation of the negotiations between the EU and the US reporting directly on the discussions without expressing an opinion or bringing the discussion in the domestic context. However, the discussion was limited and did not stir much reaction.

### **3.3.8 Information on trends until 2011**

Procedures on Passenger Name Records and data exchange applying the SWIFT banking system are not a legal or policy issue so far but once the proposed Directive on the Use of Passenger Name Record Data for the prevention, detection, investigation and prosecution of terrorist offences and serious crimes comes into force, the draft bill is likely to trigger limited reactions given the limited interest showed so far.

### **3.3.9 Identification of future challenges**

Passenger Name Records and data exchange applying the SWIFT banking system are not topics of debate so far and it is unlikely that they will emerge in the public fora in the near future.

## **3.4 Developments regarding Google and online social media**

### **3.4.1 Policy and institutional developments**

The Authority was notified of Google’s ‘my street’ data collection and use activities.<sup>121</sup>

The NASPDP is expressing concern regarding the use of facial recognition technology (biometric data collection) by Facebook without affirmative opt-in consent and without informing users that any pictures posted on the network are subjected to a biometric facial analysis.<sup>122</sup>

### **3.4.2 Legislative developments**

Nothing to report.

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<sup>121</sup> Letter 22810 from 23.09.2011 of the Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal to FOIA request 20007 from 29.08.2011, on file with FRANET expert.

<sup>122</sup> *Idem*.

### **3.4.3 National case law**

No cases to report.

### **3.4.4 Statistical data made available in the reference period**

Nothing to report.

### **3.4.5 Research and studies**

Survey carried out with EU funding (research project Consent) to gather views of internet users on use of personal information, privacy and online consent.<sup>123</sup> The results have not been published yet.

A survey conducted by Nokia Siemens Networks in Romania<sup>124</sup> found an increase awareness and concern regarding personal data handling. The interviewees trusted phone and internet providers most while government and online communities scored much lower. 65% declared they would be happy to provide personal information in order to gain access to personalised services compared to 46% across Europe. The survey was part of a wider consumer behaviour study conducted by Nokia in 18 countries world wide between october and december 2010. The survey focused on 14 – 64 years old mobile phone users.

A further survey conducted by Facebrands.ro provided data on online community participation in Romania showing that 3.7 million Romanians are on Facebook (54% increase since January 2011) with 90.57% of them willing to disclose their domicile (town/city), a 48% increase in disclosure since January 2011.<sup>125</sup> The company running the survey specialises in monitoring internet use on social networks in order to develop personalised advertisement by using the data harvested. No information regarding methodology or sampling available.

The two surveys highlight an area where more debate and active education of the public is necessary to ensure personal data is not used unscrupulously.

### **3.4.6 Promising ‘good’ practices**

Nothing to report.

### **3.4.7 Key issues in public debate**

Nothing to report.

### **3.4.8 Information on trends until 2011**

Online social media is not yet a major topic of legal research in Romania although the civil society is starting to show an interest as evidenced by discussions on Bogdan Manolea’s blog and APTI’s website.<sup>126</sup>

### **3.4.9 Identification of future challenges**

A likely future challenge will be making the public aware of the privacy risks associated with the use of new technologies as well as finding effective ways of providing information to allow users of new technologies to exercise caution in disclosing personal data.

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<sup>123</sup> Survey available at APTI website (<http://www.apti.ro/>) and Bogdan Manolea’s blog: <http://legi-internet.ro/blogs/index.php/2011/08/>.

<sup>124</sup> <http://www.ziare.com/social/romani/romanii-si-protectia-datelor-personale-suntem-mai-putin-precauti-ca-restul-europenilor-1076143>.

<sup>125</sup> <http://www.clipa.com/a2895-3-7-milioane-de-rom226-ni-utilizeaza-reteaua-sociala-Facebook.aspx>.

<sup>126</sup> <http://legi-internet.ro/blogs/index.php> and <http://www.apti.ro/>.

## 3.5 Specific information

### 3.5.1 Status of data protection authorities and enforcement

When requested to provide information necessary to assess the trends with regard to its status and activities in the period 2009 – 2010, NASPDP referred to its annual activity reports which do not include however complete accurate data regarding the evolution of human resources, of financial resources, the compliance with and development of its mandate or the development of its activities.<sup>127</sup>

The table below reflects the data as identified by FRANET expert when compiling info from the web site of the Authority (<http://www.dataprotection.ro/?page=Rapoarte%20anuale&lang=ro>) and the information provided by NASPDP:<sup>128</sup>

Data protection institutions	2009	2010
Human resources of data protection authority	50	41
Financial resources of data protection authority	RON 4,438,000	RON 3,679,000
Institutional independence of data protection authority	No development	No development
Development of mandate of data protection authority	No development	New laws: introduction of additional monitoring and compliance duties through the provisions of new Law 238/2009, <sup>129</sup> 141/2010 <sup>130</sup> and 271/2010 <sup>131</sup>
Range of sanctions (including compensation payments) in data protection cases (not just cases of data protection authority, but also courts etc.)	Warnings and fines – total quantum of fines: RON 76,100	Warnings and fines – total quantum of fines: RON 65,500
Number of sanctions (including compensation payments) in data protection cases (not just cases of data protection authority, but also courts etc.)	9427 notifications 258 investigations with 82 warnings and 47 fines 54 opinions on legislative proposals	6,813 notifications  569 investigations  31 sanctions of which 8 fines and 23 warnings

<sup>127</sup> Letter 22810 from 23.09.2011 of the Autoritatea Națională de Supraveghere a Prelucrării datelor cu Caracter Personal to FOIA request 20007 from 29.08.2011, on file with FRANET Romania.

<sup>128</sup> *Idem*.

<sup>129</sup> Romania, Internal Affairs Personal Data Processing Act from 10 June 2009 (*Legea nr. 238 din 10 iunie 2009 privind reglementarea prelucrării datelor cu caracter personal de către structurile/unitățile Ministerului Administrației și Internelor în activitățile de prevenire, cercetare și combatere a infracțiunilor, precum și de menținere și asigurare a ordinii publice*).

<sup>130</sup> Romania, Schengen Information System Participation Act from 12 July 2010 (*Legea nr. 141 din 12 iulie 2010 privind înființarea, organizarea și funcționarea Sistemului Informatic Național de Semnalări și participarea României la Sistemul de Informații Schengen*).

<sup>131</sup> Romania, Visa Information System Participation Act 271/2010 from 22 December 2010 (*Legea nr. 271 din 22 decembrie 2010 pentru înființarea, organizarea și funcționarea Sistemului național de informații privind vizele și participarea României la Sistemul de informații privind vizele*).

### 3.6 Important information not covered above

The Government of Romania joined the Open Government Partnership on 6 September 2011 and committed to deliver a country action plan by March 2012. This is an ambitious deadline considering that the action plan must be developed with public consultations which did not start so far and that some of the principles of transparency are queried by the civil society.<sup>132</sup>

<b>Official exact title EN</b>	<b>Official title (original lang.)</b>	<b>Full reference</b>
<b>Employee Registry Government Decision</b>	<i>Decizia Guvernului pentru registrul general al angajaților</i>	Romania, Employee Registry Government Decision (Decizia Guvernului nr. 500 din 18 mai 2001 pentru registrul general al angajaților), Monitorul Oficial nr. 372 / 27 May 2011
<b>Personal Data Protection Act</b>	<i>Legea pentru protecția persoanelor cu privire la prelucrarea datelor cu caracter personal și libera circulație a acestor date</i>	Romania, Personal Data Protection Act 677/2001 (Legea nr. 677 din 21 noiembrie 2001 pentru protecția persoanelor cu privire la prelucrarea datelor cu caracter personal și libera circulație a acestor date), Monitorul Oficial nr. 790 / 12 December 2001
<b>Data Retention Law</b>	<i>Legea privind reținerea datelor generate sau prelucrate de furnizorii de servicii de comunicații electronice destinate publicului sau de rețele publice de comunicații, precum și pentru modificarea Legii nr. 506/2004 privind prelucrarea datelor cu caracter personal și protecția vieții private în sectorul comunicațiilor electronice</i>	Romania, Data Retention Law no. 298/2008 (Legea nr. 298 din 18 noiembrie 2008 privind reținerea datelor generate sau prelucrate de furnizorii de servicii de comunicații electronice destinate publicului sau de rețele publice de comunicații, precum și pentru modificarea Legii nr. 506/2004 privind prelucrarea datelor cu caracter personal și protecția vieții private în sectorul comunicațiilor electronice), Monitorul Oficial nr. 780 / 21 November 2008
<b>Health Reform Act</b>	<i>Legea nr. 95 din 14 april 2006 privind reforma în domeniul sănătății</i>	Romania, Health Reform Act no. 95/2006 (Legea nr. 95 din 14 april 2006 privind reforma în domeniul sănătății, Monitorul Oficial nr. 391 / 5 May 2006 last modified by OUG 32/2011, 25 March 2011
<b>Judicial Genetic</b>	<i>Hotărârea Guvernului pentru</i>	Romania, Government Decision nr. 25/2011

<sup>132</sup> Bogdan Manolea blog: <http://legi-internet.ro/blogs/index.php/2011/10/05/citeva-noutati-septembrie-octombrie-2011>.

<b>Data Government Decision</b>	<i>aprobarea Normelor metodologice de aplicare a Legii nr. 76/2008 privind organizarea și funcționarea Sistemului Național de Date Genetice Judiciare și pentru crearea cadrului legal intern necesar aplicării Deciziei 2008/615/JAI a Consiliului din 23 iunie 2008 privind intensificarea cooperării transfrontaliere, în special în domeniul combaterii terorismului și a criminalității transfrontaliere, în ceea ce privește transferul automatizat al profilelor genetice</i>	<i>(Hotărârea Guvernului nr. 25 din 5 ianuarie 2011 pentru aprobarea Normelor metodologice de aplicare a Legii nr. 76/2008 privind organizarea și funcționarea Sistemului Național de Date Genetice Judiciare și pentru crearea cadrului legal intern necesar aplicării Deciziei 2008/615/JAI a Consiliului din 23 iunie 2008 privind intensificarea cooperării transfrontaliere, în special în domeniul combaterii terorismului și a criminalității transfrontaliere, în ceea ce privește transferul automatizat al profilelor genetice), Monitorul Oficial nr. 64 / 25 January 2011</i>
<b>Persons with Disabilities Registry Order</b>	<i>Ordin pentru constituirea Registrului electronic privind persoanele cu handicap</i>	Romania, Order no. 1106/2011 of the Work, Family and Social Assistance Ministry ( <i>Ordinul 1106/2011 pentru constituirea Registrului electronic privind persoanele cu handicap</i> ), Monitorul Oficial nr. 184 / 16 March 2011
<b>Residence and Identity Documents Emergency Ordinance</b>	<i>Ordonanța de urgență a Guvernului privind evidența, domiciliul, reședința și actele de identitate ale cetățenilor români și pentru completarea Ordonanței de urgență a Guvernului nr.102/2005 privind libera circulație pe teritoriul României a cetățenilor statelor membre ale Uniunii Europene și Spațiului Economic European</i>	Romania, Residence and Identity Documents Emergency Ordinance ( <i>Ordonanța de urgență a Guvernului nr.97/2005 privind evidența, domiciliul, reședința și actele de identitate ale cetățenilor români și pentru completarea Ordonanței de urgență a Guvernului nr.102/2005 privind libera circulație pe teritoriul României a cetățenilor statelor membre ale Uniunii Europene și Spațiului Economic European</i> ), Monitorul Oficial 719 / 12 October 2011 last modified by Law 71/2011, 3 June 2011
<b>Internal Affairs Personal Data Processing Act</b>	<i>Legea privind reglementarea prelucrării datelor cu caracter personal de către structurile/unitățile Ministerului</i>	Romania, Internal Affairs Personal Data Processing Act nr. 238/2009 ( <i>Legea nr. 238 din 10 iunie 2009 privind reglementarea prelucrării datelor cu caracter personal de</i>

	<i>Administrației și Internelor în activitățile de prevenire, cercetare și combatere a infracțiunilor, precum și de menținere și asigurare a ordinii publice</i>	<i>către structurile/unitățile Ministerului Administrației și Internelor în activitățile de prevenire, cercetare și combatere a infracțiunilor, precum și de menținere și asigurare a ordinii publice), Monitorul Oficial nr. 405 / 15 June 2009.</i>
<b>Electronic Communication Personal Data Processing Act</b>	<i>Legea privind prelucrarea datelor cu caracter personal și protecția vieții private în sectorul comunicațiilor electronice</i>	Romania, Electronic Communication Personal Data Processing Act 506/2004 ( <i>Legea nr. 506 din 17 noiembrie 2004 privind prelucrarea datelor cu caracter personal și protecția vieții private în sectorul comunicațiilor electronice</i> ), Monitorul Oficial nr. 798 / 23 November 2009 last amended by  Decision nr. 1.258 / 8 October 2009
<b>Schengen Information System Participation Act</b>	<i>Legea privind înființarea, organizarea și funcționarea Sistemului Informatic Național de Semnalări și participarea României la Sistemul de Informații Schengen</i>	Romania, Schengen Information System Participation Act nr. 141/2010 ( <i>Legea nr. 141 din 12 iulie 2010 privind înființarea, organizarea și funcționarea Sistemului Informatic Național de Semnalări și participarea României la Sistemul de Informații Schengen</i> ), Monitorul Oficial nr. 498 / 19 July 2010
<b>Visa Information System Participation Act</b>	<i>Legea pentru înființarea, organizarea și funcționarea Sistemului național de informații privind vizele și participarea României la Sistemul de informații privind vizele</i>	Romania, Visa Information System Participation Act 271/2010 ( <i>Legea nr. 271 din 22 decembrie 2010 pentru înființarea, organizarea și funcționarea Sistemului național de informații privind vizele și participarea României la Sistemul de informații privind vizele</i> ), Monitorul Oficial nr. 36 / 14 January 2011.



## **4 THE RIGHTS OF THE CHILD AND PROTECTION OF CHILDREN**

### **4.1 Physical, psychological and sexual abuse, in particular in institutional settings**

#### **4.1.1 Policy and institutional developments**

The Inter-sector Local Team (ILT) for preventing and fighting labour exploitation of children which is coordinated by the General Social Assistance and Child Protection Directorate *Direcția Generală de Asistență Socială și Protecția Copilului* (GSACPD), according to the provisions of Government Decision no. 867/2009 on Prohibiting Hazardous Work for Children<sup>133</sup> may have duties and prerogatives also in the areas of violence against children and domestic violence. ILT does not overlap with the multi-disciplinary and inter-institutional assessment and/or intervention team for violence against children and domestic violence cases, and has a consultative role for case managers. The ILT's composition is established by a decision of the county council or of the local council, for Bucharest City districts and its members are representatives of several education, child protection, health, and law enforcement institutions at a local level.

#### **4.1.2 Legislative developments**

The Government Decision no. 49 of 2011 established a joint methodological framework for the authorities in charge of child and family protection against violence, for service providers in this area, and for professionals working directly with children, their families and alleged perpetrators.<sup>134</sup> Each GSACPD has the obligation to initiate the signing of partnership conventions with other public institutions and accredited private bodies (APBs) of relevance in the area in the county/Bucharest district, for the implementation, detailing and dissemination of the legal provisions. The special attention that needs to be paid to children with disabilities and to those under special protection is emphasized in the Methodology under Chapter III.1.1: "Risk Factors." The main forms of violence against children listed are: abuse, neglect, child exploitation and trafficking, in all the environments to which a child relates- family, education, health care, and protection institutions, criminal investigation and rehabilitation/detention establishments, the internet, the media, working places, sports environments, community etc. The provisions apply to all Romanian children, including to migrant Romanian children who are victims of violence on the territory of other states, as well as to foreign children, with or without a refugee status, located in the territory of Romania, according to the provisions of Law 272 from 2004.

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<sup>133</sup> Romania/ Government Decision no. 867 on Prohibiting Hazardous Work for Children, (Hotărârea Guvernului pentru interzicerea muncii minorilor), 14 August 2009

<sup>134</sup> Romania/Government Decision no. 49 on January 19, 2011 approving the Framework Methodology for the Prevention and Intervention in the Multi-disciplinary Team or in the Network in Situations of Violence against Children and of Domestic Violence, and the Methodology for Multi-disciplinary and Inter-institutional Interventions in Cases of Exploited Children and of Those Who Are in Labor Exploitation Risk Situations, of Children Who Are Victims of Trafficking in Human Beings, as well as of Romanian Migrant Children Who Are Victims of other Violence Forms in the Territory of Other States, (Metodologia cadru privind prevenirea și intervenția în echipa multidisciplinară și în rețea în situațiile de violență asupra copilului și de violență în familie), Official Gazette of Romania no. 117 on 16 February 2011.

Cases of violence against children and of domestic violence are reported with the GSACPD.

#### **4.1.3 National case law**

No cases to report.

#### **4.1.4 Statistical data made available in the reference period**

See Annex 5 with data on child abuse, neglect and exploitation cases as of March 31, 2011, provided by the General Child Protection Directorate.

#### **4.1.5 Research and studies**

No studies published in the reporting period had been identified.

#### **4.1.6 Promising 'good' practices**

Nothing to report.

#### **4.1.7 Key issues in public debate**

Media focused on several issues such as marriages or engagements between Roma children placed in the category of sexual abuse. Another category of debates focused on priests, required to report cases of domestic violence.<sup>135</sup> Public discussions on Romanian Roma children who are forced to beg and are subject to abuse were also triggered by media reporting without following up in terms of policies.<sup>136</sup>

#### **4.1.8 Information on trends until 2011**

Compared to 2009, in 2010, a slight increase in the number of cases of children who were victims to sexual abuse has been recorded, with a percentage increase in the number of girls and a decrease in the number of boys, with an increase in the number of cases in rural areas, while the distribution per ages has remained the same.

Cases of children who were victims of sexual abuse recorded in 2009:<sup>137</sup>

- 572 cases of children who were victims of sexual abuse, out of which 432 girls (75%) and 140 boys (25%), the prevalent age groups being between 10 and 13 years old (33%) and between 14 and 17 years old (40%);
- 377 cases (66%) were recorded in rural areas, and 195 (34%) in urban areas;
- most cases of sexual abuse have been committed in the family (304 cases, representing 53% of the total), 23 cases (4%) have been committed in residential units and at maternal assistants, while 245 cases (43%) have been committed in other environments;
- in 206 cases (36% of total), criminal proceedings have been initiated against perpetrators.

Cases of children who were victims of sexual abuse recorded in 2010:<sup>138</sup>

- 623 cases of children who were victims of sexual abuse, out of which 489 girls (78%) and 134 boys (22%), the prevalent age groups being between 10 and 13 years old (33%) and between 14 and 17 years old (45%);
- 435 cases (70%) were recorded in rural areas, and 188 (30%) in urban areas;

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<sup>135</sup> Cotidianul (2011) *Preotii, obligati sa raporteze cazurile de violenta in familie, 21 October 2010.*

<sup>136</sup> Antena 3 Television, <http://www.antena3.ro/life-show/media/reporterul-bbc-john-sweeney-copiii-romani-romi-sunt-supusi-la-abuzuri-sunt-obligati-sa-cerseasca-140923.html>.

<sup>137</sup> Response no. DGPC/SML/amc/7402/14.09.2011, point 10, a) of the General Child Protection Directorate, on file with national FRANET expert.

<sup>138</sup> Response no. DGPC/SML/amc/7402/14.09.2011, point 10, a) of the General Child Protection Directorate, on file with national FRANET expert, point 10, b).

- most cases of sexual abuse have been committed in the family (367 cases, representing 59% of the total), 18 cases ( below 3%) have been committed in residential units and at maternal assistants, while 238 de cases (38%) have been committed in other environments;
- in 254 cases (41% of the total), criminal proceedings have been initiated against perpetrators.

#### **4.1.9 Identification of future challenges**

A set of specific instruments through which violence against children is monitored is being re-assessed and supplemented at the level of the General Directorate for the Protection of Persons with Handicap (*Direcția Generală pentru Protecția Persoanelor cu Handicap*) (GDPPH), and is to be adopted by an order of the Ministry for Labour, Family and Social Protection (MLFSP) (*Ministerul Muncii, Familiei și Protecției Sociale*)(MMFPS).<sup>139</sup> The correlation between the different instruments is still unclear.

### **4.2 Abuse, including violence, in the context of new technologies**

#### **4.2.1 Policy and institutional developments**

No new policy or institutional developments are to be reported. Romania continued its National programme on information and awareness of the European network Insafe (*Programul național de informare și conștientizare al rețelei europene Insafe*, [www.saferinternet.org](http://www.saferinternet.org)).

#### **4.2.2 Legislative developments**

No major legislative developments to be reported for the period 2010-2011.

#### **4.2.3 National case law**

No major cases to be reported.

#### **4.2.4 Statistical data made available in the reference period**

The General Unit for the Protection of Children (*Direcția generală protecția copilului DGPC*) provided data on physical abuse, emotional abuse, sexual abuse, neglect, work exploitation, sexual exploitation and exploitation for crimes committed. Abuse in the context of new technologies is not mentioned.<sup>140</sup>

#### **4.2.5 Research and studies**

The main study relevant for the abuse of children in the context of new technologies is the 2011 EU Kids Online.<sup>141</sup> This survey aims to enhance knowledge of both experiences and practices of children and parents in Europe with regard to use of the internet and new online technologies, in order to inform the promotion of a safer online environment for children. It had a rigorous methodology: it consisted of a face-to-face survey in homes with 9-16 year old internet users from 25 countries, including Romania. The purpose was to provide a rigorous evidence base to support stakeholders in their efforts to maximise online opportunities while minimising the risk of harm associated with internet use.

<sup>139</sup> Response no. DGPC/SML/amc/7402/14.09.2011, point 10, a) of the General Child Protection Directorate, on file with national FRANET expert, point 2.

<sup>140</sup> Romania, General Unit for the Protection of Children (*Direcția generală protecția copilului*) (2011).

<sup>141</sup> Sonia Livingstone, Leslie Haddon, Anke Gorzig, Kjartan Olafsson, EU Kids Online, September 2011, [www.eukidsonline.net](http://www.eukidsonline.net).

According to this survey, Romania was found to be “higher use, higher risk” country. According to this survey, “a country’s socio-economic stratification, regulatory framework, technological infrastructure and educational system all shape children’s online risks.”<sup>142</sup> Romania has the second highest level of online bullying in Europe. This is probably also connected to Romania having the second highest level of overall bullying in Europe.<sup>143</sup>

#### **4.2.6 Promising ‘good’ practices**

The General Inspectorate of Romanian Police (GIRP) (*Inspectoratul General al Poliției Române* (GPR) together with Microsoft Romania launched a campaign “The safety of the children depends on you.” The main aim of the campaign was that the Romanian Police implements in all its structures a Microsoft application, CETS: to collect data and report cases related to child pornography on internet. Another element of this project is to create a web page for the Unit to Fight against Information Criminality (*Direcția de Combatere a Criminalității Informatică*). According to the authorities, “Romania is the only country in South-East Europe to implement this project.”<sup>144</sup>

#### **4.2.7 Key issues in public debate**

Cases of videos or photos of teenagers having intimate relations which occurred in schools have been uploaded on the internet caused public debates and scandals. The main aspect debated concerned the responsibility of the school authorities.

#### **4.2.8 Information on trends until 2011**

The awareness of the existence of violence in the context of new technologies is increasing. There is more interest from the authorities to fight this phenomenon. Reports on such types of violence are also increasing in number. The Insafe programme and especially the Hotline Safernet.ro have a major role in this trend. In February 2010, the Romanian Centre for Disappeared and Sexually Exploited Children –FOCUS (*Centrul Român pentru Copii Disparați și Exploatați Sexual-FOCUS*) launched the Hotline Safernet.ro. This Hotline is intended to collect information on illegal or harmful contents which can be found online, such as: pornographic texts/videos, solicitation of children for sexual purposes through information and communication technologies – also known as “child grooming,” texts/videos inciting to violence, xenophobia, discrimination, texts/videos encouraging children to act dangerously or to imitate dangerous behaviour.<sup>145</sup>

In the first six months of 2011, the Hotline service received 210 reports on illegal or harmful practices for children. This shows an increase of 62% in reporting in comparison to the same year of last year. In 39 cases, measures were taken. The number of reports on sexually abused children has decreased: from 13 last year to ten this year. The number of images with abused children on web pages in Romania has doubled (six images in 2011 in comparison to three in 2010).<sup>146</sup>

#### **4.2.9 Identification of future challenges**

The main challenge for the future is the lack of a central authority specialized in this particular aspect. There is the problem of lack of coordination and difficult communication in due time between different units and services.

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<sup>142</sup> *Idem*, p.3.

<sup>143</sup> *Idem*, p. 24.

<sup>144</sup> Response no. DGPC/SML/amc/7402/14.09.2011, point 10, a) of the General Child Protection Directorate, on file with national FRANET expert.

<sup>145</sup> See: [www.safernet.ro](http://www.safernet.ro). Insafe Annual Report, Promoting safe and responsible use of online technology (2011), [www.saferinternet.org](http://www.saferinternet.org)

<sup>146</sup> *Ibid.*

Another challenge is of financial nature. In the context of economic crises, with severe cuts already decided by the Romanian government, the risk is that the budget for activities is insufficient and competent human resources leave the system.

## **4.3 Sexual exploitation and child pornography**

### **4.3.1 Policy and institutional developments**

In conformity with Government Decision no. 728/2010,<sup>147</sup> the General Unit Child Protection GUCP (*Direcția Generală Protecția Copilului*, DGPC) has assumed all competencies that were previously under the responsibility of the National Authority for Family Protection and Child Rights (*Autoritatea Națională pentru Protecția Familiei și a Drepturilor Copilului*). It drafts programmes and policies to protect and promote children's rights. One important area is the work against sexual abuse and exploitation, and child pornography.

### **4.3.2 Legislative developments**

The Government Decision No. 49/2011 approves the Methodology for multidisciplinary and inter-institutional intervention on exploited children and children in situations of risk of being exploited by work, children victims of traffic of persons, and migrant Romanian children victims of other types of violence on the territory of other states.<sup>148</sup> The aim of this document is to set a common methodology for the authorities and their personnel working with children victims of violence. The situation of sexual abuse is considered as violence against children.

### **4.3.3 National case law**

No cases to be reported for the period 2010-2011.

### **4.3.4 Statistical data made available in the reference period**

In 2010, 59 cases of sexual exploitation were reported in 2010.<sup>149</sup> Out of them, 58 were girls (98%) and there was also one boy. Most of the children were 14-17 years old (85%). 37 cases were reported in the urban area (63%) and 22 in the rural area (37%). 23 cases occurred in families and 35 cases (59%) occurred in other environments. One perpetrator was military and there were no perpetrators from educational institutions or other public institutions. In 33 cases (56%), the authorities started criminal investigations against the perpetrators.

As for 2011, 11 cases of sexual exploitation were reported. Girls were sexually exploited in all 11 cases. They were all between 14-17 years old. Six cases were reported in urban areas and five in the rural areas. Seven cases occurred in families and four cases occurred in other

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<sup>147</sup> Romania/ Government Decision no. 728/2010 on 21 July 2010, (*HOTARARE Nr. 728 din 21 iulie 2010 pentru modificarea si completarea Hotararii Guvernului nr. 11/2009 privind organizarea si functionarea Ministerului Muncii, Familiei si Protectiei Sociale, emis de Guvernul Romaniei*), Official Gazette no. 512 from 22 July 2010.

<sup>148</sup> Romania/Government Decision no. 49 on January 19, 2011 approving the Framework Methodology for the Prevention and Intervention in the Multi-disciplinary Team or in the Network in Situations of Violence against Children and of Domestic Violence, and the Methodology for Multi-disciplinary and Inter-institutional Interventions in Cases of Exploited Children and of Those Who Are in Labor Exploitation Risk Situations, of Children Who Are Victims of Trafficking in Human Beings, as well as of Romanian Migrant Children Who Are Victims of other Violence Forms in the Territory of Other States, (*Metodologia cadru privind prevenirea si interventia in echipa multidisciplinara si in retea in situatiile de violenta asupra copilului si de violenta in familie*), Official Gazette of Romania no. 117 on February 16, 2011.

<sup>149</sup> Response no. DGPC/SML/amc/7402/14.09.2011, point 10, a) of the General Child Protection Directorate, on file with national FRANET expert.

environments. In three cases the authorities started criminal investigations against the perpetrators.<sup>150</sup>

#### **4.3.5 Research and studies**

The European Commission published a feasibility study which includes a large section on sexual exploitation of children, including in Romania.<sup>151</sup>

#### **4.3.6 Promising ‘good’ practices**

Nothing to report.

#### **4.3.7 Key issues in public debate**

Nothing to report.

#### **4.3.8 Information on trends until 2011**

The authorities seem more determined to dismantle criminal networks involved in sexual exploitation of children and to punish the perpetrators as proved by criminal investigations which have involved even well known persons from media or from the political area.

#### **4.3.9 Identification of future challenges**

Authorities still have to tackle the phenomena of sexual exploitation and child pornography in a more efficient way, by taking into account: differences between rural and urban areas (see the statistics above), and between the environments where the cases occurred.

Another challenge is of financial nature. Because of severe cuts decided by the Romanian government, the budget for activities of public institutions is also under pressure and there is a high risk of brain drain of competent human resources.

### **4.4 Implementation of the European Commission Action Plan on Unaccompanied Minors**

#### **4.4.1 Policy and institutional developments**

Following requests of information, the relevant public authorities, namely ROI and the Ministry for Labour, Family and Social Protection (MLFSP) (*Ministerul Muncii, Familiei și Protecției Sociale*)(MMFPS) have stated that there are no developments regarding the implementation of the European Commission Action Plan on Unaccompanied Minors during the reference period.<sup>152</sup>

#### **4.4.2 Legislative developments**

Nothing to report.

#### **4.4.3 National case law**

Nothing to report.

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<sup>150</sup> *Idem*.

<sup>151</sup> European Commission, Feasibility study to assess the possibilities, opportunities and needs to standardise national legislation on violence against women, violence against children and sexual orientation violence, DG JLS; JLS/2009/D4/018 (in English). Available: [http://ec.europa.eu/justice/funding/daphne3/daphne\\_feasibility\\_study\\_2010\\_annexes\\_en.pdf](http://ec.europa.eu/justice/funding/daphne3/daphne_feasibility_study_2010_annexes_en.pdf).

<sup>152</sup> Letter no. 1727914/15.09.2011 of the Romanian Office for Immigration and Letter no. DGPC/SML/amc/7402/14.09.2011 of the Romanian Ministry for Labor, Family and Social Protection, on file with the FRANET national expert.

#### **4.4.4 Statistical data made available in the reference period**

Nothing to report.

#### **4.4.5 Research and studies**

Nothing to report.

#### **4.4.6 Promising ‘good’ practices**

Nothing to report.

#### **4.4.7 Key issues in public debate**

Implementation of Action Plan on Unaccompanied Minors is not an issue of public debate.

#### **4.4.8 Information on trends till 2011**

Legislation adopted prior to 2011<sup>153</sup> offered some safeguards to unaccompanied children, in line with the current recommendations and objectives of the European Commission Action Plan on Unaccompanied Minors.

For instance, unaccompanied children under 16 who are irregular immigrants and qualify as unaccompanied minors will, regardless of whether they have applied for asylum or not, be escorted to a child welfare centre.<sup>154</sup> They will be accommodated in such centres until granted refugee status, temporary rights of stay or returned to their families. During such time, they have the right to education, will benefit from counselling and assistance from child welfare staff.<sup>155</sup> Such services include, for instance legal assistance, psychological counselling, healthcare and education, although the extent to which they actually benefit from these services has not yet been assessed.<sup>156</sup>

Unaccompanied minors over 16 years old who have applied for asylum may be accommodated in Accommodation Centres managed by ROI. No information was available on the types of services offered to these children. Article 99 of the Aliens Act provides that minors detained in special facilities have free access to compulsory education, yet, there are no clear mechanisms to explain how this is ensured.

The above-cited provisions have been introduced up until 2008. Since that date and until 2011, no further legal or public policy measures have been taken for the protection of the rights of unaccompanied minors.

#### **4.4.9 Identification of future challenges**

Unaccompanied children are not specifically mentioned in any public policy document for 2010-2014 such as the National Strategy on Immigration for 2011-2014<sup>157</sup> and the Action Plan for the Implementation of the National Strategy on Immigration in 2011.<sup>158</sup>

The recently adopted methodology of intervention in the situation of children victims of trafficking and Romanian migrant children<sup>159</sup> leaves out unaccompanied children of other nationalities that enter Romania.

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<sup>153</sup> Government Ordinance no. 194/2002 on the statute of Foreigners, 5 June 2008 ; Law no 272/2004 concerning the protection of the rights of the child, 23 June 2004.

<sup>154</sup> Romania/Law on Foreigners (*Ordonanta de Guvern nr. 194/2002 privind regimul strainilor*), 5 June 2008.

<sup>155</sup> *Ibid*, Article 131 (1).

<sup>156</sup> Romania/Ministry for Labour, Social Solidarity and Family (*Ministerul Muncii, Solidarității Sociale și Familiei*), Order no. 21/2004 to approve the minimal compulsory standards concerning residential services for child protection, 26 February 2004.

<sup>157</sup> Government Decision 498/2011, 3 June 2011.

<sup>158</sup> Government Decision 604/2011, 14 July 2011.

<sup>159</sup> Government Decision no. 49/2011, 19 January 2011.



## 4.5 Child trafficking for sexual or economic exploitation

### 4.5.1 Policy and institutional developments

In order to diminish the budget deficit, the Romanian Government restructured the main implementing agencies of the anti-trafficking activities. Specifically, in 2009, [The National Agency against Trafficking in Persons] (NATP) (*Agenția Națională împotriva Traficului de Persoane* ANITP), was reorganized and transferred under the subordination of General Inspectorate of Romanian Police<sup>160</sup> and later, in May 2011, it was transferred under the coordination of MAIA.<sup>161</sup> Additionally, in 2010, the National Agency for Protection of Child's Rights (NAPCR) (*Agenția Națională privind Protecția Drepturilor Copilului* ANPDC) became a department within the Ministry for Labor, Family and Social Welfare [*Ministerul Muncii, Familiei și Protecției Sociale*] as the General Directorate for the Protection of the Child (GDPC) (*Direcția Generală Protecția Copilului* DGPC),<sup>162</sup> henceforth losing its decision-making powers.

NATP has the responsibility to draft the National Strategy against Trafficking in Persons<sup>163</sup> and the National Action Plan.<sup>164</sup> In 2010, both the National Strategy and the National Action Plan expired. As on October 2011, NATP has not conducted any assessment to measure the real impact of the implemented anti-trafficking policies. Nevertheless, NATP reported that presently the Working Inter-ministerial Group has drafted the National Strategy against Trafficking in Persons for 2012-2015.<sup>165</sup> However, the finalisation of the enactment of the National Strategy has been postponed due to pending review for ensuring compliance with EC Directive 2011/36/EU and the new EU Strategy on the fight against trafficking in human beings that will be adopted in 2012.<sup>166</sup> Nevertheless, the existing draft of the National Strategy is not publicly available for consultation.

### 4.5.2 Legislative developments

Law 678/2001 on prevention and combating trafficking in persons was amended twice between 2010 and 2011. Firstly, by means of Law 230/2010<sup>167</sup> there were introduced new

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<sup>160</sup> Romania/ Ordonanța de Urgență 20/2009 pentru modificarea art.13 (2) și (3) din Ordonanța de urgență a Guvernului nr. 30/2007 privind organizarea și funcționarea Ministerului Administrației și Internelor și pentru reorganizarea unor unități din subordinea Ministerului Administrației și Internelor (*Emergency Ordinance 20/2009 amending article 13 (2) and (3) of the Emergency Ordinance 30/2007 on organizing and functioning of Ministry of Administration and Interior Reform and reforming several agencies under its subordination*), 12 March 2009.

<sup>161</sup> Romania/ Hotărârea 460/2011 privind organizarea și funcționarea Agenției Naționale împotriva Traficului de Persoane, (*Decision 460/2011 on organisation and functioning of National agency against Trafficking in Persons*), 12 May 2011.

<sup>162</sup> Romania/ Ordonanța de Urgență 68/2010 privind unele măsuri de reorganizare a Ministerului Muncii, Familiei și Protecției Sociale și a activității instituțiilor aflate în subordinea, în coordonarea sau sub autoritatea sa, (*Emergency Ordinance 68/2010 on some measures of reorganization of Ministry of Labour, Family and Social Protection and of activity of institutions under its subordination, coordination or authority*), 30 June 2010.

<sup>163</sup> Romania/Decision 1654/2006 to approve the National strategy against trafficking in persons for the period 2006-2010, (*Hotărârea 1654/2006 privind aprobarea Strategiei naționale împotriva traficului de persoane pentru perioada 2006-2010*), 22 November 2006

<sup>164</sup> Romania/ Government Decision 982/2008 to approve the National Action Plan 2008-2010 for the implementation of the National Strategy against Trafficking in Persons 2006-2010, (*Hotărârea 982/2008 privind aprobarea Planului național de acțiune 2008-2010 în vederea implementării Strategiei naționale împotriva traficului de persoane pentru perioada 2006-2010*), 19 September 2008.

<sup>165</sup> Response 2851386/ANITP/MȘ/11.10.2011 of the National Agency against Trafficking in Persons, on file with the NFP.

<sup>166</sup> *Idem*.

<sup>167</sup> Romania, Law 230/2010 to modify and complete Law 678/2001 on prevention and combating trafficking in persons (*Legea 230/2010 pentru modificarea și completarea Legii 678/2001 privind prevenirea și combaterea traficului de persoane*), 6 December 2010.

forms of exploitation, such as begging and several additional responsibilities for the General Inspectorate of Romanian Police (GIRP) (*Inspectoratul General al Poliției Române*), such as to develop documentaries and awareness campaigns, to construct a national data base which will contain correlated data on victims of trafficking, traffickers and legal persons involved in trafficking collected from several institutions and NGOs, and publish every semester the statistical data on trafficking, to draft periodical studies on causes and conditions of trafficking phenomenon, provide to victims psychological counselling and assistance in their social reintegration. By means of the new amendment GIRP was additionally entrusted with monitoring of the services provided to victims and operation of the National Victim Identification and Referral Mechanism (*Mecanismul National de Identificare si Referire a Victimelor*).<sup>168</sup>

Further, the amended law transferred from GIRP to local authorities the responsibility of approval of the regulation of organising and functioning and the organisational structure of centres and protected homes for victims. The law goes even further and obliges Romanian diplomatic missions and consulates to publish the anti-trafficking legislation of the respective country and the contacts of the Romanian national agency and its regional centres.<sup>169</sup>

Another amendment refers to the mandatory hearing in court of minors' under the age of 14 in the presence of at least one parent or legal representative, and psychologist or a representative of General Directorate of Social Assistance or Child Protection.

In 2011, the Law 678/2001 on prevention and combating trafficking in persons was subsequently amended by the Ordinance 41/2011,<sup>170</sup> mainly, due to transfer of National Agency against Trafficking in Persons from the subordination of General Inspectorate of Romanian Police (GIRP) under the coordination of MAIA. Henceforth, the anti-trafficking tasks assigned to GIRP through Law 230/2010 were transferred to NATP acting under MAIA.

As amended by Law 286/2009, in Articles 209 – 217, the new Criminal Code<sup>171</sup> criminalizes the offence of trafficking and exploitation of vulnerable people, including children, and other offences in connection with trafficking. The new Criminal Code introduces trafficking offences against children, such as exploiting children or persons with disabilities through forced begging and using a minor for begging sanctioned with a criminal fine or with imprisonment.<sup>172</sup>

In 2011, the Romanian Government enacted the Framework Methodology to prevent and intervene in multi-tasking team and through networking on child and family violence cases and Methodology on multi-tasking and inter-institutional interventions regarding exploited children at the risk for labour exploitation, children victims of human trafficking, Romanian migrant children victims of other forms of violence in the territory of other countries.<sup>173</sup> The

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<sup>168</sup> *Ibid.*

<sup>169</sup> *Ibid.*

<sup>170</sup> Romania, Emergency Ordinance 41/2011 for amending Law 678/2001 on prevention and combating trafficking in persons, (*Ordonanța de Urgență 41/2011 pentru modificarea Legii 678/2001 privind prevenirea și combaterea traficului de persoane*), 3 May 2011.

<sup>171</sup> Romania/New Criminal Code (*Legea nr.286/2009 privind Codul Penal*) of 24 July 2009. Draft law for the entering into force of the Criminal Code (*PL-x nr. 100/2011, Proiect de Lege pentru punerea în aplicare a Codului penal și pentru modificarea și completarea unor acte normative care cuprind dispoziții penale*).

<sup>172</sup> Article 212 and 213 of New Criminal Code

<sup>173</sup> Romania/Government Decision 49/2011 regarding the approval of Framework Methodology on prevention and intervention within multidisciplinary team and network in situations of child and family violence and of the Methodology of multidisciplinary and inter-institutional intervention for exploited and at risk children for labour exploitation, children victims of trafficking in persons and Romanian emigrant children victims of other forms of violence on territory of other states (*Hotărâre de guvern 49/2011 pentru aprobarea Metodologiei cadru privind prevenirea și intervenția în echipă multidisciplinară și în rețea în situațiile de violență asupra copilului și violență în familie și a Metodologiei de intervenție multidisciplinara și interinstituțională privind copiii exploatați și aflați în*

main aim of the norm is to establish common guidelines for child protection authorities and service providers to offer support and assistance to children victims of violence or of human trafficking and their families and also prosecute the perpetrators.

#### 4.5.3 National case law

No cases to be reported.

#### 4.5.4 Statistical data made available in the reference period

The data concerning child trafficking is collected by several institutions, such as National Agency against Trafficking in Persons (NATP),<sup>174</sup> the General Directorate for Child Protection (GDPC) and the General Prosecutor's Office (GPO) (*Parchetul de pe lângă Înalta Curte de Casație și Justiție* (PICCJ): However, there is no synergy and harmonization between the institutions which gather data on victims and prosecuted traffickers.

The NATP reported that in 2009, 176 children victims of trafficking were identified representing 22.5% of the total number of victims (780 cases), of which 82% were girls forced into sexual exploitation and in child and internet pornography. The data provided shows that 98 children were victims of internal trafficking whereas 78 were trafficked in other countries. In the following year NATP identified 307 children as victims of trafficking, representing 27% of the total number of victims of trafficking in persons.<sup>175</sup> The data provided by NATP shows that 88% of the total number of children identified as victims of trafficking are girls who are trafficked mainly for sexual exploitation (78%). In 2010, NATP for the first time identified 14 boys as victims of sexual exploitation. Children are mainly coerced in sexual exploitation (240 cases), child labour (17 cases), begging (19 cases) and theft (3 cases). The trend in 2010 in child trafficking occurring internally (240 cases).<sup>176</sup> The data provided does not include information on number/percentage of children reintegrated in their families, of traffickers prosecuted/sentenced or other relevant indicators on traffickers that will facilitate to provide a comprehensive view on the child trafficking phenomenon.

According to General Directorate for Child Protection (GDPC) in 2009, 157 children were identified as victims of trafficking while in 2010 there were 179 trafficked children.

2009	Sex		Age		Place of residence		Family involvement		Prosecution
Type	Male	Female	7-13	14-17	Town	City	Yes	No	
Internal trafficking	68	29	91	32	55%	45%	31	105	36
External trafficking	39	21			58%	42%	21		9

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*situatii de risc de exploatare prin munca, copiii victime ale traficului de persoane, precum și copiii romani migrant victime ale altor forme de violent pe teritoriul altor state).*

<sup>174</sup> National Agency against Trafficking in Persons through National Integrated System for Monitoring and Evaluation of Human Trafficking Victims (Sistemul Național Integrat de Monitorizare și Evaluare a Victimelor Traficului de Persoane) collects data on victims of trafficking (adults and children).

<sup>175</sup> Response 2851386/ANITP/MȘ/11.10.2011 of the National Agency against Trafficking in Persons, on file with the FRANET expert.

<sup>176</sup> *Idem.*

<b>g</b>								
<b>Total</b>	<b>157</b>							<b>47 (29%)</b>

<b>2010</b>	<b>Sex</b>		<b>Age</b>		<b>Place of residence</b>		<b>Family involvement</b>		<b>Prosecution</b>
<b>Type</b>	<b>Male</b>	<b>Female</b>	<b>7-13</b>	<b>14-17</b>	<b>Town</b>	<b>City</b>	<b>Yes</b>	<b>No</b>	
<b>Internal trafficking</b>	95	54	39	109	31	109	47	132	49
<b>External trafficking</b>	0	10	0	10					0
<b>Total</b>	<b>189</b>								<b>49 (27%)</b>

Source: GDPC, Statistics for 2009 and 2010<sup>177</sup>

<b>Forms of child trafficking</b>				
<b>Year</b>	<b>Sexual Exploitation</b>	<b>Child Labor</b>	<b>Other forms</b>	<b>Total</b>
<b>2009</b>	47%	36%	19%	157
<b>2010</b>	54%	43%	3%	179

Source: GDPC, Statistics for 2009 and 2010<sup>178</sup>

The General Prosecutor's Office (GPO)(*Parchetul de pe lângă Inalta Curte de Casatie*) did not provide data on number of cases on child trafficking brought to court. The data available on the GPO website reveals that according to GPO in 2009, 148 children were victims of trafficking whereas in 2010 the number increased to 283 children.<sup>179</sup>

It was identified that a considerable amount of discrepancy exists between the number of victims of child labour reported by National Agency against Trafficking in Persons, GDPC and other sources, such as US Department of State, which stated that in 2009 in Romania there were 964 confirmed cases of child labour.<sup>180</sup> Further, the same report reveals that "62.7 % of trafficked children (604) are from urban areas, 360 (37.3 %) from rural areas, 434 of the victims were girls (45%) and 530 were boys (54 %); 749 victims (77.7 %) were under 14 years of age and 215 (22.3 %) were between 15 and 18. The confirmed cases involved bonded labour (65 cases), begging (642 cases), victims of domestic trafficking (42 cases), external trafficking (29 cases), working without a labour contract (44 cases), forced

<sup>177</sup> Response 7402/14.09.2011 of the Ministry for Labour, Family and Social Welfare, on file with the FRANET expert.

<sup>178</sup> *Idem*.

<sup>179</sup> Data available on GPO website, at [http://www.mpublic.ro/presa/2011/raport\\_si\\_anexe\\_2010.pdf](http://www.mpublic.ro/presa/2011/raport_si_anexe_2010.pdf).

<sup>180</sup> US Department of State, (2010), *Human Rights Report- Romania*. Report available at: <http://www.state.gov/documents/organization/160210.pdf>.

labour (45 cases), prostitution (23 cases), working in the street (41 cases), and other illicit activities (22 cases).<sup>181</sup>

#### 4.5.5 Research and studies

A Research and Public Information Unit was established in November 2009 within The Monitoring Evaluation and Coordination of Victims of Human Trafficking of the NATP. Since its establishment the unit conducted only one study: Child Trafficking in Romania- Study on Recruitment Process -*Traficul de copii în România – Studiu asupra procesului de recrutare*.<sup>182</sup> The study was produced within PHARE Program “Improving the institutional capacity of the agencies involved in the prevention of trafficking in human beings in line with the current European standards and best practices” and provides guidelines for identification of ways of recruitment of children in sex and labour trafficking.

In 2011, the NGO European Roma Rights Centre published the findings of research *Breaking the Silence: Trafficking in Romani Communities* conducted in 2010 in several European Members States, including Romania. The main aim of the research was to identify the factors and dimension of trafficking of Romani persons, including Romani children by collecting data on the proportion of victims.<sup>183</sup> The findings concerning Romania illustrated that the data source institutions do not use ethnicity indicator for data collection on child victims of trafficking and neither on alleged traffickers.

#### 4.5.6 Promising ‘good’ practices

In March 2011, NATP finalized the implementation of the campaign “Use the internet carefully! Child trafficking has hidden faces!” The campaign aimed to raise the awareness of children and parents on the risk of usage of internet as method of recruitment by traffickers. This initiative was well implemented by Save the Children under the framework of project, “Raising awareness and empowerment against child trafficking.”<sup>184</sup>

In June 2011, NATP announced that more than 15,000 people signed the petition addressed to policy makers to develop more effective legal framework and policy instruments for improving the fight against sex trafficking of children and young people.<sup>185</sup> The petition is part of a global campaign Stop Sex Trafficking of Children and Young People, initiated in 2009 by The Body Shop and ECPAT (End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes) gathered globally more than six million signatures.

#### 4.5.7 Key issues in public debate

During 2010 national and international media reported about the joint police operation, “Operation Golf” between Romania and United Kingdom which tried to dismantle an alleged child trafficking ring from Țândăreni city. “Operation Golf” identified that more than 168 Romani children were trafficked for begging in several cities of UK and seventeen adults

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<sup>181</sup> *Ibid.*

<sup>182</sup> National Agency against Trafficking in Persons (NATP) (2009), *Child Trafficking in Romania- Study on Recruitment Process* (Traficul de copii în România - Studiu asupra procesului de recrutare), (2009). The study is available at: <http://anitp.mai.gov.ro/ro/docs/studii/studiu%20ade.pdf>.

<sup>183</sup> European Roma Rights Centre (ERRC) (2011), *Breaking the Silence: Trafficking in Romani Communities*, Budapest. The research is available at: <http://www.errc.org/cms/upload/file/breaking-the-silence-19-march-2011.pdf>.

<sup>184</sup> The project is implemented by Save the Children Italy with partners also from Romania. The reference of the project is JLS/2007/DAP-1/174 30, CE-0227796/00-22, Information available at: <http://ec.europa.eu/anti-trafficking/entity.jsessionid=2XmQTJKSTnQqtVHxkKlxq7yFnz5hRjv4fbtcR9XjnYMIQqfkL1Tj!855818409?id=4231cc2b-6fce-45de-a680-4393af17de18>

<sup>185</sup> Ultima Ora, (2011), ‘17.000 de semnături pentru stoparea traficului de copii’ (17.000 signatures for stopping child trafficking). The article is available at <http://www.ultima-ora.ro/?p=30349>.

were arrested.<sup>186</sup> The news brought for the first time to the fore the vulnerability of Romani children in trafficking as well the multiple facets of this phenomenon. Nevertheless, the limelight on the subject remained in the media without transgressing on the agenda of public authorities as no interventions took place at community level in order to build up a functioning and sustainable protection program for Roma children victims. Additionally, since 2010, no trafficking awareness raising project was implemented by NATP or GDPC to target Romani communities.

#### **4.5.8 Information on trends until 2011**

The statistical data of NATP on child victims of trafficking highlights that lately internal trafficking has also become a major pattern of trafficking of children in Romania. Specifically, the NATP's figures show that internal child trafficking to have increased from 98 cases in 2009 to 270 in 2010. Another new pattern pinpointed by data from 2010 is the increased number of coercion of boys in sexual exploitation which is more than child labour.

#### **4.5.9 Identification of future challenges**

There is a particular concern regarding the restructuring of National Agency against Trafficking in Persons (NATP) which functions under the coordination of the MAIA, specifically the objectivity of NATP on the reporting, reviewing and measurement of the anti-trafficking actions. Another key problem identified is that due to the economic crisis, the government initiated a policy to downsize the social assistance budget and significantly reduced the number of personnel involved in protection and monitoring of children victims of trafficking, particularly in rural areas where there is a serious lack of social workers.<sup>187</sup>

Albeit NATP has the responsibility to establish a centralised national data system that should contain data on traffickers, entities involved in trafficking and victims,<sup>188</sup> the data provided shows that the collection of information is more focused on victims than on traffickers. The current database on child trafficking is fragmented and contradictory as the data on victims is gathered without common definitions and classifications generating a confusing and incomplete image on dimension of the phenomenon, in area of child trafficking prevention, prosecution and protection. Currently, the national data base does not generate information on the victims situation from identification till reintegration stage. Additionally, the effective operation of the national data system is hindered by the early stage implementation, continuous reorganization of the anti-trafficking institutions and lack of corroboration of information between data sources agencies.

The high rate of victims of child internal trafficking who are mainly coerced in sexual exploitation, child and internet pornography represents a serious alarm for Romanian government which gives priority to external trafficking instead of looking at internal trafficking and up-to-date forms of exploitation such as internet pornography.

### **4.6 Specific information**

#### **4.6.1 Data collection**

A Government decision adopted in January 2011 officially establishes a data collection mechanism meant to identify children in need of special protection as they are exposed to

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<sup>186</sup> BBC, (2010), 'UK police arrest 17 over alleged child smuggling ring'. The article is available at: <http://news.bbc.co.uk/2/hi/8610412.stm>.

<sup>187</sup> The Presidential Commission for Assessment of Social and Demographic Risks (2009), Social Risks and Inequities (*Riscuri și Inechități Sociale*). The report revealed that only in 13,8 % of the rural localities local authorities established Public Services of Social Assistance and that 72,83 % of the social workers from rural areas do not have academic preparation in Social Assistance. The report is available at: [http://www.presidency.ro/static/CPARSDR\\_raport\\_extins.pdf](http://www.presidency.ro/static/CPARSDR_raport_extins.pdf). p. 127.

<sup>188</sup> Article 9 of Law 678/2001 on prevention and combating trafficking in persons

abuse, neglect, violence, exploitation or human trafficking.<sup>189</sup> Any person interacting with a child in a professional capacity is under a duty to report to child welfare authorities any suspicions of child abuse/violence/neglect.<sup>190</sup> Such persons (including, but not limited to, healthcare professionals, school staff, police) will, for this purpose, be provided with guidance helping them to identify such situations, as well as a list of contacts in case such a suspicion exists. Any public or private institutions must incorporate in its internal regulation guidelines for reporting situations of child abuse/violence/neglect. All data is eventually sent to the local General Direction for Social Welfare and Child Protection (GDSWCP) (*Direcția Generală de Asistență Socială și Protecția Copilului*) (DGASPC), which will further investigate the situation reported, verify the information received and decide on further measures.

Relevant information is collected by local welfare services, which are given an active role in receiving complaints and collecting data, as well as guidance and charts to assess children at risk - such as a referral chart (*fișa de semnalare*), assessment chart (*fișa de evaluare*) or a risk assessment matrix (*matricea de evaluare a riscului*). Local welfare services are to send all collected data further up to the local General Direction for Social Welfare and Child Protection (GDSWCP) (*Direcția Generală de Asistență Socială și Protecția Copilului*) (DGASPC), which are also mandated to request, collect and process data from other local authorities.

Data collected at national level is centralised by the Ministry for Labour, Family and Social Protection (MLFSP) (*Ministerul Muncii, Familiei și Protecției Sociale*)(MMFPS), which is mandated to request, collect and process data from other state authorities as well.

A Local Interagency Team (LIT) (*Echipa Intersectorială Locală*)(EIL), composed of representatives of local child welfare institutions, police, healthcare and education authorities, NGOs and other local institutions will also put together data concerning children victims of violence, exploitation or trafficking, obtained by each of these institutions and issue annual reports on the subject.

So far, the implementation and impact of the methodology has not yet been assessed and it is still early to assess the mechanism based on factual evidence.

Currently, every GDSWCP uses an application called CMTIS (Child Monitoring and Tracking Information System), which contains data on all the children taken into evidence by the child welfare services.<sup>191</sup>

Data	2009	2010
Number of children recorded by the police as victims of domestic violence, disaggregated by type of violence, and characteristics such as sex and age.	See below	See below
Number of children recorded by the police as victims of sexual abuse	572	623
Number of children recorded by the police as victims of sexual exploitation	35	59
Number of children recorded by the police as victims of trafficking (for economic and/or sexual exploitation)	157	189
Prosecutions and convictions for crimes, such as those listed above	See below	See below
Number of children separated from their parents as a result of court decisions in situations of parental abuse or neglect <sup>192</sup>	180	2010

<sup>189</sup> Government Decision no. 49/2011 19 January 2011.

<sup>190</sup> Law no. 272/2004, 23 June 2004, Art. 85 (3).

<sup>191</sup> See Letter no. DGPC/SML/amc/7402/14.09.2011 of the Romanian Ministry for Labor, Family and Social Protection, on file with the NFP.



Number of children separated from their parents as a result of administrative decisions in situations of parental abuse or neglect <sup>193</sup>	1914	2112
Number of children claiming asylum <sup>194</sup>	N/A	83
Number of unaccompanied minors claiming asylum <sup>195</sup>	N/A	N/A
Number of children granted asylum <sup>196</sup>	N/A	37
Number of asylum seeking unaccompanied minors with legal guardian <sup>197</sup>	N/A	N/A
Average length of time for the appointment of a legal guardian for asylum seeking unaccompanied minors <sup>198</sup>	N/A	N/A
Number of asylum seeking unaccompanied minors who have disappeared during or after status determination proceedings <sup>199</sup>	N/A	N/A

#### Children victims of sexual abuse

Year	Total	Gender	Age	Environment where abuse took place
2009	572	432 Female 140 Male	10-13 years: 33% 14 – 17 years: 40%	At home: 304 In institution: 23 Other: 245
2010	623	489 Female 134 Male	10-13 years: 33% 14 – 17 years: 45%	At home: 367 In institution: 18 Other: 238

Source: MLFSP statistics<sup>200</sup> Letter no. DGPC/SML/amc/7402/14.09.2011 of the Romanian Ministry for Labor, Family and Social Protection, on file with the FRANET national expert.

#### Children victims of sexual exploitation

Year	Total	Gender	Age	Environment where abuse took place
2009	35	26 Female 9 Male	14 – 17 years: 83%	At home: 16 In institution: 0 Other: 19
2010	59	58 Female 1 Male	14 – 17 years: 85%	At home: 23 In institution: 1 Other: 35

Source: MLFSP statistics<sup>201</sup>

#### Children victims of trafficking (all of Romanian nationality).

Year	Total	Gender	Age	Type/purpose of trafficking	Family was involved:
2009	157	107 Female	7-13 years: 20%	Sexual	Yes: 52 cases

<sup>192</sup> MLFSP statistics on the issue are not desaggregated according to gender, age or ethnicity. See Letter no. DGPC/SML/amc/7402/14.09.2011 of the Romanian Ministry for Labor, Family and Social Protection, on file with the NFP

<sup>193</sup> MLFSP statistics on the issue are not desegregated according to gender, age or ethnicity. See Letter no. DGPC/SML/amc/7402/14.09.2011 of the Romanian Ministry for Labor, Family and Social Protection, on file with the FRANET national expert.

<sup>194</sup> Letter no.1727914/15.09.2011 of the Romanian Office for Immigration, on file with the NFP

<sup>195</sup> *IDEM.*

<sup>196</sup> *IDEM.*

<sup>197</sup> *IDEM.*

<sup>198</sup> *IDEM.*

<sup>199</sup> *IDEM.*

<sup>200</sup> Letter no. DGPC/SML/amc/7402/14.09.2011 of the Romanian Ministry for Labor, Family and Social Protection, on file with the NFP.

<sup>201</sup> *IDEM.*

		50 Male	14 – 17 years: 58%	exploitation: 47% Labour, including begging: 36% Crime: 6% Organ trafficking: 1% Adoption: 1 case Other: 10%	No: 105 cases
2010	189	95 Female 84 Male	10-13 years: 22% 14 – 17 years: 61%	Labour, including begging: 54% Sexual exploitation: 43% Other: 3%	Yes: 47 cases No: 132 cases

Source: *MLFSP statistics*<sup>202</sup>

Prosecutions for crimes above

Year	Domestic violence	Sexual Abuse	Sexual Exploitation	Trafficking	No. of prosecutions:
2009	1254	206 (36%)	13 (37%)	45 (29%)	13 (37%)
2010	1405	254 (41%)	33 (56%)	49 (27%)	33 (56%)

Source: *MLFSP and GPO statistics*<sup>203</sup>

Rate of convictions could not be established.

#### 4.6.2 Cross-national divorce and parental child abduction

Romanian legislation previously adopted contains some provisions on the hearing of a child subjected to a return procedure under the Hague Convention against Child Abduction.<sup>204</sup> The child older than 10 must be heard. A child younger than 10 will be heard only if the court deems it necessary. A psychologist will attend the hearing and may draft, at the request of the court, a psychological report.<sup>205</sup> However, according to data obtained for the purpose of the current report, children concerned were heard only in two of the 57 cases concerning the Hague Convention tried by the Bucharest Tribunal during 2009-2010.<sup>206</sup> No further details of the hearing could be obtained.

According to the New Civil Procedure Code, to enter into force on 1 January 2012, a child will always be heard in chambers.<sup>207</sup> The judge will decide, taking into account the circumstances of the case, if a parent, guardian or other person may attend.<sup>208</sup> If the child does not speak Romanian, an authorised translator must be used. If the child has a speech or hearing impediment or cannot express himself/herself, the court is to communicate with the child in writing or through an interpreter.<sup>209</sup>

The relevant authorities have taken no steps to adopt protocols for interviewing children in judicial proceedings during the reference period..

In view of the implementation of Council Regulation (CE) no.4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating

<sup>202</sup> *IDEM*.

<sup>203</sup> Letter no. DGPC/SML/amc/7402/14.09.2011 of the Romanian Ministry for Labor, Family and Social Protection and Letter no. 1540/C/2011 of the General Prosecutor's Office, on file with the FRANET national expert.

<sup>204</sup> Law no. 369/2004 concerning the enforcement of the Hague Convention on the Civil Aspects of International Child Abduction from 15 September 2004.

<sup>205</sup> *Ibid*, Article 9 (4).

<sup>206</sup> See Letter no. 1/5054/C/3.10.2011 of the Bucharest Tribunal, on file with the NFP.

<sup>207</sup> Law no. 134/2010 on the Civil Procedure Code, 1 July 2010.

<sup>208</sup> *Ibid*, Article 221.

<sup>209</sup> *Ibid*, Article 221

to maintenance obligations, the Romanian Ministry for Justice has issued a draft bill currently submitted to the Romanian Parliament.<sup>210</sup>

Outgoing and incoming return and access requests received/sent by the Central Authority on Child Abduction

Year	Total	Gender	Age	Nationality
2009	46	25 Female 32 Male	1-5 years: 31 6-10 years:18 11-15 years: 8	Romanian: 50 German: 1 Canadian: 3 Greek: 1 Cyprus: 1 Portuguese: 1
2010	48	26 Female 27 Male	1-5 years: 37 6-10 years:10 11-15 years: 6	Romanian: 27 Double nationality (Romanian and other): 19 Canadian:1 American:1 Dutch: 1 German: 1 Mexican: 1 French: 1 Croatian:1

Source: MoJ statistics<sup>211</sup>

Data	2009	2010
Outgoing and incoming return and access requests received/sent by the Central Authority on Child Abduction, disaggregated by gender, nationality and age	See above	See above
Outgoing and incoming return and access requests received/sent by the Courts	18	34
Return and access cases settled through mediation <sup>212</sup>	N/A	N/A
Percentage of return and access cases in which the child was given an opportunity to be heard <sup>213</sup>	1	N/A

Source: MoJ statistics<sup>214</sup>

#### 4.6.3 Participation of children in policy or legal reform processes

Relevant authorities questioned on the issue were unable to indicate any example of involving the children in a legal reform process or consulting them on policy issues that concern them.<sup>215</sup> Further examination of available resources has failed to reveal any initiative of local or state authorities to involve children in the decision-making process during the period under survey.

Romanian NGO Save the Children organises, every year, an event called 'Children's Forum', which allows children to present to representatives of state authorities their opinion and

<sup>210</sup> Letter no.71454/20.09.2011 of the Ministry of Justice, on file with the NFP.

<sup>211</sup> *Idem*.

<sup>212</sup> See Letter no. 1/5054/C/3.10.2011 of the Bucharest Tribunal, on file with the NFP.

<sup>213</sup> *Ibid*.

<sup>214</sup> Letter no. 71454/20.09.2011 of the Romanian Ministry for Justice, on file with the NFP

<sup>215</sup> Letter no. DGPC/SML/amc/7402/14.09.2011 of the Romanian Ministry for Labor, Family and Social Protection, on file with the NFP.

suggestions on issues such as violence in schools, violence in the on-line environment and children's participation in the decision-making process, both at local and national level.<sup>216</sup>

Data	2009	2010
Number of complaints submitted by or on behalf of children to the Ombudsman institution <sup>217</sup>	53	58
Number of complaints submitted by or on behalf of children to the National Council for Combating Discrimination	6	5

Complaints were submitted to the Ombudsman mostly by parents on behalf of children. The petitions concerned parental rights, child custody, alimony, rights of guardians, child support, access to healthcare, transport for children that have to travel long distances to school and unaccompanied Romanian children found abroad.<sup>218</sup>

Petitions filed with the **National Council for Combating Discrimination (NCCD)** (**Consiliul Național pentru Combaterea Discriminării, CNCD**) concerned:

2009	Access to education (kindergarten)	2
	Access to a public place (cinema)	1
	Discrimination in school	3
2010	Refusal to issue a decision confirming a degree of disability	1
	Lack of access of a disabled person	1
	Aggressive behaviour towards one's child	1
	Discrimination in school	2

## 4.7 Important information not covered above

Often, the media presents cases of marriages between children as being a Roma tradition as well as being a public health concern.<sup>219</sup> Notified by the media, the police and child protection authorities usually report starting investigations, but they never follow up on cases in the media. According to a research carried out at the regional level, public authorities' awareness and interest about the issue is relatively low – for example, in only four out of 41 counties, the mixed working groups established to ensure social inclusion of Roma actually addressed the problematic of child marriages in their activities.<sup>220</sup>

In August 2011, Romani CRISS and Euroregional Center for Public Initiatives, two Romanian human rights organizations, submitted information to the Committee on Elimination of Discrimination against Women and the Committee on the Rights of the

<sup>216</sup> For more information, see <http://www.salvaticopiii.ro/?id2=00020000> (22.10.2011).

<sup>217</sup> Letter no. 5990/06.09.2011 of the Romanian Ombudsman, on file with the FRANET National expert. See also [www.avp.ro](http://www.avp.ro) (22.12.2011).

<sup>218</sup> Letter no. 5990/06.09.2011 of the Romanian Ombudsman, on file with the FRANET national expert.

<sup>219</sup> Adevărul (2011), 'Țigani din Galați pot rămâne fără copii căsătoriți' [Gypsies from Galați might be taken their children away], 31 August 2011, available at [http://www.adevarul.ro/locale/galati/tigani-galati-casatorie\\_0\\_545346018.html](http://www.adevarul.ro/locale/galati/tigani-galati-casatorie_0_545346018.html). Adevărul (2011), 'Copila legată cu lanțuri de pat a fost rasă pe cap, spălată și hrănită' [The handcuffed child was shaved her head, washed and fed], 29 July 2011, available at [http://www.adevarul.ro/locale/constant/Copila-legata-lanturi-spalata-hranita\\_0\\_526147672.html](http://www.adevarul.ro/locale/constant/Copila-legata-lanturi-spalata-hranita_0_526147672.html).

<sup>220</sup> Liga Pro Europa, Press Release, Preventing forced marriages, 8 September 2010, available at [http://www.proeuropa.ro/documente2010/Comunicat\\_de\\_presa\\_8\\_septembrie\\_2010\\_03.pdf](http://www.proeuropa.ro/documente2010/Comunicat_de_presa_8_septembrie_2010_03.pdf).

Child regarding the practice of child marriage in Romania, focusing on child marriages taking place in Roma communities.<sup>221</sup>

Pro Europe League, another human rights NGO, is currently carrying out trainings for competent authorities from the local level and representatives of communities where this practice is still present.<sup>222</sup>

Official title exact EN	Official title RO	Full reference
<b>Government Decision no. 49/2011 to approve the framework methodology for the prevention and multidisciplinary team and network intervention in cases of violence against the child and domestic violence and of the methodology for the inter-agency, multidisciplinary intervention concerning children that are exploited or at risk of exploitation, children victims of trafficking and Romanian migrant children victims of other forms of violence on the territory of other states</b>	Hotararea Guvernului nr. 49/2011 pentru aprobarea Metodologiei-cadru privind prevenirea și intervenția în echipă multidisciplinară și în rețea în situațiile de violență asupra copilului și de violență în familie și a Metodologiei de intervenție multidisciplinară și interinstituțională privind copiii exploatați și aflați în situații de risc de exploatare prin muncă, copiii victime ale traficului de persoane, precum și copiii români migranți victime ale altor forme de violență pe teritoriul altor state	Romania, Government Decision no. 49/2011 to approve the framework methodology for the prevention and multidisciplinary team and network intervention in cases of violence against the child and domestic violence and of the methodology for the inter-agency, multidisciplinary intervention concerning children that are exploited or at risk of exploitation, children victims of trafficking and Romanian migrant children victims of other forms of violence on the territory of other states ( <i>Hotararea Guvernului nr. 49/2011 pentru aprobarea Metodologiei-cadru privind prevenirea și intervenția în echipă multidisciplinară și în rețea în situațiile de violență asupra copilului și de violență în familie și a Metodologiei de intervenție multidisciplinară și interinstituțională privind copiii exploatați și aflați în situații de risc de exploatare prin muncă, copiii victime ale traficului de persoane, precum și copiii români migranți victime ale altor forme de violență pe teritoriul altor state</i> ), 19 January 2011, Official Bulletin no. 117/2011, Part I.
<b>Government Decision 498/2011 to approve the</b>	Hotararea Guvernului nr. 498/2011 pentru aprobarea Strategiei naționale privind imigrația pentru perioada 2011-2014	Romania, Government Decision 498/2011 to approve the National Strategy for Immigration for 2011-2014 ( <i>Hotararea Guvernului nr. 498/2011</i>

<sup>221</sup> Romani CRISS, Euroregional Center for Public Initiatives, Submission to Support the Development of a General Comment/Recommendation on Harmful Practices, 23 August 2011, on file with national FRANET expert

<sup>222</sup> CityNews (2011), 'Proiect impotriva casatoriilor timpurii si fortate' (Project to combat early and forced marriages), 22 September 2011, available at <http://www.citynews.ro/mures/eveniment-29/proiect-impotriva-casatoriilor-timpurii-si-fortate-201835/>.

<b>National Strategy for Immigration for 2011-2014</b>		<i>pentru aprobarea Strategiei nationale privind imigratia pentru perioada 2011-2014</i> ), 3 June 2011, the Official Bulletin no.391/2011.
<b>Government Decision 604/2011 to approve the Action Plan for the implementation of the National Strategy for Immigration in 2011.</b>	Hotărârea Guvernului nr. 604/2011 privind aprobarea Planului de actiune pe anul 2011 pentru implementarea Strategiei naționale privind imigrația pentru perioada 2011-2014 aprobata prin HG nr. 498/2011	Romania, Government Decision 604/2011 to approve the Action Plan for the implementation of the National Strategy for Immigration in 2011 ( <i>Hotararea Guvernului nr. 604/2011 privind aprobarea Planului de actiune pe anul 2011 pentru implementarea Strategiei nationale privind imigratia pentru perioada 2011-2014 aprobata prin HG nr. 498/2011</i> ), 14 July 2011, Official Bulletin no.501/2011.
<b>Government Ordinance no. 194/2002 on the statute of foreigners</b>	Ordonanța de Guvern nr. 194/2002 privind regimul străinilor	Romania, Government Ordinance no. 194/2002 on the statute of foreigners ( <i>Ordonanța de Guvern nr. 194/2002 privind regimul străinilor</i> ), amended, 5 June 2008, the Official Bulletin no. 421/2008.
<b>Law no. 369/2004 concerning the enforcement of the Hague Convention on the Civil Aspects of International Child Abduction.</b>	Legea nr. 369/2004 privind aplicarea Convenției asupra aspectelor civile ale răpirii internaționale de copii.	Romania, Law no. 369/2004 concerning the enforcement of the Hague Convention on the Civil Aspects of International Child Abduction ( <i>Legea nr. 369/2004 privind aplicarea Convenției asupra aspectelor civile ale răpirii internaționale de copii</i> ), 15 September 2004, Official Bulletin no. 888/2004, Part I..
<b>Law no. 134/2010 on the New Civil Procedure Code</b>	Legea nr. 134/2010 privind Codul de Procedură Civilă	Romania, Law no. 134/2010 on the New Civil Procedure Code ( <i>Legea nr. 134/2010 privind Codul de Procedură Civilă</i> ), 1 July 2010, Official Bulletin 485/2010.
<b>Law 678/2011 on prevention and combating trafficking in persons</b>	Legea 678/2011 privind prevenirea si combaterea traficului de persoane	Romania, Law 678/2011 on prevention and combating trafficking in persons, Official Gazette (Monitorul Oficial), no. 783 11th December 2001, modified by Law 230/2010, Official Gazette Part I, no. 812/2010, 6 <sup>th</sup> December 2010 and by Emergency Ordinance 41/2011, Official Gazette no. 304/3011, 3 <sup>rd</sup> May 2011
<b>Law 286/2009 on Penal Code</b>	Legea 286/2009 privind Codul Penal	Romania, Law 286/2009 on Penal Code, Official Gazette (Monitorul Oficial) I, 510/ 2009, 24th July 2009.

<b>Breaking the Silence: Trafficking in Romani Communities.</b>	Breaking the Silence: Trafficking in Romani Communities.	European Roma Rights Centre (2011). The research is available at: <a href="http://www.errc.org/cms/upload/file/breaking-the-silence-19-march-2011.pdf">http://www.errc.org/cms/upload/file/breaking-the-silence-19-march-2011.pdf</a> .
<b>Child Trafficking in Romania- Study on Recruitment Process</b>	Traficul de copii în România - Studiu asupra procesului de recrutare	National Agency against Trafficking in Persons, 2009. The research is available at: <a href="http://anitp.mai.gov.ro/ro/docs/studii/studiu%20ade.pdf">http://anitp.mai.gov.ro/ro/docs/studii/studiu%20ade.pdf</a>
<b>Government Decision no. 867 on Prohibiting Hazardous Work for Children</b>	Hotararea de Guvern nr. 867 privind interzicerea muncii periculoase pentru copii	Romania/ Government Decision no. 867 on Prohibiting Hazardous Work for Children, (Hotararea Guvernului pentru interzicerea muncii minorilor), published in Official Gazette no 568 of August 14, 2009
<b>Government Decision no. 49 on approving the Framework Methodology for the Prevention and Intervention in the Multi-disciplinary Team or in the Network in Situations of Violence against Children and of Domestic Violence</b>	Hotararea de Guvern nr. 49 prin care s-a aprobat Metodologia-cadru privind prevenirea și intervenția în echipă multidisciplinară și în rețea în situațiile de violență asupra copilului și de violență în familie	Government Decision no. 49 on January 19, 2011 approving the Framework Methodology for the Prevention and Intervention in the Multi-disciplinary Team or in the Network in Situations of Violence against Children and of Domestic Violence, and the Methodology for Multi-disciplinary and Inter-institutional Interventions in Cases of Exploited Children and of Those Who Are in Labor Exploitation Risk Situations, of Children Who Are Victims of Trafficking in Human Beings, as well as of Romanian Migrant Children Who Are Victims of other Violence Forms in the Territory of Other States, (Metodologia cadru privind prevenirea și intervenția în echipa multidisciplinară și în rețea în situațiile de violență asupra copilului și de violență în familie), Official Gazette of Romania no. 117 on February 16, 2011.
<b>Statistics on Abuse against Children, March 2011</b>	Buletin statistic informativ la data 31 martie 2011	The Ministry of Labor, Family and Social Protection, the General Child's Rights Protection Directorate, „Statistics on Abuse against Children, March 2011”, <a href="http://www.copii.ro/alte_categorii.html">http://www.copii.ro/alte_categorii.html</a>
<b>Act no. 728 of 21 July 2010 for the amendment and supplementation of Government Decision no. 11/2009 on the functioning of Ministry of Labour, Family and Social Protection.</b>	Hotararea no. 728 din 21 iulie 2010 pentru modificarea și completarea Hotararii Guvernului no. 11/2009 privind functionarea Ministerului Muncii, Familiei și Protecției Sociale, emis de Guvernul României	Romania, Act no. 728 of 21 July 2010 for the amendment and supplementation of Government Decision no. 11/2009 on the functioning of Ministry of Labour, Family and Social Protection ( <i>Hotararea no. 728 din 21 iulie 2010 pentru modificarea și completarea Hotararii Guvernului no. 11/2009 privind functionarea Ministerului Muncii, Familiei și Protecției Sociale, emis de Guvernul României</i> ) published in the Official Gazette No. 512 of 22 July 2010.
<b>Feasibility study</b>		European Commission, DG JLS (2011)



<b>2011: to assess the possibilities, opportunities and needs to standardise national legislation on violence against women, violence against children and sexual orientation violence.</b>		Feasibility study to assess the possibilities, opportunities and needs to standardise national legislation on violence against women, violence against children and sexual orientation violence, available at <a href="http://ec.europa.eu/justice/funding/daphne3/daphne_feasibility_study_2010_annexes_en.pdf">http://ec.europa.eu/justice/funding/daphne3/daphne_feasibility_study_2010_annexes_en.pdf</a>
<b>Insafe Annual Report (2011) Promoting safe and responsible use of online technology</b>		Insafe, Annual Report (2011) Promoting safe and responsible use of online technology, available at <a href="http://www.saferinternet.org">www.saferinternet.org</a>
<b>EU Kids Online (2011)</b>		Sonia Livingstone, Leslie Haddon, Anke Gorzig, Kjartan Olafsson, EU Kids Online, September 2011, available at <a href="http://www.eukidsonline.net">www.eukidsonline.net</a>
<b>Data collection: Situations of abuse, neglect and exploitation of the child</b>	<i>Statistica: Situatii de abuz, neglijare, exploatare a copilului</i>	Romania, General Unit for the Protection of Children –(Directia generala protectia copilului) (2011), Situations of abuse, neglect and exploitation of the child (Situatii de abuz, neglijare, exploatare a copilului ), 31 March 2011.

## 5 EQUALITY AND NON-DISCRIMINATION

### 5.1 Sex

#### 5.1.1 Policy and institutional developments

In the last two years the national body dealing with equal opportunities and equal treatment between women and men in the field of employment was restructured leading to lower protection for women. In July 2010, the National Agency for Equal Opportunities (NAEO) (*Agenția Națională pentru Egalitate de Șanse*, ANES) was abolished due to budgetary cuts.<sup>223</sup>

The Government assigned part of its competences to a newly created department within the Ministry of Labour, Family and Social Protection – the Department for Equal Opportunities between Women and Men (DEOWM) (*Direcția Egalitate de Șanse între Femei și Bărbați*, DESFB).<sup>224</sup>

DEOWM competences are limited to drafting policies and national plans of actions and coordinating their implementation, receiving notifications and complaints about infringements of equality and non-discrimination legislation on the ground of sex and forwarding them to the competent bodies, and giving its advice on normative acts initiated by the Government. Thus, legally, DEOWM is no longer in charge with representing victims of sex discrimination to court, drafting the plan of research and analysis in the field of equal opportunities and equal treatment between men and women, training public officials and other employees and coordinating the promotion of equal opportunities and equal treatment between men and women at the local level.<sup>225</sup> DEOWM's human resources are poorer both quantitatively and qualitatively compared to the previous NAEO, which affects its capacity to implement the National Strategy for Equal Opportunities between Women and Men and its general action plan. Although responsible for drafting Romania's reports to the UN Committee on the Elimination of Discrimination against Women, DEOWM does not have competence to represent Romania before CEDAW Committee, as NAEO had.<sup>226</sup>

Although the Labour Code prohibits discrimination in employment on several grounds<sup>227</sup> and the Labour Inspection Unit (*Inspecția Muncii*) is in charge with its enforcement,<sup>228</sup> it reports only monitoring and sanctioning infringements of the equal chances between women and men and maternity legislation.<sup>229</sup> The Labour Inspection Unit concluded that many employees are not aware of their rights. It also stated that employees generally report rights violations only after they took place and are not willing to cooperate with the inspectors or to provide complete information. Another conclusion was that internal regulations do not have concrete

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<sup>223</sup> Romania/ Governmental Emergency Ordinance 68/2010 (*Ordonanța de Urgență privind unele măsuri de reorganizare a Ministerului Muncii, Familiei și Protecției Sociale și a activității instituțiilor aflate în subordinea, în coordonarea sau sub autoritatea sa*), publicat în Official Journal, Part I, No.446/1.VII.2010, Art.2.(1).

<sup>224</sup> Romania/ Governmental Decision No.728/2010 (*Hotărârea Guvernului nr.728/2010 pentru modificarea și completarea Hotărârii Guvernului nr.11 din 2009 privind organizarea și funcționarea Ministerului Muncii, Familiei și Protecției Sociale*).

<sup>225</sup> More information available at [http://www.gov.ro/agentia-nationala-pentru-egalitatea-de-sanse-intre-femei-si-barbati-promoveaza-principiul-egalitatii-de-sanse-si-de-tratament-intre-femei-si-barbati\\_11a64123.html](http://www.gov.ro/agentia-nationala-pentru-egalitatea-de-sanse-intre-femei-si-barbati-promoveaza-principiul-egalitatii-de-sanse-si-de-tratament-intre-femei-si-barbati_11a64123.html).

<sup>226</sup> DEOWM, Response No.E1337/15.09.2011, pp.1-3 on file with national FRANET expert.

<sup>227</sup> Labour Code (*Legea 53/2003 Codul muncii*), amended by Law 40/2011, republished in Official Journal No.0345 of 18 May 2011, Articles 5, 6, 39.(1).(d), 59.(a), 159.(3), 242.(b).

<sup>228</sup> Labour Code (*Legea 53/2003 Codul muncii*), amended by Law 40/2011, republished in Official Journal No.0345 of 18 May 2011, Article 237.

<sup>229</sup> Labour Inspection Unit, Response No.9933/DCRMEM/30.08.2011, pp.1-3 on file with the NFP.

provisions regarding the principle of non-discrimination and equal opportunities and treatment between women and men at the workplace.<sup>230</sup>

### 5.1.2 Legislative developments

In December 2010, a new Public Pensions Act (*Legea nr.263/2010 privind sistemul unitar de pensii publice*) was adopted. Its initial draft aimed at increasing and equalizing the retirement age for men and women at 65 years old. Contested before the Constitutional Court on grounds of discrimination against women, the law was found to be constitutional (see Annex 4).<sup>231</sup> However, the President of Romania asked the Parliament to re-examine the act on grounds that women should work less due to the double burden they are facing in Romania – working and taking care of the household and children. This request runs counter previous declarations of the President supporting the equalization of retirement age,<sup>232</sup> but the President declared it was a pretext to settle accusations of fraude during the vote made upon the President of the Chamber of Representatives.<sup>233</sup> The Parliament introduced an amendment maintaining a difference between the retirement age for men (65 years old) and for women (63 years old).<sup>234</sup>

An imposed gender differentiation of retirement age was considered by some women's rights academics as being discriminatory against women – their contribution to social security fund being smaller due to fewer years of contribution and lower salaries than men.<sup>235</sup> According to a report assumed by the Romanian President and arguing for age retirement equalization women would benefit by no longer having to retire earlier than men, especially at the peak of their careers when the salary is the highest.<sup>236</sup> Currently, women are forced by law to retire earlier than men. During leave for childcare that is predominantly taken by women, the points assigned for their contribution to social security fund do not reflect their actual income (only 25% of the medium income at the national level registered during the leave period, irrespective of actual income of the person).<sup>237</sup> In addition, the new Public Pensions Act introduced an equal necessary period of contribution to social security fund – 35 years for both men and women<sup>238</sup> – which will downgrade even more women's pensions in comparison with men.<sup>239</sup>

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<sup>230</sup> Labour Inspection, Response No.9933/DCRMEM/30.08.2011, p.1 on file with the national FRANET expert.

<sup>231</sup> Romanian Constitutional Court, Decision No.1237 of 6 October 2010, published in the Official Journal No.785/2010.

<sup>232</sup> Romania/ The message of Romania's President in Front of the Chambers of the Romanian Parliament in Common Session (*Mesajul Preşedintelui României, Traian Băsescu, în faţa Camerelor reunite ale Parlamentului*) available at:

[http://www.presidency.ro/?\\_RID=det&tb=date&id=12400&\\_PRID=ag](http://www.presidency.ro/?_RID=det&tb=date&id=12400&_PRID=ag).

<sup>233</sup> Mediafax (2010) 'Băsescu: retrimiteră legii pensiilor a fost o mână întinsă tuturor partidelor, inclusiv opoziţiei' (Băsescu: resending the Pension Law was a hand reaching to all parties, including the opposition), 4 November 2010, available at: <http://www.mediafax.ro/politic/basescu-retrimiteră-legii-pensiilor-a-fost-o-mână-întinsă-tuturor-partidelor-inclusiv-opoziției-7692144>.

<sup>234</sup> Romania/Public Pensions Act (Legea nr.263) of 16 December 2010, published in the Official Journal No.852 of 20 December 2010, Part I, Article 53

<sup>235</sup> Mihaela Miroiu, *Drumul către autonomie: teorii politice feministe*, Iaşi, Polirom, 2004, pp.231-232, available at <http://fragen.nu/aletta/fragen/SNSP-973681646X.pdf>

<sup>236</sup> Romania/ Presidential Administration, Presidential Commission for Analyzing Social and Demographic Risks, Social Risks and Inequities in Romania, September 2009, pp.90-91, available at [http://www.presidency.ro/static/CPARSDR\\_raport\\_extins.pdf](http://www.presidency.ro/static/CPARSDR_raport_extins.pdf)

<sup>237</sup> Public Pensions Act (Legea nr.263) of 16 December 2010, published in the Official Journal No.852 of 20 December 2010, Part I, Article 97.(1).(b).

<sup>238</sup> Romania/Public Pensions Act (Legea nr.263) of 16 December 2010, published in the Official Journal No.852 of 20 December 2010, Part I, Article 53.(3)

<sup>239</sup> România Liberă (2010), 'Comisia de muncă a Camerei: Vârsta de pensionare - 63 de ani la femei, 65 de ani la bărbaţi' (Chamber of Representatives' Commission on Labour: Retirement age of 63 years

Nevertheless, the new Public Pensions Act equalised the retirement age for men and women and the minimum and maximum period of contribution to social security fund in case of military personnel, police forces, penitentiary public officers and other public officers from the public order and national security.<sup>240</sup>

In December 2010, the Government adopted new legislation regarding leave and allowance for childcare, diminishing the period a parent is entitled to take this leave and the allowance. The previous legislation established a two year leave with an allowance of 85%, maximum RON 4.000 (€952).<sup>241</sup> The new law provided that for children born after 31 December 2010, a parent on childcare leave receives a monthly allowance of minimum RON 600 (€142) maximum 75% of his/her income, but not more than RON 3.400 (€809) if he/she takes one year leave and not more than RON 1.200 (€285) for two years leave.<sup>242</sup>

- Parents who return to work within one year, receive a monthly incentive reinsertion allowance of RON 500 (€119) ('stimulent de reinserție') up until the child is two years old.<sup>243</sup> This is insufficient to pay for childcare and the number of nurseries is insufficient, too.
- In an official opinion, the NCCD stated that the Childcare Leave and Allowance Act (*OUG 111/2010 privind concediul și indemnizația lunară pentru creșterea copiilor*) is discriminating against parents and their children conceived before and born after the adoption of the new law compared to cases when the children were conceived and born before the adoption of the new law. According to the NCCD, the situations are similar in the sense that parents were planning the pregnancy taking into account existing entitlements prescribed by the law at the moment of conception and according to the Civil Code, the unborn child is entitled to acquire rights under condition to be born alive and viable.<sup>244</sup> Although the law was reviewed by the Constitutional Court in June 2011, this particular issue was not addressed.<sup>245</sup> This is currently addressed in several cases pending before courts, opened with support from civil society.<sup>246</sup>

In 2011, the Ministry of Health (*Ministerul Sănătății*) launched a national program providing financial support of €800.000 for 500 couples needing medical assistance for in vitro fertilization and embryos transfer (the amount of RON6.150 (€1.464) for one in vitro procedure per couple). This financial aid is provided only to sterile couples married for two years.<sup>247</sup> Unmarried couples and single women do not qualify for the program, which is in

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old for women and 65 years old for men), 30 November 2010, available at <http://www.romanialibera.ro/bani-afaceri/angajari/comisia-de-munca-a-camerei-varsta-de-pensionare-63-de-ani-la-femei-65-de-ani-la-barbati-207904.html>.

<sup>240</sup> Romania/Public Pensions Act (Legea nr.263) of 16 December 2010, published in the Official Journal No.852 of 20 December 2010, Part I, Article 54.

<sup>241</sup> Romania/ Childcare Act (*OUG nr. 148/2005 privind susținerea familiei în vederea creșterii copilului*), Article 1.

<sup>242</sup> Romania/ Childcare Leave and Allowance Act (*OUG 111/2010 privind concediul și indemnizația lunară pentru creșterea copiilor*), Article 2.(2) and (3).

<sup>243</sup> Romania/ Childcare Leave and Allowance Act (*OUG 111/2010 privind concediul și indemnizația lunară pentru creșterea copiilor*), Article 7.

<sup>244</sup> See Evenimentul zilei (2010), 'CNCD: Modificarea indemnizației de creștere a copilului, discriminatorie', available at <http://www.evz.ro/detalii/stiri/cncd-modificarea-indemnizatiei-de-crestere-a-copilului-discriminatorie-915976.html>.

<sup>245</sup> Romania/ Constitutional Court, Decision No.765 of 15 June 2011, published in Official Journal No. 476 of 6 July 2011.

<sup>246</sup> Romania/ Asociația Mame pentru Mame, more information available at [http://www.mamepentrumame.ro/index.php?option=com\\_content&view=article&id=184:curtea-constitutionala-a-deliberat-impotriva-parintilor-responsabili-din-romania&catid=37:legislatie&Itemid=56](http://www.mamepentrumame.ro/index.php?option=com_content&view=article&id=184:curtea-constitutionala-a-deliberat-impotriva-parintilor-responsabili-din-romania&catid=37:legislatie&Itemid=56)

<sup>247</sup> Romania/ Ministry Order regarding the in vitro program (*Ordinul Ministrului Sănătății Nr. 765/27.05.2011 privind aprobarea Normelor metodologice pentru realizarea și raportarea*

contradiction to the prohibition of discrimination based on sex and marital status, also according to a 2005 Romanian Constitutional Court decision.<sup>248</sup>

### 5.1.3 National case law

The Constitutional Court case law in the field of retirement age represents a jurisprudential revival. According to the previous Constitutional Court jurisprudence, general socio-professional conditions which were unequal for men and women justified lower retirement age for women which was aimed to address the disadvantage women faced in the society. Although the Court stated that the socio-professional conditions are not equal yet for men and women in Romania, it stated that significant changes were registered; this is justifying the progressive equalization of the retirement age provided by the law to take place in 15 years time. The Court invoked the reasoning put forward by the European Court of Justice – imposing different retirement ages for men and women does not compensate for disadvantages and burdens women face in their professional carrier due to their social status and concerns regarding childcare should be raised in respect of both men and women. However, the Court did not go forward to apply this reasoning. Rather, the Court restated its previous decision that the Legislative is the State authority mandated to decide when socio-professional conditions justify the progressive realisation of equal treatment between men and women with respect to retirement age. See Annex 4.<sup>249</sup>

The administrative sanctions that are issued by the NCCD in cases of sexual harassment are not fulfilling the requirements prescribed in the Framework Directive by providing sanctions that are dissuasive, proportionate, and effective. First, if the NCCD investigation takes more than six months from the moment when the facts occurred, as it often happens due to internal delays, the NCCD cannot issue a fine, and, when finding discrimination, it can only issue a written warning.<sup>250</sup> Second, even in cases when the NCCD is mandated to issue a fine, fines established are very small. In the most recent case, from 2010, the NCCD sanctioned with a fine of RON2000 (€476) sexual harassment at the workplace consisting of obscene gestures and signs and watching adult movies in the office.

In 2011, the NCCD sanctioned a psychiatrist and an MEP for making discriminatory statements regarding women. The two decisions point out to a legal question that has been recently occurring more frequently in the NCCD's jurisprudence – whether Article 15 of the Anti-discrimination Law sanctions behaviours of perpetrators who do not act with the purpose of degrading the victims (affecting human dignity). The NCCD gave contradictory solutions in these two cases. The interpretation of Article 15 is currently raised before Bucharest Court of Appeal in a case regarding the Minister of Foreign Affairs.<sup>251</sup>

In the first case, a psychiatrist often invited by televisions as expert stated that women who participate in talk shows should be subjected to psychiatric evaluation and he would support a bill on this issue. The NCCD did not find a breach of Article 15, motivating that it did not establish any purpose to affect women's dignity by these statements. However, it found a violation of Article 2.(5), a very broad article, interpreted in its jurisprudence as the implementation of harassment from the Framework Directive.<sup>252</sup>

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*activităților specific în cadrul subprogramului de fertilizare in vitro și embriotransfer*), Annex 1, Article 2, published in the Official Journal, Part I, No.378/31.05.2011.

<sup>248</sup> Romania/ Constitutional Court Decision No. 418 of 18 July 2005, published in the Official Journal, Part I, No.664 of 26.07.2005.

<sup>249</sup> Romanian Constitutional Court, Decision No.1237 of 6 October 2010, published in the Official Journal No.785/2010.

<sup>250</sup> Administrative Sanctions Act (Ordonanța Guvernului nr. 2/2001 privind regimul juridic al contravențiilor), Article 13.

<sup>251</sup> Bucharest Court of Appeal, File No.1490/2/2011 regarding the appeal against the NCCD decision No.366/24.11.2010.

<sup>252</sup> NCCD, Decision No.154 of 18 April 2011, 5.14.

In the second case, a Romanian member of the European Parliament declared on TV that, according to religious and moral norms, in our society for men to commit adultery is natural or biological, while for women it means being a “bitch.” The NCCD found a breach of Article 15 in this case, motivating that the statements “target affecting human dignity or creating an intimidating, hostile environment” for women, another component of the illegal behaviour sanctioned under Article 15.<sup>253</sup> Furthermore, it stressed that in cases affecting human dignity through discrimination, intention is irrelevant.<sup>254</sup>

In 2010, the NCCD continued its series of cases sanctioning discrimination based on sex against men who are being refused by hospitals to accompany their small children during hospitalization. The hospitals’ policy is rooted in the stereotype that only mothers or other women from the family are taking care of small children. The NCCD did not issue a sanction but only a recommendation.<sup>255</sup>

In March 2011, the Superior Council of Magistracy (SCM) (*Consiliul Superior al Magistraturii*, CSM) issued its first disciplinary decision in a case of sexual harassment. SCM excluded from magistracy a judge from Constanța First Instance Court (*Judecătoria Constanța*) for sexually harassing three female court registers.<sup>256</sup> According to the media, during disciplinary investigation initiated at the complaint of a victim, SCM found out that court management was aware of the accusations of sexual harassments. However, the court management recommended female court registers to put up with the judge’s behaviour either by entering his office accompanied by another person or contacting him through the chief register.<sup>257</sup> The SCM’s decision became final at the end of September when the judge was finally dismissed.<sup>258</sup>

#### 5.1.4 Statistical data made available in the reference period

According to the National Institute of Statistics (NIS) (*Institutul Național de Statistică*, INS), in 2010, the unemployment rate among women was 6.5% compared to 7.9% for men, increasing for both sexes compared to previous years.<sup>259</sup> In 2010, the activity rate and occupation rate was increasing for men more than for women – from 70.9 % to 71.5% compared to 55.4 % to 55.8% and from 65.2% to 65.7% compared to stagnation to 52%.<sup>260</sup> The percentage of education coverage for both girls and boys of schooling age is dropping constantly, more rapidly in the case of girls (from 82.3% in 2003 to 79.3% in 2010)

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<sup>253</sup> NCCD, Decision No.261 of 29 June 2011, 5.3.

<sup>254</sup> NCCD, Decision No.261 of 29 June 2011, 5.13.

<sup>255</sup> NCCD, Decision No.187 of 19 July 2010.

<sup>256</sup> *Adevărul* (2011), ‘Un judecător obsedat sexual a rămas șomer’ (Sexually obsessed judge becomes unemployed), 11 March 2011, available at [http://www.adevarul.ro/actualitate/eveniment/Constanta-Un\\_judecator\\_obsedat\\_sexual\\_a\\_ramas\\_somer\\_0\\_441556439.html](http://www.adevarul.ro/actualitate/eveniment/Constanta-Un_judecator_obsedat_sexual_a_ramas_somer_0_441556439.html)

<sup>257</sup> *Gândul* (2011), ‘Cine este judecătorul care își spune “The boy from Vallahia” și a fost exclus din magistratură pentru că hărțuia sexual grefierile: Eu i-am zis doar Simona, ia o portocală’ (Who is the judge that calls himself “The boy from Vallahia” and who was excluded from magistracy for sexually harassing court registers: I only told her Simona, grab an orange), 10 March 2011, available at <http://www.gandul.info/news/cine-este-judecatorul-care-isi-spune-the-boy-from-vallahia-si-a-fost-exclus-din-magistratura-pentru-ca-hartuia-sexual-grefierele-eu-i-am-zis-doar-simona-ia-o-portocala-8050095>.

<sup>258</sup> *Romanian* Presidency, Press Statement, 20 September 2011, available at:

[http://www.presidency.ro/index.php?\\_RID=det&tb=date&id=13173&\\_PRID=search](http://www.presidency.ro/index.php?_RID=det&tb=date&id=13173&_PRID=search) <sup>259</sup> Romania/ National Institute of Statistics, *România în cifre*, p.23, available at [http://www.insse.ro/cms/files/publicatii/Romania\\_in%20cifre%202011.pdf](http://www.insse.ro/cms/files/publicatii/Romania_in%20cifre%202011.pdf).

<sup>260</sup> Romania/ National Institute of Statistics, *România în cifre*, p.24, available at [http://www.insse.ro/cms/files/publicatii/Romania\\_in%20cifre%202011.pdf](http://www.insse.ro/cms/files/publicatii/Romania_in%20cifre%202011.pdf).



compared to boys (from 77.2% in 2003 to 76.0% in 2010) although it stays higher for girls.<sup>261</sup>

The NCCD disaggregates some of its statistical data based on sex – the number of complaints (see ANNEX 2) and sanctions it applied in certain areas.

### 5.1.5 Research and studies

A qualitative sociological study published in April 2011 identified unemployed people's opinions and perceptions about women and men on the labour market, including competences, roles, and obstacles they meet in accessing employment. Although participants to focus groups have general knowledge of gender equality, both women and men share the same stereotypes, perceptions and opinions rooted in traditionalist mentalities. Gender roles established in the family and assumed by women influence gender roles in employment, access to employment and promotion at the workplace. Both men and women share the women "take care", men "take charge" stereotype. Even more, both men and women prefer male colleagues.<sup>262</sup>

Another study was issued in June 2011 focusing on Roma women and the labour market - their interests, representation and participation in trade unions movement.<sup>263</sup> The study showed that compared to non-Roma, one of the main concerns of Roma employees is having a dignified working climate. This concern is not found among trade unions' priorities. Roma women employees have less confidence in trade unions, although they are more prone to resort to collective actions to solve their problems at the workplace, rather than individual actions. One third of employees declare they faced discrimination at the workplace, 20% of them being discriminated by colleagues and 16,1% by their superiors.<sup>264</sup>

A human rights report issued in June 2011 indicates that women living with HIV are discriminated against in accessing sexual and reproductive health services, despite national legislation forbidding discrimination based on HIV status.<sup>265</sup> The report indicates that discrimination takes various forms from denial of medical assistance at birth, post-abortion care or even regular gynaecological check-ups, to hospitals' policies of segregating HIV positive patients and practices of the medical personnel of breaching confidentiality, placing HIV positive patients in humiliating and degrading situations, neglecting them or debasing and judging them for becoming pregnant or for choosing to take the pregnancy to term.<sup>266</sup>

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<sup>261</sup> Romania/ National Institute of Statistics, România în cifre, p.38, available at [http://www.insse.ro/cms/files/publicatii/Romania\\_in%20cifre%202011.pdf](http://www.insse.ro/cms/files/publicatii/Romania_in%20cifre%202011.pdf).

<sup>262</sup> TBWA/București, Center for Partnership and Equality, Active Watch, Femei și bărbați în căutarea unui loc în societate. Studiu despre stereotipurile de gen privind competențele, alegerea profesiei și rolurile din viața profesională și personal (Women and men looking for a job. Study about gender stereotypes regarding abilities, choosing a job and roles in the professional and private life), Bucharest, 2011, pp.15-16, available at <http://www.altfem.ro/resurse/cercetari-si-analize> (last visit 11.10.2011).

<sup>263</sup> Cristina Mocanu, Ana Maria Zamfir, Carmen Gheorghe, Femei rome pe piața muncii: interese, reprezentare și participare sindicală (Roma women on the labour market: interests, representation and participation in trade unions movement), June 2011.

<sup>264</sup> Cristina Mocanu, Ana Maria Zamfir, Carmen Gheorghe, Femei rome pe piața muncii: interese, reprezentare și participare sindicală (Roma women on the labour market: interests, representation and participation in trade unions movement), June 2011, pp.105-109.

<sup>265</sup> Anti-discrimination Law, Article 2.(1), art.2 alin.(5), art.10 lit.b, Public health Act (*Legea nr.95/2006 privind reforma în domeniul sănătății*), Articles 374 alin.(3) and 652 alin.(2), Combating HIV/AIDS Act (*Legea nr.584/2002 privind măsurile de prevenire a răspândirii maladii SIDA în România și de protecție a persoanelor infectate cu HIV sau bolnave de SIDA*), Article 9.

<sup>266</sup> Euroregional Center for Public Initiatives, Sexual and reproductive rights. The case of women living with HIV in Romania (*Drepturile sexuale și ale reproducerii. Cazul femeilor care trăiesc cu HIV în România*), June 2011, Bucharest, Maiko, available at: [http://www.ecpi.ro/documents/Docs/Raport\\_femeicuHIV\\_website.pdf](http://www.ecpi.ro/documents/Docs/Raport_femeicuHIV_website.pdf).



A short study published in May 2011 indicates that women face refusals when accessing abortion on request in public hospitals that is a legal public service paid by the patient. These refusals are based on medical personnel's invoking conscientious objection to perform abortion on request especially during important Orthodox religious holidays like Christmas and Easter. This is affecting women's rights to health care, private life, and non-discrimination (on religion and sex – given that this medical service is exclusively needed by women). The study contains a legal analysis showing that the law does not permit conscientious objection in the public healthcare system.<sup>267</sup>

### 5.1.6 Promising 'good' practices

There are no 'good' practices to report in spite of in depth research of available databases.<sup>268</sup>

### 5.1.7 Key issues in public debate

The two main legal developments regarding equalizing the retirement age for men and women and decreasing the period of leave for childcare and the monthly allowance for childcare leave were key issues in the public debate in 2011. The Government motivated the measures on budgetary cuts needed because of the economic crises. The parliamentary opposition and part of the civil society, including mass media, argued that these two measures are disadvantaging women, thus constitute discrimination on the ground of sex:

- With regards to the first measure, they claimed that the principle of equality was misunderstood by the Government and that it should take into account the specificities of women's situation in Romania, who are in the same time employees, housewives and main caregivers of their families.
- With regards to the second measure, they claimed that women are predominantly affected by the measure because the great majority of parents that take leave for childcare are women.

The debates were finalized in both cases at the level of the Constitutional Court which withheld the Government's decisions. In the end, gender roles deeply entrenched in the Romanian society were not discussed and challenged during the debate, but rather reinforced. A fathers' association argued before the NCCD that the President of Romania's request to the Parliament to provide a lower retirement age for women because they bear a double burden in the Romanian society – taking care of the household and children – is discriminating against men, especially fathers who have an important role in child rearing. The NCCD found that the President's statements do not constitute sex discrimination but a manifestation of freedom of opinion.<sup>269</sup>

In February 2011, one member of the Government coalition introduced in the Parliament a draft law imposing quotas to political parties to distribute women among candidates for general elections.<sup>270</sup> The draft law mandates the NCCD and the Central Electoral Bureau (CEB) (*Biroul Electoral Central*, BEC) to monitor and assess political parties' compliance with the law and apply sanctions – the suspension of annual subsidy from state budget.<sup>271</sup> The

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<sup>267</sup> Euroregional Center for Public Initiatives, The refusal based on religion on conscience to accessing abortion on request in Romania (*Refuzul pe motive de religie sau conștiință la efectuarea întreruperii electiv de sarcină în România*), May 2011, Bucharest available at: [http://www.ecpi.ro/documents/Docs/Raport\\_refuz\\_avort\\_electiv.pdf](http://www.ecpi.ro/documents/Docs/Raport_refuz_avort_electiv.pdf).

<sup>268</sup> We checked the ALTFEM database on projects regarding gender issues available at: <http://www.altfem.ro/resurse/proiecte-gender-in-romania>.

<sup>269</sup> NCCD, Decision No.55 of 15 February 2011.

<sup>270</sup> Quotas for women Draft Law (*PL-x nr. 333/2011, Proiect de Lege privind introducerea cotei obligatorii de reprezentare politică a femeilor în Parlamentul României*), Article7, available at [http://www.cdep.ro/pls/proiecte/upl\\_pck\\_proiect?cam=2&idp=12039](http://www.cdep.ro/pls/proiecte/upl_pck_proiect?cam=2&idp=12039).

<sup>271</sup> Quotas for women Draft Law (*PL-x nr. 333/2011, Proiect de Lege privind introducerea cotei obligatorii de reprezentare politică a femeilor în Parlamentul României*), Article7

draft is presently debated in the Parliament. The initiator was strongly criticised by one feminist advocate for inviting to a round table about the draft law exclusively men.<sup>272</sup> A former Romanian President of the Equal Opportunities Committee of the Parliamentary Assembly of the Council of Europe also criticised the draft law for being ineffective in practice because Romania has a uninominal electoral system.<sup>273</sup> Other critics stressed that what is important for democracy are not quotas but building a civilized political arena that encourages real values, professionalism, and politeness.<sup>274</sup> Gender roles and stereotypes about women were again reinforced in the debate. They were used to justify the need of this legislative measure – for example, women are more qualified to talk about education, childcare, healthcare.<sup>275</sup>

According to the World Bank, the percentage of Romanians who perceive men being better leaders than women decreased from 67% (in 1994-7) to 55% (in 2005-7).<sup>276</sup> However, the percentages of women in Parliament decreased dramatically from 34 %in 1990 to 11% in 2008.<sup>277</sup> In the Government, women representation dropped from 19% in 2009 to 6% in 2011. In local administration women representation is very low as well: 3.5% mayors, 12.6% county counsellors, 10.8% local counsellors, and 4.7% prefects. These figures placed Romania at the bottom of the World Economic Forum 2006-2009 list (place 126 out of 134).<sup>278</sup>

### 5.1.8 Information on trends until 2011

According to the National Institute of Statistics, the general trend of decreasing the gap between women's medium wage compared to men's medium wage (from 24% in 1996 to 8.4% in 2009) was overturned in 2009, reaching in 2010 12.6%.<sup>279</sup>

The World Bank showed that while telework has grown rapidly in the world, particularly among female workers, this tendency was not registered in Romania, remaining at very low

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<sup>272</sup> Filia Center, Scrisoare de mulțumire adresată doamnei deputat Sulfina Barbu (*Thank you letter addressed to madame deputy Sulfina Barbu*), 30.03.2011, available at:

<http://www.centrulfilia.ro/index.php/example-pages/89-scrisoare-de-multumire-adresata-doamnei-deputat-sulfina-barbu>.

<sup>273</sup> Evenimentul zilei (2011), 'Raportor european: inițiativa Sulfinei Barbu de a crește reprezentarea femeilor în politică, un gest politicianist' (European Rapporteur: Sulfina Barbu's initiative to increase women's representation in politics, a politicized gesture), 1 April 2011, available at <http://www.evz.ro/detalii/stiri/raportor-european-initiativa-sulfinei-barbu-de-a-creste-reprezentarea-femeilor-in-politica-un.html>.

<sup>274</sup> Adevarul (2011), 'AUDIO "Femeia încă pupă mâna bărbatului în mediul rural"', (AUDIO In rural areas the woman is still kissing the man's hand), 2 April 2011, available at [http://www.adevarul.ro/actualitate/eveniment/femei-politica-lege-sulfina-preda-avramescu-filia\\_0\\_454754986.html](http://www.adevarul.ro/actualitate/eveniment/femei-politica-lege-sulfina-preda-avramescu-filia_0_454754986.html).

<sup>275</sup> Adevarul (2011), 'Sulfina Barbu despre legea care prevede mai multe femei în politică: A fost foarte greu să dezbat indemnizația mamelor cu bărbatii', (Sulfina Barbu on the law regarding increasing women's representation in politics: It was difficult to debated with men the allowance for mothers), 31 March 2011, available at [http://www.adevarul.ro/actualitate/politica/Sulfina-Barbu-despre-legea-care-prevede-mai-multe-femei-in-politica-A-fost-foarte-greu-sa-dezbat-indemnizatia-mamelor-cu-barbatii\\_0\\_454155149.html](http://www.adevarul.ro/actualitate/politica/Sulfina-Barbu-despre-legea-care-prevede-mai-multe-femei-in-politica-A-fost-foarte-greu-sa-dezbat-indemnizatia-mamelor-cu-barbatii_0_454155149.html)

<sup>276</sup> World Bank, World Development Report 2012. Gender Equality and Development, 2011, The International Bank for Reconstruction and Development / The World Bank, Washington D.C., p.85.

<sup>277</sup> World Bank, World Development Report 2012. Gender Equality and Development, 2011, The International Bank for Reconstruction and Development / The World Bank, Washington D.C., p.387.

<sup>278</sup> Reasoning of the Mandatory quotas for women Draft Law, available at [http://www.adevarul.ro/actualitate/eveniment/Expunere-motive-femei\\_ADVFI20110401\\_0004.pdf](http://www.adevarul.ro/actualitate/eveniment/Expunere-motive-femei_ADVFI20110401_0004.pdf)

<sup>279</sup> Romania/ National Institute of Statistics, România în cifre, pp.27-28, available at [http://www.insse.ro/cms/files/publicatii/Romania\\_in%20cifre%202011.pdf](http://www.insse.ro/cms/files/publicatii/Romania_in%20cifre%202011.pdf)

levels among both women and men (less than 5% are teleworking at least one quarter of the time).<sup>280</sup>

Sexist stereotypes and gender roles predominate in mass media perpetuating negative models, according to a mass media analysis published in September 2011.<sup>281</sup> Only one third of women depicted in mass media are presented as professionals or experts, the rest of the cases, they are presented as social actors that obtained their statute due to association with powerful men or due to their physical or sexual qualities. Men appear on TV more often than women; the highest disproportion is seen in talk shows where the accent is on professional life and expertise (12% women). Men appear three times more frequent than women in the written media, where women are more present in tabloids. Clear-cut divisions based on gender are very frequent in portrayals of professions, roles in the family, roles in the household, and in commercials. Men are presented as decision-makers, technically oriented, associated with physical strength, while women are presented as caregivers, organizers of the household, educators. While success for a man means being a good professional, for a woman it means being equally a good professional, mother, and housewife.<sup>282</sup>

### 5.1.9 Identification of future challenges

In October 2011, the results of a study about the impact the economic crisis has on women were issued. They show that the unemployment rate of women increased from 4.7% in 2008 to 7% in 2010; this is a 1.8% raise compared to 1.2% for men. The poverty risk was in 2009 of 23.5% for women and 21.4% for men; the difference between sexes is higher for over 65 year olds – 21% for men compared to 30% for women.<sup>283</sup>

The study also argues that the great majority of anti-crisis governmental measures are disproportionately affecting women due to de facto inequalities between women and men that exist in the society. These inequalities have not been addressed or taken into account by the Government. Thus, the reduction of salaries in the public sector by 25% affected disproportionately women because they are the majority in this sector, particularly in the health and education systems where salaries are nine times lower than in the defence system for example, largely masculinised. The allowance for childcare leave reduction, which is predominately taken by women, has a disproportionate effect on them, too.

In 2009, the economic crisis increased the number of cases of domestic violence to 40%. Instead of addressing this issue, the Government abolished the National Agency for the Protection of Family (*Agencia Națională pentru Protecția Familiei*, ANPF) and made budgetary cuts –subsequently, only 4.46% of the victims can be housed in shelters and there is no shelter in eight counties in the country.<sup>284</sup>

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<sup>280</sup> World Bank, World Development Report 2012. Gender Equality and Development, 2011, The International Bank for Reconstruction and Development / The World Bank, Washington D.C., p.202.

<sup>281</sup> CPE, TBWA, Active Watch, ALTFEM – O campanie media pentru schimbarea imaginii femeii în societate, Imaginea femeii în societatea românească. Raport de analiză media, available at <http://www.altfem.ro/noutati/stiri/imaginea-femeilor-si-barbatilor-in-mass-media-si-publicitate>.

<sup>282</sup> Hotnews (2011), 'Spațiul media este impregnat cu stereotipuri sexiste, femeia având un rol controversat - studiu', available at [http://economie.hotnews.ro/stiri-media\\_publicitate-10060485-spatiul-media-este-impregnat-stereotipuri-sexiste-femeia-avand-rol-controversat-studiu.htm?cfat](http://economie.hotnews.ro/stiri-media_publicitate-10060485-spatiul-media-este-impregnat-stereotipuri-sexiste-femeia-avand-rol-controversat-studiu.htm?cfat)

<sup>283</sup> Adevărul (2011), 'Studiu: măsurile anti-criză ignoră femeile' (Study: Anti-crisis measures ignore women), 29 September 2011, available at [http://www.adevarul.ro/actualitate/social/web-femei-criza-filia-cercetare-masuri\\_0\\_563343849.html](http://www.adevarul.ro/actualitate/social/web-femei-criza-filia-cercetare-masuri_0_563343849.html)

<sup>284</sup> România Liberă (2011), 'Impactul crizei economice asupra femeilor din România', (Economic crisis impact upon women in Romania), 29 September 2011, available at: <http://www.romanialibera.ro/actualitate/eveniment/impactul-crizei-economice-asupra-femeilor-din-romania-239268.html>.

## 5.2 Religion

### 5.2.1 Policy and institutional developments

There are no policy and institutional developments to report.

### 5.2.2 Legislative developments

The Cemeteries and Funeral Services Act (*Legea privind cimitirele, crematoriile umane și serviciile funerare*) adopted by the Parliament in November 2010 was sent back for re-examination by the President of Romania.<sup>285</sup> Among several objections, the President points out that the new regulation establishes on the part of the local public administration the obligation to organize public cemeteries on sectors for each recognized cult (religious denomination) at the request of the cults functioning in the locality, yet the text of the draft law does not impose such an obligation on economic operators, foundations and associations, as cemetery owners. In fact, the draft law actually repeats provisions already existing within the Law on Religions.<sup>286</sup> This law also states that in the localities where there are no communal cemeteries and where certain cults do not dispose of their own cemetery, the deceased persons who belonged to the cults in question shall be buried according to their own rite in existing cemeteries, with the exception of the Mosaic and Muslim cemeteries. While it is justified to place the obligation of organizing sectors for existing cults within public cemeteries as the members of each cult are also taxpayers, it might be considered an infringement upon the right to property to impose this obligation on private entities (except for cases where they should allow the burial of persons from any cult if they own the only cemetery in the community). The President also requested that the Parliament adopts sanctions, considering that otherwise the law would be ineffective.<sup>287</sup> The Senate rejected the law entirely during re-examination. The law is being re-examined by the Chamber of Representatives.<sup>288</sup>

In March 2011, the Parliament adopted a law regulating public funding of social services and charity projects carried out by religious denominations. The law provided an allocation of up to 80% from public funds to such services.<sup>289</sup> The draft law was not supported by the Government, but it was introduced by 90 members of the Parliament from the main party of the Government coalition.<sup>290</sup> At the request of the civil society, the President of Romania sent the bill back to the Parliament for re-examination.<sup>291</sup> One of his main objections was that the

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<sup>285</sup> Cemeteries and funeral services Act (*PL-x nr. 592/2009*

*Proiect de Lege privind cimitirele, crematoriile umane și serviciile funerare*), available at [http://www.cdep.ro/pls/proiecte/upl\\_pck.proiect?cam=2&idp=10084](http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=10084).

<sup>286</sup> Romania/ Law 489/2006 on religious freedom and the general regime of cults, *Legea privind libertatea religioasă și regimul general al cultelor*, Art 28.

<sup>287</sup> President of Romania, Request of re-examination, 13 December 2010, available at <http://www.senat.ro/Legis/Lista.aspx?cod=14124>.

<sup>288</sup> Cemeteries and funeral services Act (*PL-x nr. 592/2009*

*Proiect de Lege privind cimitirele, crematoriile umane și serviciile funerare*), available at [http://www.cdep.ro/pls/proiecte/upl\\_pck.proiect?cam=2&idp=10084](http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=10084).

<sup>289</sup> State-religious denominations partnership for social services Act (*PL-x nr. 630/2009 Proiect de Lege pentru stabilirea parteneriatului dintre stat și biserică în domeniul asistenței sociale*), 8 March 2011, available at [http://www.cdep.ro/pls/proiecte/upl\\_pck.proiect?cam=2&idp=10655](http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=10655).

<sup>290</sup> The Government opinion on the draft law, 19.02.2010, available at <http://www.cdep.ro/proiecte/2009/600/30/0/pvg630.pdf>.

<sup>291</sup> Romania/Institutul pentru Politici Publice, 6 April 2011, available at <http://ipp.ro/pagini/dup259-criticile-publice-ale-ong-uril.php?pg=4>.

law treats differently social service providers that are not religious denominations.<sup>292</sup> The law is being re-examined by the Parliament.

### 5.2.3 National case law

In November 2010, the NCCD issued a decision finding the Ministry of Communication and Information Technologies in violation of the Anti-discrimination Act. The concept of the E-Romania portal launched by the ministry presented the Romanian Orthodox Church as the only relevant religious denomination in Romania that the Government is cooperating with. The only information presented on the portal with regards to religion was referring to the Orthodox religion, although in Romania there are 18 religious denominations recognized by the state (see Annex 4).<sup>293</sup> The case is important because it refers to a State authority and is motivated on the principle of state neutrality towards all religious denominations. It also shows misinterpretation of the definition of indirect discrimination. The NCCD considers intention to characterize the distinction between direct and indirect discrimination. In addition, instead of ordering an administrative sanction, the NCCD issued a recommendation, motivating that the Ministry had made the necessary changes on the portal and in other documents.<sup>294</sup> Issuing only recommendations (which are aimed for the future and can be issued both when finding discrimination and when finding that no discrimination occurred) instead of applying administrative sanctions (as required by law) has become common approach of the NCCD. As recommendations are not specifically mentioned as a remedy or as a part of the mandate of the NCCD, this practice was challenged before Bucharest Court of Appeal in a case concerning discriminatory remarks against Roma of the Ministry of Foreign Affairs (the court judgment is still not available).<sup>295</sup>

The NCCD sanctioned for discrimination a local council for unlawfully refusing to issue a construction permit for a worship place. The facts of the case show the environment at the local level between religious minorities and the majority and the influence the majority religion representatives could have on local administration. The case raises questions as to why the NCCD did not simply find discrimination on the ground of religion, but discrimination on “other criterion” as the person was “belonging to a religious denomination recognized by law.” It also shows ineffectiveness of legislation that forbids the NCCD to issue an administrative fine if the prescription term of six months<sup>296</sup> from the date the facts occurred expired (see Annex 4).<sup>297</sup>

In April 2011, the NCCD reviewed a complaint from the Greek-Catholic Church against the Romanian Orthodox Church and 18 local administrations regarding alleged acts of inobservance of the Greek-Catholic Church’s right to property. Some claims were separated and they are still pending before the NCCD. Others were declared inadmissible for being outside the NCCD’s mandate. One claim was actually reviewed on the merits and the NCCD found discrimination on the ground of religion in the exercise of the right to property. It issued only a written warning motivating that the Complainant asked an administrative fine be avoided. This is raising questions as to the actual capacity of the Complainant to ask for a softer sanction and the manner in which the NCCD understands to fulfil its mandate of

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<sup>292</sup> President of Romania request, 05.04.2011, available at <http://www.cdep.ro/proiecte/2009/600/30/0/cerere630rx.pdf>.

<sup>293</sup> More information available at <http://www.secularhumanism.ro/lang-ro/comunicate-de-presa/139-succes-al-asociaiei-umaniste-romane-la-cnccd.html>.

<sup>294</sup> NCCD, Decision No.240 of 23.11.2010.

<sup>295</sup> Bucharest Court of Appeal, File No.1490/2/2011 regarding the appeal against the NCCD decision No.366/24.11.2010.

<sup>296</sup> Romania/Administrative sanctions Act (*Ordonanta Guvernului nr. 2/2001 privind regimul juridic al contravențiilor*), Article 13.(1).

<sup>297</sup> National Council for Combating Discrimination, Decision No.131 of 6 April 2011.



applying administrative sanctions proportionately with the seriousness of acts committed (see Annex 4).<sup>298</sup>

#### 5.2.4 Statistical data made available in the reference period

The only statistics regarding discrimination with regards to religion are available at the NCCD. It reports data regarding the number of complaints (see ANNEX 2), the number of cases of discrimination, and the number of cases when the NCCD issued a recommendation regarding religion discrimination .

##### Discriminations found in 2010 on certain grounds:<sup>299</sup>

Ground	Abs.	Rel.
Religion	1	1.5%
Total	68	100%

##### Number of recommendations in certain fields, depending on certain grounds of discrimination:<sup>300</sup>

Ground of discrimination	Number of recommendations issued
Religion	2
Total	31 out of which 29 are issued in cases where discrimination was found.

##### Discriminations found in 2010 on certain grounds:<sup>301</sup>

Ground	Abs.	Rel.
Religion	1	1.5%
Total	68	100%

#### 5.2.5 Research and studies

The latest US State Department Report on Freedom of Religion (covering July-December 2010) assessed that the Government generally respected religious freedom in law and in practice. However, the report indicates that an Orthodox religion textbook published in 2006 by the Ministry of Education under the coordination of the then and present State Secretary for Religious Affairs was not withdrawn from schools though it contains discriminatory statements regarding certain religious denominations. It reports on local administration's refusals to granting construction permits for places of worship to some minority groups and its despondency to countering harassment of religious minorities due to Orthodox clergy's pressure. The report also mentions complaints made by the Greek-Catholic Church regarding refusals of property restitution. Falun Dafa Romania complained the authorities interfered with some of their actions.<sup>302</sup>

A sociological survey published in September 2011 shows information on recent trends in the Romanian society with regards to religious minorities and attitudes and perceptions motivated by religious feelings (see below).<sup>303</sup>

<sup>298</sup> National Council for Combating Discrimination, Decision No.153 of 18 April 2011, *Romanian Church United with Rome v. Romanian Orthodox Church and 18 local administrations*.

<sup>299</sup> NCCD, Annual Report 2010, Extract from table, p.55.

<sup>300</sup> NCCD, Annual Report 2010, Extract from table, pp.28-29.

<sup>301</sup> NCCD, Annual Report 2010, Extract from table, p.55.

<sup>302</sup> US State Department (2011), The July-December 2010 International Religious Freedom Report, available at <http://romania.usembassy.gov/2010-irfr-en.html> .

<sup>303</sup> Soros Foundation Romania (2011), *Religie și Comportament Religios* (Religion and religious behaviour), September 2011.

### 5.2.6 Promising 'good' practices

There are no good practices to report.

### 5.2.7 Key issues in public debate

A controversial draft law allegedly supposed to combat religious defamation was withdrawn by its initiator after media and humanist movement criticisms.<sup>304</sup> According to the draft law, religious defamation was defined as any form of expression made in public, private or on the internet that is inciting to violence, denial or ridicule of religious rights or members of religious denominations or communities recognised in Romania. The draft law proposed sanctions of administrative fines or even imprisonment for religious defamation.<sup>305</sup>

The financing of religious denominations, especially the Romanian Orthodox Church, the majority religion in the country, has always been a key issue on the public agenda. It became more present in the economic crisis context and the raise of a humanist movement. One of the most common topics in the public debate is the public funds allocated to the building of churches, especially the Cathedral of National Redemption in Bucharest ('*Catedrala Mântuirii Neamului*'), the biggest Orthodox church in the country.<sup>306</sup> Recent international media report<sup>307</sup> criticizing the Government for providing important public funds for this project in times of wide budgetary cuts split national media in two.<sup>308</sup> In the meanwhile, a survey shows that 58% of Romanians think that the money for building the cathedral should be exclusively or preponderantly Orthodox Church's money.<sup>309</sup>

### 5.2.8 Information on trends until 2011

A sociological survey published in September 2011 shows that one third of Romanians reject people belonging to religious sects ('*sectanți*'), being the third category rejected in the society (after homosexuals and Roma). This category is associated in Romania with marginal religious behaviour of people that changed their religion after having been baptised Orthodox and adopted a new religious denomination which appeared in Romania, not necessarily traditional religious denominations. Surprisingly, Orthodox believers and atheists are equally

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<sup>304</sup> HotNews (2011), 'O noua disputa pe teme religioase: Un deputat PNL vrea pedepsirea "comportamentului intolerant religios, indiferent de modul de exprimare - public/privat, internet/e-mail"' (New controversy on religious issues: National Liberal Party MP wants to sanction religious defamation irrespective of the form of expression – in public, private, on the internet or e-mail), 17 May 2011, available at <http://www.hotnews.ro/stiri-esential-8637234-noua-disputa-teme-religioase-deputat-pnl-vrea-pedepsirea-comportamentului-intolerant-religios-indiferent-modul-exprimare-public-privat-internet-mail.htm>. Dilema Veche (2011), 'Înjurați-i pe profeți în baie, cât mai e voie!' (Curse the prophets in your own bathrooms, while it is still allowed!), 12-18 May 2011, available at <http://www.dilemaveche.ro/sectiune/editoriale-opinii/articol/injura-i-i-profe-i-baie-cit-mai-e-voie>.

<sup>305</sup> Draft law on religious defamation (BP264/2011 *Propunere legislativă pentru prevenirea intoleranței religioase*), available at <http://www.senat.ro/Legis/PDF/2011/11b264FG.pdf>.

<sup>306</sup> România Liberă (2011), 'Bucureștenii finanțează fără voie Catedrala Mântuirii Neamului' (People living in Bucharest are financing without will the Cathedral of national Redemption), 16 June 2011, available at <http://www.romanialibera.ro/actualitate/eveniment/bucurestenii-finanteaza-fara-voie-catedrala-mantuirii-neamului-228502.html>.

<sup>307</sup> Deutsche Welle (2011), Romania - The Cathedral of National Redemption, 31 July 2011, available at <http://www.dw-world.de/dw/article/0,,15264903,00.html>.

<sup>308</sup> Gândul (2011), 'Catedrala Mântuirii Neamului a ieșit prima din criza' (Cathedral of National Redemption the first to come out of the crisis), 31 July 2011, available at <http://www.gandul.info/puterea-gandului/catedrala-mantuirii-neamului-a-iesit-prima-din-criza-8550596>. Jurnalul (2011), 1 August 2011, 'De ce construim Catedrala Mântuirii Neamului?' (Why are we building the Cathedral of National Redemption?), available at <http://www.jurnalul.ro/stiri/observator/de-ce-construim-catedrala-mantuirii-neamului-586294.html>.

<sup>309</sup> Soros Foundation Romania (2011), Religie și Comportament Religios (Religion and religious behaviour), September 2011, available at [http://soros.ro/ro/program\\_articol.php?articol=300](http://soros.ro/ro/program_articol.php?articol=300).



the most intolerant groups.<sup>310</sup> On the other hand, the study also establishes that Romanians are becoming more tolerant towards religious manifestations (except sects, see above), including towards people that do not have a religion – 75% think that true believers can be also people that do not attend church, 70 % think that every religion is right in its own way and 56% think that people that disobey God's laws should not be punished. Muslims are the most tolerant towards other religions. People that declare to be Orthodox, Catholic or Protestant have a general level of tolerance, while Neo-protestants appear to be the most intolerant of all.<sup>311</sup>

### 5.2.9 Identification of future challenges

The financing of religious denominations will continue to be challenged by the civil society.<sup>312</sup> In September 2011, the Romanian Secular-Humanist Association (*Asociația Secular-Umanistă Română*, ASUR) launched a law proposal aiming to change the current system of financing religious denominations by a direct payment system intermediated by state.<sup>313</sup> The proposal does not have parliamentary support, yet. A recent survey shows that the percentage of Romanians that support the idea of the Orthodox Church being financed by the state dropped significantly from 74% in 2000 to 54% in 2011.<sup>314</sup>

## 5.3 Disability (please focus on specific issues as defined in the guidelines)

### 5.3.1 Policy and institutional developments

The European Declaration of the World Health Organization on the Health of Children and Young People with Intellectual Disabilities and Their Families was signed by the Romanian Minister of Health on November 26, 2010.<sup>315</sup> Through this Declaration, states express their commitment to offer a better life to children and young people with intellectual disabilities by improving their access to high quality health care. The Declaration includes an Action Plan covering 10 priority areas, and establishing concrete interventions for various categories of young people, depending on their age, vulnerability and capacities. Following this plan implementation, the first results are expected to be obtained by the end of 2015.

On 19 September 2011, the Romanian Ministry of Education, Research, Youth and Sport (*Ministerul Educației, Cercetării, Tineretului și Sportului*) drafted a Government Decision to approve the technical-economic indicators for 210 preschool unit buildings in disadvantaged areas to be upgraded in the project Early childhood education reform in Romania (*Reforma educației timpurii în România*).<sup>316</sup> The buildings are to be equipped with ramps and toilets for persons with disabilities.

<sup>310</sup> Soros Foundation Romania (2011), *Religie și Comportament Religios* (Religion and religious behaviour), September 2011, available at [http://soros.ro/ro/program\\_articol.php?articol=312#](http://soros.ro/ro/program_articol.php?articol=312#).

<sup>311</sup> Soros Foundation Romania (2011), *Religie și Comportament Religios* (Religion and religious behaviour), September 2011, available at [http://soros.ro/ro/program\\_articol.php?articol=306](http://soros.ro/ro/program_articol.php?articol=306).

<sup>312</sup> Evenimentul Zilei (2011), 'Propunere: Finanțarea bisericii ca-n Germania. Bani de la credincioși nu de la stat' (Proposal: Financing the church like the Germans. Money should come from the believers not the state), 28 September 2011, available at <http://www.evz.ro/detalii/stiri/propunere-finantarea-bisericii-ca-n-germania-bani-de-la-credinciosi-nu-de-la-stat-947356.html>.

<sup>313</sup> More information is available at <http://www.asur.ro/noutati/lege-contributie-bisericeasca>.

<sup>314</sup> Soros Foundation Romania (2011), *Religie și Comportament Religios* (Religion and religious behaviour), September 2011, available at [http://soros.ro/ro/program\\_articol.php?articol=300](http://soros.ro/ro/program_articol.php?articol=300).

<sup>315</sup> World Health Organization, The European Declaration of the World Health Organization on the Health of Children and Young People with Intellectual Disabilities and Their Families, 26 November 2010.

<sup>316</sup> *PROIECT - Hotărâre de Guvern privind aprobarea indicatorilor tehnico-economici pentru 210 obiective de investiții, grădinițe cu program normal cu 2 săli de grupă, cuprinse în Proiectul "Reforma educației timpurii în România", Componentele 1.a, 1.b și 1.c* (Romania, DRAFT – Government Decision concerning the approval of technical-economic indicators for 210 investments in

### 5.3.2 Legislative developments

Law no. 221/2010, which ratifies the UN Convention on the Rights of Persons with Disabilities. According to this law, the Ministry of Labour, Family and Social Protection will modify the legislation on the protection of the persons with disabilities.<sup>317</sup> So far, the process of harmonizing Law no. 448/2006 on the Rights of Persons with Disabilities has not been initiated.

Order no. 1372/29.09.2010 of the Minister of Labour, Family and Social Protection approves the procedure for authorising protected units.<sup>318</sup> According to this Order, authorities and public institutions, public or private legal persons may acquire products or services from authorised protected units. The amount spent will be equivalent to the debt of that company or institution to the state budget.

Currently, there is an inter-ministerial discussion in the final stage on a Project to modify the normative NP-051/2001 in order to adapt civil buildings and the urban space around them in order to accommodate persons with disabilities.<sup>319</sup>

According to Article 2 (4) of the Law of National Education (*Legea Educației Naționale*) no. 1/2011,<sup>320</sup> “The State grants equal rights of access to all levels and forms of pre-university and higher education, as well as lifelong learning, for all citizens of Romania, without any form of discrimination.” Articles 48 through 56 of the Law of Education lay down the provisions for special and integrated special education. Special education can be organised in special schools and in mainstream schools which integrate special groups or individual students in mainstream groups. Article 50 stipulates: “Abusive diagnostic assessment of children based on criteria of race, nationality, ethnicity, language, belonging to a disadvantaged category, or any other criterion, which leads to their inclusion in special education needs groups, shall be punished.” There are no specific sanctions included in the law.

Subsequent to the new Law of National Education no. 1/2011, five bylaws (methodologies and regulations) were prepared concerning the implementation of education for children and students with additional needs. These bylaws have been posted on the website of the Ministry of Education for consultation and are to be approved in early October.<sup>321</sup>

### 5.3.3 National case law

The civil society strongly criticised the NCCD for ineffectively sanctioning discrimination, especially discrimination against persons with disabilities considering that sanctions are too light or non-existent.<sup>322</sup> According to the data provided by the National Council for

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kindergartens with regular timetable with 2 classrooms, included in the project “Early Education Reform in Romania”, Components 1.a, 1.b and 1.c) , available at <http://www.edu.ro/index.php/articles/16161>.

<sup>317</sup> Romania, Law Ratifying the UN Convention on the Rights of Persons with Disabilities (*Legea nr. 221 din 11 noiembrie 2010 pentru ratificarea Convenției privind drepturile persoanelor cu dizabilități*) 11 November 2010.

<sup>318</sup> Romania, Ministerial Order approving authorizing procedures for special units (*Ordinul nr. 1372 din 29 Septembrie 2010 al Ministerului Muncii, Familiei și protecției sociale privind aprobarea procedurii de autorizare a unităților protejate*) 29 September 2010.

<sup>319</sup> Project to modify the normative NP-051/2001 in order to adapt civil buildings and the urban space around them in order to accommodate persons with disabilities (*Proiectul de modificare a Normativului NP-051/2001 pentru adaptarea clădirilor civile și spațiului urban aferent la exigențele persoanelor cu handicap*) available at: [www.anph.ro](http://www.anph.ro).

<sup>320</sup> See: [http://www.dreptonline.ro/legislatie/legea\\_educatiei\\_nationale\\_lege\\_1\\_2011.php](http://www.dreptonline.ro/legislatie/legea_educatiei_nationale_lege_1_2011.php).

<sup>321</sup> Letter from the Ministry of Education, Research, Youth and Sport received on 20.10.2011 in response to inquiry no. 304/18.08.2011 sent by Centrul de Resurse Juridice.

<sup>322</sup> Institutul pentru Politici Publice (2011), *În ultimii ani, cazurile de discriminare a persoanelor cu dizabilități, inclusiv cele grave, au fost sancționate cu avertisment de către CNCD* [In the late years, cases of discrimination against persons with disabilities, among the most serious ones, have been

Combating Discrimination (NCCD) (*Consiliul Național pentru Combaterea Discriminării*, CNCD), the NCCD issued one decision in 2011, where disability was invoked as a ground for discrimination.<sup>323</sup> However, in September 2011, the NCCD issued a €1,160 administrative fine to a night club for denying access to a woman with disabilities. This is the highest fine ever issued by the NCCD (see Annex 4).<sup>324</sup>

The Centre for Legal Resources, on behalf of Valentin Campeanu v. Romania<sup>325</sup> is the first case brought before the European Court of Human Rights presenting a grim picture of the range of extreme human rights abuses routinely inflicted upon people with disabilities placed in long-term internment institutions, and who are often unable to complain or seek remedies for their plight before a court, due to their disability or because they are prevented from doing so by the authorities. The Court has asked the Romanian Government to account for its treatment of an HIV-positive, intellectually disabled young man of Roma ethnicity, which resulted in his death at the notorious Poiana Mare Psychiatric Hospital in Romania. The case, brought on behalf of Valentin Campeanu by the NGO Centre for Legal Resources Romanian and supported by INTERIGHTS, was communicated to the Romanian Government by the Court on June 7, 2011.<sup>326</sup>

### 5.3.4 Statistical data made available in the reference period

The General Department for Social Inspection (Social Inspection) (*Direcția Generală pentru Inspecție Socială*) reports issuing for the entire country only 11 sanctions in 2010 (in a total amount of about €9,000) and nine sanctions in 2011 (a total of about €17,500) for infringements of accessibility to public utility buildings (Article 62 of the Rights of the Persons with Disabilities Act).<sup>327</sup> These low numbers are the result of the Social Inspection not conducting any *ex officio* inspections during 2010 and 2011, only responding to complaints filed by persons with disabilities.<sup>328</sup>

In 2011 (1<sup>st</sup> of January-30<sup>th</sup> of June), 23 complaints (out of 236) were lodged with the NCCD on the ground of disability. In its response to the request for information, the NCCD mentioned the existence of cases involving discrimination of persons with disabilities in employment.<sup>329</sup>

As of June 30, 2011, according to the “Quarterly Statistic Bulletin Q2” published by the Ministry of Labour, Family and Social Protection – the General Directorate for the Protection of Persons with Disabilities,<sup>330</sup> 690,469 persons with disabilities<sup>331</sup> were recorded in Romania, out of which 673,359 were non-institutionalized and 17,110 were institutionalized.

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sanctioned with a warning by the NCCD], 15 April 2011, available at

<http://www.ipp.ro/profiles.php?IDfile=99>.

<sup>323</sup> Romania, National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării*) Bucharest/244, 22 June 2011.

<sup>324</sup> Evenimentul Zilei (2011), ‘Combaterea Discriminării a amendat clubul care a interzis accesul unei tinere imobilizate’, 21 September 2011, available at <http://www.evz.ro/detalii/stiri/combatarea-discriminarii-a-amendat-clubul-care-a-interzis-accesul-unei-tinere-imobilizate-946564.html>.

<sup>325</sup> European Court of Human Rights, *Valentin Campeanu v. Romania*, 47848/2008

<sup>326</sup> The first case concerning patients’ deaths at the Poiana Mare Psychiatric Hospital communicated to the Romanian Government, <http://www.crj.ro/EN/First-case-concerning-patients-deaths-at-the-Poiana-Mare-Psychiatric-Hospital-communicated-to-the-Romanian-Government-828>.

<sup>327</sup> Social Inspection, Response of 15 September 2011, p.1 on file with national FRANET expert.

<sup>328</sup> Social Inspection, Response of 15 September 2011, p.2 on file with national FRANET expert.

<sup>329</sup> Romania, National Council for Combating Discrimination (*Consiliul Național pentru Combaterea Discriminării*) Bucharest/ 199, 1 August 2007. NCCD, Response no. 4875/ 15.09/2011, 3.IV, pp. 4-5 on file with national FRANET expert.

<sup>330</sup> The General Directorate for the Protection of Persons with Disabilities, the Ministry of Labor, Family and Social Protection (MMFPS), June 30, 2011, <http://www.anph.ro/tematica.php?id=13&idss=41>.

<sup>331</sup> Data available: 61,183 of which are children and 629,286 are adults.

The following statistics were made available by the Ministry of Education, Research, Youth and Sport for the 2010-2011 academic year. The data is provided by the County School Inspectorates (Romania, Inspectoratele Școlare Județene):<sup>332</sup>

Number of special education schools	Number of mainstream schools which integrate students with special education needs	Number of students in special education schools	Number of students in mainstream schools who receive additional support	Number of students in special integrated classes/ groups in mainstream schools	Number of students who receive tuition at their domicile
171	2019	26936	26689	3346	1091

Number of support teachers	Number of school counsellors	Number of speech therapists	Number of staff in County / Bucharest Municipality Resource and Educational Assistance Centres(Romania, Centru Județean/ al Municipiului București de Resurse și Asistență Educațională)
1125	1899	535	1065

### 5.3.5 Research and studies

In 2010, NCCD published a Report on the implementation in Romania of Directive 2000/78/EC for the period 2003-2010.<sup>333</sup> In this report, the NCCD presents the way in which Article 5 of the Directive was transposed into Romanian law. It also presents the number of cases concerning disability in which the NCCD issued a decision and the solutions adopted.

In 2010, NCCD carried out a barometer of opinion Discrimination phenomenon in Romania (*Fenomenul discriminării în România*) on the perception and attitudes of the population towards groups vulnerable to the phenomenon of discrimination. According to this barometer, persons with HIV/AIDS, homosexuals, Roma and persons with disabilities are perceived as being the groups most discriminated in Romania.<sup>334</sup>

In 2010, the Barometer of Social Inclusion (*Barometrul de Incluziune Socială 2010*) a survey at national level, financed by the European Social Fund, had as major objective the study of social inclusion and the job market in Romania. During the survey, 1,013 employees from local companies were interviewed personally.<sup>335</sup> According to the survey, 75% of respondents reported that they would agree to have a colleague with disabilities (in comparison to 92% agreeing with a colleague that would be single mother and 46% agreeing with a homosexual colleague). The barometer also revealed that the employers have a limited interest in the working conditions for persons with disabilities. 55% of the respondents believe that the company/institution for which they are working has no interest in equality of chances for

<sup>332</sup> Letter from the Ministry of Education, Research, Youth and Sport received on 20.10.2011 in response to inquiry no. 304/18.08.2011 sent by Centrul de Resurse Juridice.

<sup>333</sup> National Council for Combating Discrimination (NCCD) (2011), Raport privind implementarea Directivei cadru (2000/78/CE) în România 2003-2010

<sup>334</sup> National Council for Combating Discrimination (NCCD) (2010) Phenomenon of discrimination in Romania- Synthetic Report 2010, Bucharest, Totem, 2010, pp. 37.

<sup>335</sup> Barometer of Social Inclusion (2010)

persons with disabilities. There are few facilities at the workplace for persons with disabilities. Most of them are for the persons in wheelchair (ramps and parking). 38% of the respondents considered that persons with disabilities are the least likely to be hired (in comparison to 5% women, 37% Roma persons).

The NGO, the Institute for Public Policies (*Institutul pentru Politici Publice IPP*) has published in 2010 a study on services provided to persons with intellectual disabilities in residences.<sup>336</sup> The study covers the period from 2007 until 2010 and aims to assess the efficiency of social services offered to persons with disabilities by Units for Social Protection.

In 2011, the Institute for Public Policies has also published a study on the decisions issued by NCCD on disability cases.<sup>337</sup> According to this study, the NCCD has only sanctioned by “warning” in the cases concerning discrimination on the ground of disability, even in the cases raising very serious issues.

In 2009, the NGO the Academic Society in Romania (*Societatea Academică din România*) published a report on the obstacles encountered by persons with disabilities on the job market.<sup>338</sup>

### 5.3.6 Promising ‘good’ practices

In 2011, the NCCD in cooperation with Association for the Visually Impaired (*Asociația Nevăzătorilor din România*) has published a leaflet in Braille system comprising information on discrimination: legal provisions, case law of NCCD, with the purpose to inform visually impaired persons.

Sibiu County Council invested RON 4.2 million partly raised from REGIO funds in improving the quality of inclusive education provision in Sibiu County through modernising the Turnu Roșu School Centre for Inclusive Education. The project includes rehabilitation of the school premises, providing new furniture and information technology equipment, building access ramps and lifts for people in wheelchairs, equipping the schoolyard and establishing a school club. The 19-month project (2011-2013) will benefit 89 students who come from five localities in Sibiu County.<sup>339</sup>

### 5.3.7 Key issues in public debate

In June 2011, a young woman in a wheelchair was not allowed to enter a club. The case came to the attention of the authorities and the NCCD started legal procedures *ex officio*. The case was widely discussed in the media and it resulted in a spontaneous campaign initiated on Facebook by young people aiming to boycott that club. The NCCD found discrimination in this case and fined the disco with RON5,000 (approximately €1,1160).

According to the Government Emergency Ordinance no. 84 /2010, Articles 1 and 3 the special protection measure of “personal assistant” (*asistent personal*) is no longer guaranteed (although a government emergency ordinance should not be able to diminish rights guaranteed through a law). Thus, if the employer (local authority with competence in the area of disability) is no longer able to ensure the employment of the personal assistant, the person with a disability will be given an indemnity instead, regardless of whether they opted for the

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<sup>336</sup> Institutul pentru Politici Publice (2010) *Furnizarea serviciilor oferite persoanelor cu dizabilități mentale din sistemul rezidențial- Indicatori, Repere, Provocări*, Bucharest.

<sup>337</sup> Institutul pentru Politici Publice (2011) În ultimii ani, cazurile de discriminare a persoanelor cu dizabilități, inclusiv cele grave au fost sancționate cu avertisment de către CNCD, Bucharest, 15 April 2011.

<sup>338</sup> Academic Society in Romania (Societatea Academică din România) (2009) Diagnostic : EXCLUS DE PE PIAȚA MUNCII- Piedici în ocuparea persoanelor cu dizabilități în România.

<sup>339</sup> Infrastructura serviciilor educationale inclusive din judetul Sibiu, sustinuta prin fonduri nerambursabile (Romania, Inclusive education provision infrastructure in Sibiu County supported from non-reimbursable funds), MDRT Newsletter, No. 64, available at [www.mdrt.ro/comunicare/buletine/newsletter-mdrt?newsID=84&art=563](http://www.mdrt.ro/comunicare/buletine/newsletter-mdrt?newsID=84&art=563).



indemnity or for the special assistant. This would affect 15,000 persons with severe disabilities. It is expected that this legal provision will lead to an increased pressure for the institutionalization of persons with disabilities in residential-type centers and to degrading treatment of people in need.

Proposals for revising Law no. 487/2002 on the Mental Health and Protection of People with Mental Health Disorders are submitted to the Chamber of Deputies for adoption.<sup>340</sup> The main amendments to the law consist of notifying the judge on a measure of involuntary detention of a person having mental health disorders, and of authorizing non-governmental organizations in the area of protection of human rights/persons with disabilities, to conduct monitoring visits in psychiatric hospitals/sections, based on the hospital manager's consent. Adoption of the amendments to Law no. 487/2002 will result in a new approach of involuntary detention decisions, which may be maintained only with approval of a judge; however, training would be necessary both for judges and psychiatrists. The possibility for non-governmental organizations to conduct unannounced monitoring visits in order to prevent incidents of cruel and inhuman treatments will represent a step forward for the observance of the rights of institutionalized persons with disabilities. The issue existing currently in the draft law that is under debate in the Parliament is that NGO representatives will have access only based on the consent of the head of the institution, which eliminates the unannounced character of such visits.

At present, according to the NGO RENINCO, the inclusive education provision in preschools is being analysed by the Ministry of Education, Research, Youth and Sport in partnership with UNICEF and the NGO RENINCO within the project entitled *Pași spre educația incluzivă în grădinițe* (Romania, Steps toward inclusive education in kindergartens).<sup>341</sup> However, there is no major public debate on any specific issue.

### 5.3.8 Information on trends until 2011

There is more awareness of the phenomenon of discrimination but the discrimination of persons with disabilities in employment is less discussed than other grounds of discrimination (especially nationality and ethnicity).

As relevant data is only available for the 2010-2011 academic year, no trends can be discerned regarding the number of students with additional learning needs in the Romanian education system, or the number of specialised and support staff for inclusive education.

### 5.3.9 Identification of future challenges

One major challenge for the future is how to make sure that measures taken for the inclusion of persons with disabilities on the job market will be fully implemented. This is the case, for instance, of the Article 78 (2) of Law no. 448/2006 which establishes an obligation for the employers with at least 50 employees to employ at least 4% of persons with disabilities of their total number of employees or pay a certain amount to the state.<sup>342</sup> This provision still has to be implemented, recent reports indicating that there is no mechanism to collect the money and ensure that a special fund is created to facilitate inclusive measures.<sup>343</sup>

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<sup>340</sup> Romania/ Law no. 487 on the Mental Health and Protection of People with Mental Health Disorders (*Legea privind sănătatea mintală și protecția persoanelor cu tulburări psihice*), 2002.

<sup>341</sup> Asociația RENINCO România (RENINCO Association Romania), correspondence no. 224 of 12.10.2011.

<sup>342</sup> Romania, Act for the Protection and Promotion of Rights of Persons with Disabilities (*Legea nr. 448/2006 privind protecția și promovarea drepturilor persoanelor cu handicap*) 6 December 2006.

<sup>343</sup> See statement of the president of the NGO Motivation claiming that the authorities fail to collect €30 million from employers. Article available at: <http://www.mediafax.ro/social/presedintele-motivation-30-milioane-de-euro-necolectati-de-la-angajatori-care-nu-incadreaza-persoane-cu-handicap-8856511/>.

Media and politicians claim that during the period of transition many Romanians, who had lost their jobs, obtained certificates qualifying them as persons with disabilities illegally. Claiming fraud within the disability system which would pose an unreasonable burden on the social assistance budget and deprive those who really need disability benefits of them, the Ministry of Labour started a process of reassessment of persons with disabilities based on controls to confirm that they obtained the certificates legally. Following the start of the implementation of the reassessment procedures, the National Organization of People with Disabilities in Romania-NOPDR (*Organizația Națională a Persoanelor cu Handicap din România - ONPHR*) sent in May 2011 a letter to the Ministry arguing that the reassessment was implemented illegally and in an abusive manner (on the basis of legislation establishing controls which has not been published in the Official Gazette, provisions including unannounced visits which, the organization claimed, breached the right to private and family life and the right to dignity, etc...) <sup>344</sup>. According to the Strategy on the Reform of the Social Assistance System, social inspection controls in 2010 revealed a level of 14 per cent irregularities within the disability system (still there is no clear image of the range of irregularities and their nature). <sup>345</sup>

Following publicly transmitted messages, coming mainly from the part of the executive, a phenomenon of scapegoating of persons with disabilities in general could be discerned. The Ministry of Labour did not provide a methodology for identifying fraud in individual cases, and thus failed to avoid abusing those who do qualify for disability benefits by re-evaluating them without individually identified reasons of suspicion."

Another problem is that persons with disabilities are still very much dependant and less encouraged in leading an autonomous, richly developed life.

The government has prepared a draft of a Framework Act on Social Assistance with the stated intention to also address these issues. <sup>346</sup> NGOs working on persons with disabilities are criticising this bill, and especially the section 3 of chapter IV, which eliminates the monthly income which was previously granted to persons with disabilities. <sup>347</sup>

OPCAT ratification should lead to implementation of a National Preventive Mechanism, covering also involuntary detention, until mid 2012. <sup>348</sup> To date, the institution will take over the powers OPCAT was not identified.

Although no official data could be secured from the Ministry of Education, Research, Youth and Sport to substantiate this, newspaper articles reporting on the number of support teachers available for children with special education needs in Bucharest, and empirical observation in Timiș County, suggest that one of the challenges that inclusive education may face is shortage

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<sup>344</sup> Organizația Națională a Persoanelor cu Handicap din România ONPHR, (*National Organization of Persons with Disabilities in Romania - NOPDR*), Open Letter to the Ministry of Labour, Family and Social Protection, 18.05.2011, available at: [http://www.onphr.ro/PDF-docs/Adresa\\_MMFPS.pdf](http://www.onphr.ro/PDF-docs/Adresa_MMFPS.pdf)

<sup>345</sup> Ministry of Labour, Family and Social Protection, *Strategia privind reforma în domeniul asistenței sociale* (*Strategy of the Reform in the Field of social assistance*) for 2011-2014, available at: <http://www.mmuncii.ro/pub/img/site/files/58bd6ffc9844fbc4a8a639672450872b.pdf>

<sup>346</sup> Law on social assistance (*Legea-cadru a asistenței sociale*) adopted by the Romanian Government on 1 June 2011.

<sup>347</sup> National Council on Disability in Romania (Consiliul Național al Dizabilității din România, CNDR), Proiectul legii Asistenței Sociale în România încalcă drepturile persoanelor cu dizabilități, <http://cndr.anvr.ro/>.

<sup>348</sup> Letter of the Permanent Mission of Romania to the Office of the United Nations and the International Organisations in Switzerland No 1110/17 May 2010, [http://www2.ohchr.org/english/bodies/cat/opcat/docs/ReplyPM\\_Romania17.05.2010.pdf](http://www2.ohchr.org/english/bodies/cat/opcat/docs/ReplyPM_Romania17.05.2010.pdf).



of human resources.<sup>349</sup> There is a relatively low number of support teachers for an increasing number of children who need additional learning support.

According to the Association RENINCO,<sup>350</sup> the future challenges for inclusive education relate to the frequent changes in the Romanian education system, as concerns legislation, methodologies, and allocation of resources. Although the 2011 Law of Education has embraced the principle of social inclusion, this principle is not reflected clearly enough in the chapter on special education or in draft methodologies for the implementation of the law. RENINCO points out that inclusive education and the education of people with disabilities in general is not a priority on the agenda of education authorities. There is no research department within the National Institute for Education (*Institutul Național al Educației*) or within a similar institution to initiate research in the field of inclusive education. Universities promote inclusive education insufficiently and unequally: special psycho-pedagogy courses are only available for preschool and primary school teachers' pre-service training. The itinerant support teachers' activity for children with additional needs in elementary school is not known enough, nor monitored, coordinated, valued or promoted. There are only a small number of non-governmental organisations and parents of children with additional needs (e.g. children with autism) who militate for inclusive education. A comprehensive campaign would be necessary to raise awareness of and promote inclusive education.

One of the most significant challenges that the inclusive education system is expected to face in the near future is to provide qualified human resources for children and students with additional learning needs. In this respect, the Ministry of Education, Research, Youth and Sport intends to focus its efforts on training teachers who work with children and students with special education needs in special schools and mainstream schools.<sup>351</sup>

## 5.4 Sexual orientation and gender identity

### 5.4.1 Policy and institutional developments

The National Institute for Forensic Medicine “Mina Minovici” (NIFM) (*Institutul Național de Medicină Legală “Mina Minovici”*, INML) has a new methodology for evaluating cases of the so-called “sexual identity disorder.” The methodology however is in breach of human rights and of the standards of care for transgender people – ineffective mechanism, infringing on the right to private life, the right to self-determination, the right to physical and mental integrity of the person, the right to personal dignity.. It takes three years of evaluations (three phases) to certify whether the person is transgender. At any moment NIFM can interrupt the evaluation if the person does not comply with its recommendations and requests. The person is expected to avail himself/herself to a large number of tests, hospitalizations, mandatory psychotherapy for at least two years, A social investigation usually performed by the local authorities from the person's residence, which impedes on the right to confidentiality by interfering with the person's privacy and family life – family members, work colleagues, neighbours are usually interviewed during such investigation at the initiative of local authorities. In most cases, these interviewees have nothing to do with the transgender person's decision about sex reassignment.. The person is also required “to carry out activities in an environment predominated by persons belonging to the preferred sex” and to have “direct relations with people that suffered sex reassignment surgery and people that chose not to

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<sup>349</sup> Profesor de sprijin pentru elevii care învață greu (Romania, Support teachers for students with learning difficulties), available at <http://www.evz.ro/detalii/stiri/profesor-de-sprijin-pentru-elevii-care-invata-greu-910995.html>.

<sup>350</sup> Asociația RENINCO România (RENINCO Association Romania), correspondence no. 224 of 12.10.2011.

<sup>351</sup> Letter from the Ministry of Education, Research, Youth and Sport received on 20.10.2011 in response to inquiry no. 304/18.08.2011 sent by Centrul de Resurse Juridice.

subject themselves to sex reassignment surgery.”<sup>352</sup> If the person has medical contraindications to endocrinological treatment, the sex reassignment procedure is not allowed.<sup>353</sup>

A forensic-medical certificate to attest the sex of the person is required by law in the administrative procedure for name change. This requirement is in addition to the court decision giving permission to gender reassignment and civil status change.<sup>354</sup> When asked which are the criteria for attesting the masculine or feminine sex of a person when issuing such a forensic-medical certificate, the NIFM stated that these criteria do not constitute public information. Consequently, the NGO which was refused access to these public information opened an access to public information trial against NIFM.<sup>355</sup>

Public health authorities took a stand on the issue of covering gender reassignment treatment by the national health insurance fund, on the occasion of a gender reassignment surgery largely covered by the media in June 2011. The National Health Insurance House (NHIH) (*Casa Națională de Asigurări de Sănătate*, CNAS) gave contradictory declarations whether the costs are actually covered or not.<sup>356</sup> The Minister of Health declared that he does not support the coverage.<sup>357</sup> Officially, the costs for gender reassignment treatment, including surgery are not covered, only some medical tests, medicines, especially hormones, associated with certain health conditions or diseases, are covered.<sup>358</sup>

#### 5.4.2 Legislative developments

The New Civil Code (*Legea nr.287/2009 privind Codul civil*), that entered into force on 1 October 2011, provides restrictive definitions of marriage and family and explicitly forbids same-sex marriage. Marriage is only between a man and a woman.<sup>359</sup> Marriage and the equal rights of spouses regarding children resulted of marriage are the basis of family.<sup>360</sup> Furthermore, the New Civil Code does not recognize same-sex marriage or civil partnership lawfully concluded abroad, except for the scope of the legal provisions regulating freedom of movement of the EU and EEA citizens.<sup>361</sup>

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<sup>352</sup> Interview with Irina Niță, Director, ACCEPT Association of 21 September 2011. NIFM, Response No.A8/4584/03.05.2011 on file with national FRANET expert.

<sup>353</sup> *Idem*.

<sup>354</sup> Romania/Administrative Procedures for Name Change Act (*Ordonanța Guvernului nr.41/2003 privind dobândirea și schimbarea pe cale administrativă a numelor persoanelor fizice*) of 30 January 2003, Article 4(2)(l).

<sup>355</sup> *Idem*.

<sup>356</sup> Realitatea TV (2011), ‘CNAS acoperă costurile operației pentru schimbarea de sex’ [CNAS covers the costs of sex reassignment surgery], 2 June 2011, available at [http://www.realitatea.net/cnas-acopera-costurile-operatiei-pentru-schimbare-de-sex-vezi-cati-romani-asteapta\\_840936.html](http://www.realitatea.net/cnas-acopera-costurile-operatiei-pentru-schimbare-de-sex-vezi-cati-romani-asteapta_840936.html). Gândul (2011), ‘Al șaselea român a fost operat pentru schimbare de sex’ [The sixth Romanian had sex reassignment surgery], 1 June 2011, available at <http://www.gandul.info/news/al-saselea-roman-a-fost-operat-pentru-schimbare-de-sex-interventia-va-fi-decontata-de-statul-roman-o-operatie-similara-costa-in-strainatate-60-000-de-euro-8303240>. Evenimentul Zilei (2011), ‘Operație de schimbare de sex, cu voia judecătorului’ [Sex reassignment surgery with judge’s permission], 2 June 2011, available at <http://www.evz.ro/detalii/stiri/operatie-de-schimbare-de-sex-cu-voia-judecatorului-932337.html>.

<sup>357</sup> B1 TV (2011), ‘Ministrul Sănătății: E straniu să decontăm operații de schimbare de sex’ [Minister of Health: It is bizarre to bear the costs of sex reassignment surgery], 2 June 2011, available at <http://www.b1.ro/stiri/politica/ministrul-sanata-ii-e-straniu-sa-decontam-opera-ii-de-schimbare-de-sex-5826.html>.

<sup>358</sup> Interview with Irina Niță, Director, ACCEPT Association of 21 September 2011. HINH, Responses No.RP/228/03.05.2011 and No.1778/17.05.2011 on file with national FRANET expert.

<sup>359</sup> Romania/New Civil Code (*Legea nr.287/2009 privind Codul civil*) of 17 July 2009, Articles 259 and 277.

<sup>360</sup> Romania/New Civil Code (*Legea nr.287/2009 privind Codul civil*) of 17 July 2009, Article 258.

<sup>361</sup> Romania/New Civil Code (*Legea nr.287/2009 privind Codul civil*) of 17 July 2009, Article 277.

In September 2011, this prohibition was further stated in an amendment of the Civil Status Act (*Legea nr. 119/1996 cu privire la actele de stare civilă*).<sup>362</sup>

“At Article 44, after paragraph (6), a new paragraph is introduced, paragraph (7) having the following content:

‘(7) The transcription/registration of civil status certificates or extracts issued by foreign authorities regarding same-sex marriage or same-sex civil partnerships concluded or contracted abroad by either Romanian citizens or foreign citizens is forbidden.’ ”

### 5.4.3 National case law

After a four years trial before the court of first instance, Bucharest Second District First Instance Court (*Judecătoria Sector 2 București*) ruled that the National Administration of Penitentiaries (NAP) (*Administrația Națională a Penitenciarelor*, ANP) should pay moral compensation of €50,000 for discrimination and ill-treatment based on sexual orientation.<sup>363</sup> The victim complained against NAP for failing to protect him from acts of sexual violence, harassment, threats and discrimination committed by fellow prisoners while he was in jail in 2004-2005 due to his presumed sexual orientation. NAP appealed the decision. The case is pending before Bucharest Tribunal (*Tribunalul București*).

In October 2010, the NCCD issued a decision sanctioning discriminatory declarations of George Becali, for impeding on the right to personal dignity of homosexuals in Romania. Mr. Becali, who is a member of the European Parliament and the main financier of “Steaua” Bucharest Football Club (Steaua) (*Clubul de Fotbal “Steaua” București*), stated that he will never hire a homosexual football player at Steaua.<sup>364</sup> The NCCD did not find discrimination in employment and did not hold Steaua liable for discriminatory employment policies. The NCCD’s decision is presently reviewed by Bucharest Court of Appeal (*Curtea de Apel București*) and on 12 October 2011, the Court sent a request to send preliminary questions to the ECJ in this case.<sup>365</sup> See ANNEX 4.

Contradictory decisions were issued in 2011 on gender reassignment recognition in civil status documents by different first instance courts. Two courts found that legal recognition of the preferred sex is conditioned by full sex reassignment surgery and persons do not have their preferred gender recognized by law during transition period.<sup>366</sup> One court ordered the civil status office to immediately make all necessary changes in the civil status documents, establishing the standard that the change of civil status documents can be made unconditioned of the full sex reassignment surgery if some irreversible changes of sex are made and the transgender person is persistent in his/her decision of gender reassignment.<sup>367</sup> See ANNEX 4.

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<sup>362</sup> Romania/ Government Emergency Ordinance No.80/2011 (*OGU 80/2011 pentru modificarea și completarea Legii nr. 119/1996 cu privire la actele de stare civilă*.) of 30 September 2011, Article I.(20), published in the Official Journal, Part I, No.694 of 30 November 2011.

<sup>363</sup> Romania/ Judecătoria Sectorului 1 Bucharest Second District First Instance Court, Civil Judgment No.11198 of 16.11.2010.

<sup>364</sup> Romania/NCCD, Decision No.276 of 13.10.2010.

<sup>365</sup> Romania/ Curtea de Apel București, File No. 12562/2/2010, available at <http://portal.just.ro/InstantaDosar.aspx?idInstitutie=2&d=MjAwMDAwMDAwMjUzMTU3>.

<sup>366</sup> Civil Judgment of Bucharest First District First Instance Court No.14136/2011, of 18.08.2011, I.B.N. v Local Council First District Bucharest (Consiliul Local Sector 1 București). Civil Judgment of Bucharest First District First Instance Court No.22444/2010 of 15.11.2010, S.C.E v Local Council First District Bucharest (Consiliul Local Sector 1 București).

<sup>367</sup> Civil Judgment of Bucharest Third District First Instance Court No.8054/2011 of 30.05.2011, T.D.M. v Local Council Third District Bucharest (Consiliul Local Sector 3 București).

#### 5.4.4 Statistical data made available in the reference period

The only statistical data disaggregated on sexual orientation was made available by the NCCD about the number of complaints (see ANNEX 2) and sanctions it applied in certain areas. However, its annual report does not put in relation the measures issued (recommendation, warning, findings of discrimination) with types of facts, issues or findings:

##### Administrative warnings issued in 2010 in cases of discrimination:<sup>368</sup>

Ground	Number of warnings	Field	Number of warnings
Sexual orientation	1	Personal dignity	1

##### Number of recommendations in certain fields, depending on certain grounds of discrimination:<sup>369</sup>

Ground of discrimination	Number of recommendations issued
Sexual orientation	1
Total	31 out of which 29 are issued in cases where discrimination was found.

##### Discriminations found in 2010 on certain grounds:<sup>370</sup>

Ground	Abs.	Rel.
Sexual orientation	2	2.9%
Total	68	100%

#### 5.4.5 Research and studies

There is no relevant research conducted in the reported period.

#### 5.4.6 Promising 'good' practices

The Danish Institute for Human Rights and the Romanian LGBT rights association, ACCEPT implement a project aiming to combat homophobia and bullying in schools. See ANNEX 3.

#### 5.4.7 Key issues in public debate

In February 2011, a draft law on civil partnership covering same-sex partnership was introduced in the Parliament and immediately withdrawn by the initiator due to strong public objection from the Government.<sup>371</sup> The Ministry of Justice motivated the opposition saying that the adoption of the New Civil Code expressed a clear political option – heterosexual marriage is the only form of family recognized by law.<sup>372</sup> Public discussions on this topic resumed in September 2011, around the entry into force of the New Civil Code.<sup>373</sup>

#### 5.4.8 Information on trends until 2011

The number of complaints of discrimination on sexual orientation filed to the NCCD increased in 2011 compared to 2010 – seven complaints until end of August 2011 compared

<sup>368</sup> NCCD (2010), Annual Report 2010, Extract from table, p.28.

<sup>369</sup> NCCD, Annual Report 2010, Extract from table, pp.28-29.

<sup>370</sup> NCCD, Annual Report 2010, Extract from table, p.55.

<sup>371</sup> Draft law on civil partnership (*PL nr. L98/2011 Propunere legislativă privind parteneriatul civil*) on file with national FRANET expert

<sup>372</sup> Mediafax (2011), 'Oficializarea legăturilor gay interzisă în România' [The recognition of gay relations forbidden in Romania], 14 February 2011, available at <http://www.mediafax.ro/social/oficializarea-legaturilor-gay-interzisa-in-romania-7983614>.

<sup>373</sup> HotNews (2011), 'Noul Cod civil: Este interzisă căsătoria între persoane de același sex' [New Civil code: Same-sex marriage is forbidden], 9 September 2011, available at <http://www.hotnews.ro/stiri-esential-10078831-noul-cod-civil-este-interzisa-casatoria-dintre-persoane-acelasi-sex.htm>.

to four in 2010. The low numbers show that LGBT people, although being the second most discriminated group in Romania, prefer to stay invisible due to stigma.<sup>374</sup>

The State continues to reject recognizing in any form same-sex families and restrictive legislation voted in 2009 came into force in October 2011.<sup>375</sup>

The case from the 2006 Gay March when five participants were beaten in the subway was closed in June 2011 due to the statute of limitations. The law enforcement proved ineffective, despite the victims having identified two of the perpetrators. The police informed ACCEPT Association, the LGBT organization who helped the victims bringing criminal complaints, that the identification of perpetrators was hindered by the reorganization of police stations. The criminal file was moved within the police structures for about one year without being examined.<sup>376</sup>

Some police officers continue harassing gay men in cruising areas.<sup>377</sup> There were cases reported when policemen stated that engaging in homosexual acts in public is liable under the criminal offence of Sexual perverse act (Article 197 of the Criminal Code),<sup>378</sup> despite a 2005 normative judgment of the High Court of Cassation and Justice (HCCJ) (*Înalta Curte de Casație și Justiție*, ICCJ) explicitly excluding homosexual acts from the scope of Article 197.<sup>379</sup>

#### 5.4.9 Identification of future challenges

The legislation in the field of legal recognition of gender reassignment is scarce and the jurisprudence is contradictory, while more transgender people want to change their civil status documents.

The prohibition of recognizing same-sex marriage or civil partnership lawfully concluded abroad causes a series of inequalities.<sup>380</sup> According to the Freedom of Movement Act (*Ordonanța de Urgență a Guvernului Nr.102 din 14 iulie 2005 privind libera circulație pe teritoriul României a cetățenilor statelor member ale Uniunii Europene și Spațiului Economic European*), the partner is not a family member. Consequently, the partner has only the right to entry and residence. He/she is not entitled to rights prescribed in Article 3.(1) of the Act such as: equal social protection, the right to work under certain conditions, access to education and training.<sup>381</sup>

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<sup>374</sup> NCCD (2010), Annual report 2010, p.51 citing to the Survey “Fenomenul Discriminării în România” (Discrimination Phenomenon in Romania), by TOTEM Communication for the NCCD, 2010, pp.15, 24, 28, available at <http://www.cncd.org.ro/noutati/Comunicate-de-presa/Rezultatele-sondajului-de-opinie-Fenomenul-discriminarii-in-Romania-in-anul-2010-100/>.

<sup>375</sup> Romania/New Civil Code (*Legea nr.287/2009 privind Codul civil*) of 17 July 2009, Articles 258, 259, 277.

<sup>376</sup> Interview with Irina Niță, Director of ACCEPT Association of 21 September 2011. Romania/ Serviciul Politie Metrou (Metro Police Service), Letter No.430015 of 09.08.2011, on file with FRANET expert.

<sup>377</sup> Interview with Irina Niță, Director of ACCEPT Association of 21 September 2011. US State Department (2010), 2010 Human Rights Report: Romania, pp.40-41, available at [http://romania.usembassy.gov/2010\\_rhr\\_en.html](http://romania.usembassy.gov/2010_rhr_en.html) (last visit 17.10.2011).

<sup>378</sup> Romania/Criminal Code of 21 June 1968, republished in Official Journal Part I, No.65/16 April 1997.

<sup>379</sup> Romania/ High Court of Cassation and Justice (HCCJ), Decision No.III of 23 May 2005, published in the Official Journal No.867/27 September 2005.

<sup>380</sup> Romania/New Civil Code (*Legea nr.287/2009 privind Codul civil*) of 17 July 2009, Article 277. Romania/ Government Emergency Ordinance No.80/2011 (*OUG 80/2011 pentru modificarea si completarea Legii nr. 119/1996 cu privire la actele de stare civila.*) of 30 September 2011, Article I.(20), published in the Official Journal, Part I, No.694 of 30 November 2011.

<sup>381</sup> Romania/ Freedom of Movement Act (*Ordonanța de Urgență a Guvernului Nr.102 din 14 iulie 2005 privind libera circulație pe teritoriul României a cetățenilor statelor member ale Uniunii*

## 5.5 Age

### 5.5.1 Policy and institutional developments

Nothing to report.

### 5.5.2 Legislative developments

The new Public Pensions Act (*Legea nr.263/2010 privind sistemul unitar de pensii publice*) that increases gradually the retirement age for men (65 years) and women (63 years) was a legislative measure taken for economic reasons and not meant as an active aging measure.<sup>382</sup>

### 5.5.3 National case law

In 2011, the NCCD decided two cases regarding discrimination in employment on the ground of age. They both refer to imposing discriminatory criteria during recruitment procedures. In both cases, despite relatively straightforward facts, the NCCD does not succeed to provide a reasoning regarding discrimination on the ground of age and fails to find discrimination on this ground in employment. In either case, respondents did not raise the defence that the conditions are justified by the job description.

- The first case is about a security company that published a job announcement in the media imposing conditions of age, height and weight for several positions of guardians. Although the motivation part of the NCCD's decision refers to all positions advertised and all criteria (height, weight and age), the decision was only about the position of regional chief guardian and the NCCD found discrimination on the grounds of height and weight (covered in legislation by the formula "any other criteria"), not on the ground of age. Furthermore, the NCCD did not justify why it did not decide the case under age discrimination provisions (see Annex 4).<sup>383</sup>
- The second case regards a mayor's decision imposing 12 years seniority in management for the position of manager of Urziceni Municipal Hospital. The NCCD stated that the condition of 12 years seniority in a position of manager is an apparently neutral condition of recruitment. Instead of going further with the argumentation of indirect discrimination to explain which group is affected disproportionately by this apparently neutral condition (for example, people under 40 years old), the NCCD stated that the discriminated group is actually people that do not have 12 years seniority in a position of manager. This motivation suggests direct discrimination, not indirect discrimination, which the NCCD found on the ground of 12 years seniority in a position of manager (see Annex 4).<sup>384</sup>

### 5.5.4 Statistical data made available in the reference period

The National Institute for Statistics did not publish relevant information recently.

The NCCD disaggregates some of its statistical data based on age – the number of complaints (see ANNEX 2) and decisions it applied in certain areas:

Number of recommendations in certain fields, depending on certain grounds of discrimination:<sup>385</sup>

Ground of discrimination	Number of recommendations issued
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*Europene și Spațiului Economic European*), Article 3, published in the Official Journal, Part I, No.646 of 21 July 2005, amended

<sup>382</sup> Public Pensions Act (Legea nr.263) of 16 December 2010, published in the Official Journal No.852 of 20 December 2010, Part I, Article 53.

<sup>383</sup> National Council for Combating Discrimination, Decision No.141 of 13 April 2011, *X v. ASG Security*.

<sup>384</sup> National Council for Combating Discrimination, Decision No.215 of 1 June 2011, *Ialomița Prefecture v. Mayor of Urziceni Town*.

<sup>385</sup> NCCD, Annual Report 2010, Extract from table, pp.28-29.



Age	2
Total	31 out of which 29 are issued in cases where discrimination was found.

#### Discriminations found in 2010 on certain grounds:<sup>386</sup>

Ground	Abs.	Rel.
Age	2	2.9%
Total	68	100%

### 5.5.5 Research and studies

There are no relevant research and studies to report.

### 5.5.6 Promising 'good' practices

There are no 'good' practices to report.

### 5.5.7 Key issues in public debate

In the last three years, the Government took measures aimed at reducing social insurance expenses in order to address the effects of the economic crisis. For example, in 2008, it forbade the cumulus of state pension and state salary.<sup>387</sup> The legal proposal was found unconstitutional on procedural grounds by the Constitutional Court<sup>388</sup> and at the end of 2009 the Government adopted a new act establishing a maximum threshold up to which the cumulus is possible.<sup>389</sup> Among the most affected by these measures were the elderly – the pensioners. In the context of wide criticism from the elderly and the civil society, the Government displayed discriminatory attitudes on the ground of age. The Prime Minister mentioned there “is a need for the renewal of the public system, there is a need for fresh blood in the system, there is a need to encourage the young and other categories to have access into the system, and from this point of view our measure also targets the renewal of the public system.”<sup>390</sup>

In 2010, the measures continued with the new Public Pensions Act (*Legea nr.263/2010 privind sistemul unitar de pensii publice*). It increased gradually the retirement age for men (65 years) and women (63 years), without taking other measures of actual active aging.<sup>391</sup>

### 5.5.8 Information on trends until 2011

The perceptions of discrimination against the elderly and against the youth slightly decreased in 2010<sup>392</sup> compared to 2009<sup>393</sup> according to the polls commissioned by the NCCD. In 2010, 11% thought the elderly are very much discriminated against and 31% that they are much

<sup>386</sup> NCCD, Annual Report 2010, Extract from table, p.55.

<sup>387</sup> Emergency Government Ordinance No.230/2008 (*Ordonanța de Urgență a Guvernului nr. 230/2008 pentru modificarea unor acte normative în domeniul pensiilor din sistemul public, pensiilor de stat și al celor de serviciu*).

<sup>388</sup> Constitutional Court Decision No.82 of 15 January 2009.

<sup>389</sup> Law No.329 of 15 November 2009 the reorganization of authorities and public institutions, rationalization of public expenses, supporting the business sector and respecting the framework agreements with the European Commission and the International Monetary Fund, Article 17 (1).

<sup>390</sup> Romanian Government, Media Office, Prime Minister Emil Boc brings clarifications regarding the cumulating of state pension and salary, Press statement on 07.01.2009, available at: [http://www.gov.ro/premierul-emil-boc-aduce-clarificari-in-privinta-cumularii-pensiei-cu-salariul-din-bugetul-de-stat\\_11a103844.html](http://www.gov.ro/premierul-emil-boc-aduce-clarificari-in-privinta-cumularii-pensiei-cu-salariul-din-bugetul-de-stat_11a103844.html).

<sup>391</sup> Public Pensions' Act (Legea nr.263) of 16 December 2010, published in the Official Journal No.852 of 20 December 2010, Part I, Article 53.

<sup>392</sup> NCCD, TOTEM, Fenomenul discriminării în România. Sondaj de opinie (The phenomenon of discrimination in Romania. Opinion survey), November 2010.

<sup>393</sup> NCCD, INSOMAR, Fenomenul discriminării în România. Percepții și atitudini (The phenomenon of discrimination in Romania. Perceptions and attitudes), August 2009.



discriminated against, compared to 2009 when the results were 11.7% and 33.3%, respectively. In 2010, 5% thought the youth are very much discriminated against and 15 % that they are much discriminated against, compared to 2009 when the results were 6.2% and 15.6%.

While older age is perceived as a serious disadvantage when trying to find a job by 48 % of Romanians,<sup>394</sup> 65 % agree or strongly agree that as older people work until a later age fewer jobs will be available for younger people, as opposed to a 54% EU average. Furthermore, Romanians have the highest percentage in the EU, 53% of people who agree and strongly agree that companies which employ mostly young people perform better than those which employ people of different ages, as opposed to a 25 % EU average. 60 % of Romanians believe that the Government should make it easier for older people in Romania to continue working beyond the normal retirement age if they wish, which is lower than the 66 % EU average.<sup>395</sup>

The “young-old” conflict was mentioned in a 2010 study as being perceived by 45% of population as existing in the Romanian society to a large and very large extent (more than the 28 % who perceived conflict between women and men or religious conflict and the 22 % who perceived the existence of ethnic conflicts). The older population perceived the antagonism to a larger extent than the younger population. Furthermore, those very young are more inclined to consider social access less difficult as opposed to those who are older. Thus, 8 % of the respondents with the age between 18-24 say that the possibility of social assertion is very low as opposed to 21 % of those whose age is between 55-64 who say the same.<sup>396</sup>

### 5.5.9 Identification of future challenges

In 2009<sup>397</sup> and 2011,<sup>398</sup> the National Council of the Elderly, a public interest autonomous body established by the Government to ensure dialogue and participation of the civil society to the decisions regarding the elderly, drafted two studies regarding the socio-economic situation of the elderly in Romania.

They show that from 1980 until 2007, the economic participation of older persons increased from 5% to 31%. This was found not to be due to the activation principle of social protection, “but moreover by the *need* to work in order to make their daily living, under the conditions of absence of or insufficient income sources (especially in the rural environment).”<sup>399</sup>

The Government still has to find appropriate measures to ensure efficient learning throughout the life cycle, medical interventions to help people maintain their autonomy as they grow older, eliminate discouragement factors, offer stimuli for workers to stay in labour for longer and take efficient measures to increase the chances of older workers to be employed.<sup>400</sup>

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<sup>394</sup> European Commission Special Eurobarometer, *Discrimination in the EU in 2009*, available at: [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_317\\_fact\\_ro\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_317_fact_ro_en.pdf).

<sup>395</sup> European Commission Flash Eurobarometer, *Intergenerational Solidarity*, 2009, available at: [http://ec.europa.eu/public\\_opinion/flash/fl\\_269\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_269_en.pdf).

<sup>396</sup> Institute for the research of the Quality of Life, *The Quality of Life in Romania*, 2010, p. 47, available at: <http://www.iccv.ro/sites/default/files/Calitatea%20Vietii%202010.pdf>.

<sup>397</sup> National Council of the Elderly, *The socio-economic situation of older persons in Romania and in other European union Countries*, March, 2009, available at: [http://www.cnpv.ro/Situatia\\_socio\\_ec2.pdf](http://www.cnpv.ro/Situatia_socio_ec2.pdf).

<sup>398</sup> National Council of the Elderly, *The socio-economic situation of older persons in Romania and in other European Union Countries – present and evolution perspectives*, 2011, p. 34 and 205.

<sup>399</sup> National Council of the Elderly, *The socio-economic situation of older persons in Romania and in other European Union Countries*, March, 2009, p. 95-96, available at: [http://www.cnpv.ro/Situatia\\_socio\\_ec2.pdf](http://www.cnpv.ro/Situatia_socio_ec2.pdf).

<sup>400</sup> National Council of the Elderly, *The socio-economic situation of older persons in Romania and in other European Union Countries – present and evolution perspectives*, 2011, p. 224 - 225

## 5.6 Specific information

### 5.6.1 Update tables in ANNEX 2

Please see Annex 2.

### 5.6.2 Multiple and intersectional discrimination

Multiple discrimination is provided for by Article 2.(6) of the Anti-discrimination Law<sup>401</sup> (see below).

Only information regarding case law of the national equality body (NCCD) is available. The judicial statistics on civil cases do not use relevant indicators. Based on the official data, the number of cases of multiple discrimination assessed by the national equality body dropped in the recent years: 12 cases in 2003, one case in 2004, 18 cases in 2005, four cases in 2006, six cases in 2007, eight cases in 2008, one case in 2009, four cases in 2010, one case in 2011. The same trend manifests as to intersectional discrimination: two cases in 2003, two cases in 2004, 11 cases in 2005, two cases in 2006, five cases in 2007, six cases in 2008, four cases in 2009, three cases in 2010, no case in 2011.<sup>402</sup>

Cou ntry	Is multiple discrimina tion covered in legislation ?	Legal reference	Legal definition	Numb er of groun ds cover ed	Is multiple <u>indirect</u> discrimina tion covered?	Is there higher compensation for multiple discrimination?
RO	Yes	Art.2.(6) of the Anti- discrim ination Law	“Any differentiation, exclusion, restriction or preference based on two or more grounds prescribed in para.(1) represents aggravating circumstance for engaging administrative liability if one or more of the components does not fall under criminal law.”	Two or more	No	No. The law explicitly states that the aggravating circumstance in case of multiple discrimination applies when establishing administrative liability (e.g. administrative fine or written warning). The level of compensation is evaluated and ordered only by the court based on the assessment of the moral or material damage suffered by the victim of discrimination.

However, official data should be assessed carefully as the cases reported by the NCCD for the year 2010 as being intersectional discrimination do not represent actual cases of intersectional discrimination. The first case is about alleged discrimination on “other ground” (socio-economical category).<sup>403</sup> The second case is about alleged discrimination on the ground of

<sup>401</sup> Romania/Ordonanța Guvernului nr.137/2000 privind prevenirea și sancționarea tuturor formelor de discriminare (Government Ordinance No.137/2000 regarding the prevention and sanctioning of all forms of discrimination) (Anti-discrimination Law), published in the Official Journal No.431 of 2 September 2000, amended and republished in the Official Journal No.99 of 8 February 2007.

<sup>402</sup> NCCD, Response No.4875/15.09.2011, 3.IV, pp.4-5 on file with national FRANET expert.

<sup>403</sup> NCCD, Decision No.64 of 19.05.2010.

disability.<sup>404</sup> In the third case, the NCCD sanctions discrimination on the ground of language.<sup>405</sup>

In addition, two of the four cases reported as multiple discrimination for the year 2010 are not in fact founded on Article 2.(6) of the Anti-discrimination Law (multiple discrimination). The first case refers to discriminatory statements against distinct ethnic groups made on different occasions by the same person, Mr.C.B.<sup>406</sup> On 19.10.2010, during a basketball game, he displayed an anti-Romanian slogan. On 06.04.2010, he displayed anti-Semitic slogans in front of a supermarket in Miercurea Ciuc, similar to slogans used in 1944 Hungary. In July 2010, he wore a T-shirt with anti-Romanian message at a Summer Camp in Tuşnad Băi. On 30.07.2010, during a Roma rights march that took place in Miercurea Ciuc, he was one of the six protesters who displayed anti-Roma slogans. The NCCD did not find the application of Article 2.(6) of the Anti-discrimination Law (multiple discrimination), but sanctioned two separate acts of discrimination that occurred in two separate occasions. The second case is about a man who, after returning from the USA where he used to work and contribute to social insurance, obtained a pension for persons with disabilities in Romania. He was refused lodging in the Elders' Nursing Home Sibiu by the local authorities because he did not fulfil the requirement related to the age of the pensioners entitled to lodgement in that facility. The standard retirement age for men is 65 years old. The man complained of discrimination on the ground of age, disability, refugee status and belonging to a disadvantaged category. NCCD found only discrimination on the ground of age. In the reasoning, the NCCD makes a connection between disability and age with regards to social protection. Although the applicant was not a pensioner on the basis of age, he was entitled to a pension due to his disability, consequently he was entitled to lodgement in an elders' nursing home, irrespective of age.<sup>407</sup>

Other two cases on multiple discrimination were dismissed by the NCCD based on procedural grounds and merits, respectively. The first case is a complaint against several statements made by the hosts of the radio show "Alarm" of ProFM radio station allegedly discriminating based on sexual orientation and Roma origin ("The hosts, commenting about an insurance company in the UK which ordered a study on the numbers of houses that bring the most bad luck: 'Look on what these people spend their money and when it comes to obtaining your money from insurance against an accident, you go through an entire hurdle [in Romanian for "hurdle" - "îgănie", a pejorative meaning of the Romanian term for "Gypsy"]'. Within the same show, the host also stated: 'Mr. Vintilă, are you a fagot [in Romanian 'poponar' - a word play] or a populist?; Mr. Sara: Dear George, I like women!' One of the hosts stated: 'I used to have a movie that I liked, *Schindler's List*, but it became frivolous, too [in Romanian for "became frivolous" - "s-a manelizat", word deriving its meaning from a music style considered frivolous and low quality and which is associated by many with the Roma population].") The case was dismissed for not fulfilling admissibility criteria because the complainant, the General Secretary of an NGO, did not provide his regular mail address for subpoena arrangements by the NCCD.<sup>408</sup> The second case, which did not meet the prongs, regards two criteria imposed by the Romanian Chess Federation allegedly restricting participation to the National Super League based on age and nationality. According to the decision of the Romanian Chess Federation the participants to the competition may only be on the FIDE Romania List and it is mandatory that each male/female team has minimum one junior player. The complainant (Clubul Sportiv Studentesc Medicina Timișoara) argued that these criteria are discriminatory based on age and nationality: only Romanian citizens are member of FIDE Romania List and the presence of a junior in the team should be optional, based on individual performance, and not mandatory. The NCCD rejected the case on the

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<sup>404</sup> NCCD, Decision No.191 of 27..07.2010.

<sup>405</sup> NCCD, Decision No.284 of 20.10.2010.

<sup>406</sup> NCCD, Decision No.410 of 15.12.2010.

<sup>407</sup> NCCD, Decision No.454 of 21.12.2010.

<sup>408</sup> [NCCD, Decision No.357 of 24.11.2010.](#)

merits. It stated that the criteria imposed by the federation constitute affirmative measures to advance Romanian chess players and juniors in competitions. Moreover, citizens of EU Member States may register on FIDE Romania List upon paying a tax, so they are not excluded to participate in the National Super League, only requested to represent Romania in the competition.<sup>409</sup> The jurisprudence of the national equality body raises questions as to the institution representatives' understanding of what intersectional and multiple discrimination means or to NCCD's seriousness in handling public information requests.

## 5.7 Important information not covered above

Nothing to report.

### 5.1. SEX

Official exact title EN	Official title RO	Full reference
<b>Governmental Emergency Ordinance 68/2010</b>	Ordonanța de Urgență privind unele măsuri de reorganizare a Ministerului Muncii, Familiei și Protecției Sociale și a activității instituțiilor aflate în subordinea, în coordonarea sau sub autoritatea sa	Romania/Governmental Emergency Ordinance 68/2010 ( <i>Ordonanța de Urgență privind unele măsuri de reorganizare a Ministerului Muncii, Familiei și Protecției Sociale și a activității instituțiilor aflate în subordinea, în coordonarea sau sub autoritatea sa</i> ), published in Official Journal, No.446/2010.
<b>Governmental Decision No.728/2010</b>	Hotărârea Guvernului nr.728/2010 pentru modificarea și completarea Hotărârii Guvernului nr.11 din 2009 privind organizarea și funcționarea Ministerului Muncii, Familiei și Protecției Sociale	Romania/Governmental Decision No.728/2010 ( <i>Hotărârea Guvernului nr.728/2010 pentru modificarea și completarea Hotărârii Guvernului nr.11 din 2009 privind organizarea și funcționarea Ministerului Muncii, Familiei și Protecției Sociale</i> ), published in Official Journal No. 512/2010.
<b>Labour Code</b>	Legea 53/2003 Codul muncii	Romania/Labour Code ( <i>Legea 53/2003 Codul muncii</i> ), amended by Law 40/2011, republished in Official Journal No.0345/2011.
<b>Romanian Constitutional Court, Decision No.1237/2010</b>	Curtea Constituțională a României, Decizia nr.1237/2010	Romanian Constitutional Court ( <i>Curtea Constituțională a României</i> ), Decision No.1237 of 6 October 2010, published in the Official Journal No.785/2010.
<b>Public Pensions' Act</b>	Legea nr.263/2010 privind sistemul unitar de pensii publice	Romania/Public Pensions' Act ( <i>Legea nr.263/2010 privind sistemul unitar de pensii publice</i> ) of 16 December 2010, published in the Official Journal No.852/2010.
<b>Mihaela Miroiu, The journey</b>	Mihaela Miroiu, Drumul către autonomie: teorii politice feministe	Mihaela Miroiu, Drumul către autonomie: teorii politice feministe, Iași, Polirom, 2004, available at <a href="http://fragen.nu/aletta/fragen/SNSP-">http://fragen.nu/aletta/fragen/SNSP-</a>

<sup>409</sup> NCCD, Decision No.262 of 29.09.2010.

towards autonomy: feminist theories		973681646X.pdf (last visit 17.10.2011).
Presidential Administration , Presidential Commission for Analyzing Social and Demographic Risks, Social Risks and Inequities in Romania	Administrația Prezidențială, Comisia Prezidențială Pentru Analiza Riscurilor Sociale și Demografice, Riscuri și inechități sociale în România	Romania/Presidential Administration, Presidential Commission for Analyzing Social and Demographic Risks ( <i>Administrația Prezidențială, Comisia Prezidențială Pentru Analiza Riscurilor Sociale și Demografice</i> ), Riscuri și inechități sociale în România [Social Risks and Inequities in Romania], September 2009, available at <a href="http://www.presidency.ro/static/CPARSDR_raport_extins.pdf">http://www.presidency.ro/static/CPARSDR_raport_extins.pdf</a> (last visit 17.10.2011).
Childcare Act	OUG nr. 148/2005 privind susținerea familiei în vederea creșterii copilului	Romania/Childcare Act ( <i>OUG nr. 148/2005 privind susținerea familiei în vederea creșterii copilului</i> ), published in Official Journal No.1008/2005.
Childcare Leave and Allowance Act	OUG 111/2010 privind concediul și indemnizația lunară pentru creșterea copiilor	Romania/Childcare Leave and Allowance Act ( <i>OUG 111/2010 privind concediul și indemnizația lunară pentru creșterea copiilor</i> ), published in Official Journal 830/2010.
Romanian Constitutional Court, Decision No.765/2011	Curtea Constituțională a României, Decizia nr.765/2011	Romanian Constitutional Court, Decision No.765 of 15 June 2011, published in Official Journal No. 476 of 6 July 2011.
Ministry Order regarding the in vitro program	Ordinul Ministrului Sănătății Nr.765/27.05.2011 privind aprobarea Normelor metodologice pentru realizarea și raportarea activităților specific în cadrul subprogramului de fertilizare in vitro și embriotransfer	Romania/Ministry Order regarding the in vitro program ( <i>Ordinul Ministrului Sănătății Nr.765/27.05.2011 privind aprobarea Normelor metodologice pentru realizarea și raportarea activităților specific în cadrul subprogramului de fertilizare in vitro și embriotransfer</i> ), published in the Official Journal, No.378/2011.
Romanian Constitutional Court, Decision No.418/2005	Curtea Constituțională a României, Decizia nr.418/2005	Romanian Constitutional Court, Decision No. 418 of 18 July 2005, published in the Official Journal, Part I, No.664/2005.
Administrative Sanctions Act	Ordonanța Guvernului nr. 2/2001 privind regimul juridic al contravențiilor	Romania/Administrative Sanctions Act ( <i>Ordonanța Guvernului nr. 2/2001 privind regimul juridic al contravențiilor</i> ), published in Official Journal No.584/2001.
Bucharest Court of Appeal, File No.1490/2/2011	Curtea de Apel București, Dosar nr. 1490/2/2011	Romania/Bucharest Court of Appeal ( <i>Curtea de Apel București</i> ), File No.1490/2/2011 regarding the appeal against the NCCD decision No.366/24.11.2010.
NCCD, Decision	CNCD, Hotărârea nr.154/2011	Romania/NCCD, Decision No.154 of 18 April

<b>No.154/2011</b>		2011
<b>NCCD, Decision No.261/2011</b>	CNCD, Hotărârea nr.261/2011	Romania/NCCD, Decision No.261 of 29 June 2011.
<b>NCCD, Decision No.187/2010</b>	CNCD, Hotărârea nr.187/2010	Romania/NCCD, Decision No.187 of 19 July 2010.
<b>NCCD, Decision No.281/2010</b>	CNCD, Hotărârea nr.281/2010	Romania/NCCD, Decision No.281 of 20 October 2010.
<b>National Institute of Statistics, Romania in numbers</b>	INS, România în cifre	Romania/ National Institute of Statistics ( <i>Institutul Național de Statistică</i> , INS), România în cifre (Romania in numbers), available at <a href="http://www.insse.ro/cms/files/publicatii/Romania_in%20cifre%202011.pdf">http://www.insse.ro/cms/files/publicatii/Romania_in%20cifre%202011.pdf</a> (last visit 11.10.2011).
<b>TBWA\București, Equality Partnership Center, Active Watch, Women and men looking for a job. Study about gender stereotypes regarding abilities, choosing a job and roles in the professional and private life</b>	TBWA\București, Equality Partnership Center, Active Watch, Femei și bărbați în căutarea unui loc în societate. Studiu despre stereotipurile de gen privind competențele, alegerea profesiei și rolurile din viața profesională și personal	TBWA\București, Equality Partnership Center, Active Watch, Femei și bărbați în căutarea unui loc în societate. Studiu despre stereotipurile de gen privind competențele, alegerea profesiei și rolurile din viața profesională și personal (Women and men looking for a job. Study about gender stereotypes regarding abilities, choosing a job and roles in the professional and private life), Bucharest, 2011, pp.15-16, available at <a href="http://www.altfem.ro/resurse/cercetari-si-analizehttp://docs.google.com/viewer?a=v&amp;q=cach e:tGxT2sopAjeJ:www.altfem.ro/files/download/jv wxGg6tv80pzpxoKU7jkyH1qlQcIhZw+Femei+si+ barbati+in+cautarea+unui+loc+in+societate+studiu &amp;hl=ro&amp;gl=ro&amp;pid=bl&amp;srcid=ADGEESjvsh1yPhr W-GvevdNvnFStq8W6f_aUPQFY-wMSbq99M521hRSkq1UEauNIT2azjy28cHB6Us yoZPyQtbkMjvHZD69aLdqiN1lKolBdDnewtjJH Z_0UrX6E6J9DAb1C1xvh_hh&amp;sig=AHIEtbTg2L NxA-YG505MX8jQgt1N604E-A">http://www.altfem.ro/resurse/cercetari-si-analizehttp://docs.google.com/viewer?a=v&amp;q=cach e:tGxT2sopAjeJ:www.altfem.ro/files/download/jv wxGg6tv80pzpxoKU7jkyH1qlQcIhZw+Femei+si+ barbati+in+cautarea+unui+loc+in+societate+studiu &amp;hl=ro&amp;gl=ro&amp;pid=bl&amp;srcid=ADGEESjvsh1yPhr W-GvevdNvnFStq8W6f_aUPQFY-wMSbq99M521hRSkq1UEauNIT2azjy28cHB6Us yoZPyQtbkMjvHZD69aLdqiN1lKolBdDnewtjJH Z_0UrX6E6J9DAb1C1xvh_hh&amp;sig=AHIEtbTg2L NxA-YG505MX8jQgt1N604E-A</a> (last visit 11.10.2011). LINK DOES NOT WORK
<b>Cristina Mocanu, Ana Maria Zamfir, Carmen Gheorghe, Roma women on the labour market: interests, representation and participation in trade unions movement</b>	Cristina Mocanu, Ana Maria Zamfir, Carmen Gheorghe, Femei rome pe piața muncii: interese, reprezentare și participare sindicală	Cristina Mocanu, Ana Maria Zamfir, Carmen Gheorghe, Femei rome pe piața muncii: interese, reprezentare și participare sindicală (Roma women on the labour market: interests, representation and participation in trade unions movement), June 2011.

<b>Public health Act</b>	Legea nr.95/2006 privind reforma în domeniul sănătății	Public health Act ( <i>Legea nr.95/2006 privind reforma în domeniul sănătății</i> ), published in Official Journal No.372/2006.
<b>Combating HIV/AIDS Act</b>	Legea nr.584/2002 privind măsurile de prevenire a răspândirii maladiei SIDA în România și de protecție a persoanelor infectate cu HIV sau bolnave de SIDA	Combating HIV/AIDS Act ( <i>Legea nr.584/2002 privind măsurile de prevenire a răspândirii maladiei SIDA în România și de protecție a persoanelor infectate cu HIV sau bolnave de SIDA</i> ), published in Official Journal No.814/2002.
<b>ECPI, Sexual and reproductive rights. The case of women living with HIV in Romania</b>	ECPI, Drepturile sexuale și ale reproducerii. Cazul femeilor care trăiesc cu HIV în România	Euroregional Center for Public Initiatives (ECPI), Sexual and reproductive rights. The case of women living with HIV in Romania (Drepturile sexuale și ale reproducerii. Cazul femeilor care trăiesc cu HIV în România), June 2011, Bucharest, Maiko.
<b>ECPI, The refusal based on religion on conscience to accessing abortion on request in Romania</b>	ECPI, Refuzul pe motive de religie sau conștiință la efectuarea întreruperii electiv de sarcină în România	Euroregional Center for Public Initiatives (ECPI), The refusal based on religion on conscience to accessing abortion on request in Romania (Refuzul pe motive de religie sau conștiință la efectuarea întreruperii electiv de sarcină în România), May 2011, Bucharest.
<b>NCCD, Decision No.55/2011</b>	CNCD, Hotărârea nr.55/2011	Romania/NCCD, Decision No.55 of 15 February 2011.
<b>Quotas for women Draft Law</b>	PL-x nr. 333/2011, Proiect de Lege privind introducerea cotei obligatorii de reprezentare politică a femeilor în Parlamentul României	Quotas for women Draft Law ( <i>PL-x nr. 333/2011, Proiect de Lege privind introducerea cotei obligatorii de reprezentare politică a femeilor în Parlamentul României</i> ), available at <a href="http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&amp;idp=12039">http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&amp;idp=12039</a> (last visit 11.10.2011).
<b>World Bank, World Development Report 2012. Gender Equality and Development</b>		World Bank, World Development Report 2012. Gender Equality and Development, 2011, The International Bank for Reconstruction and Development / The World Bank, Washington D.C., p.85.
<b>Reasoning of the Mandatory quotas for women Draft Law</b>	Expunere de motive Proiect de lege privind cota obligatorie pentru femei	Reasoning of the Mandatory quotas for women Draft Law, available at <a href="http://www.adevarul.ro/actualitate/eveniment/Expunere-motive-femei_ADVFILE20110401_0004.pdf">http://www.adevarul.ro/actualitate/eveniment/Expunere-motive-femei_ADVFILE20110401_0004.pdf</a> (last visit 11.10.2011).
<b>CPE, TBWA, Active Watch, ALTFEM, The woman's image in society. Media</b>	CPE, TBWA, Active Watch, Imaginea femeii în societatea românească. Raport de analiză media	CPE, TBWA, Active Watch, ALTFEM – O campanie media pentru schimbarea imaginii femeii în societate, Imaginea femeii în societatea românească. Raport de analiză media (The woman's image in society. Media analysis report), available at



analysis report		<a href="http://www.altfem.ro/noutati/stiri/imaginea-femeilor-si-barbatilor-in-mass-media-si-publicitate">http://www.altfem.ro/noutati/stiri/imaginea-femeilor-si-barbatilor-in-mass-media-si-publicitate</a> (last visit 11.10.2011).
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## 5.2 RELIGION

Official exact title EN	Official title RO	Full reference
<b>Cemeteries and funeral services Act</b>	PL-x nr. 592/2009 Proiect de Lege privind cimitirele, crematoriile umane și serviciile funerare	Cemeteries and funeral services Act ( <i>PL-x nr. 592/2009 Proiect de Lege privind cimitirele, crematoriile umane și serviciile funerare</i> ), available at <a href="http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&amp;idp=10084">http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&amp;idp=10084</a> (last visit 13.10.2011).
<b>President of Romania, Request of re-examination</b>	Președintele României, Cerere de reexaminare	President of Romania, Cerere de reexaminare (Request of re-examination), 13 December 2010, available at <a href="http://www.juridice.ro/130122/cerere-de-reexaminare-asupra-legii-privind-cimitirele-crematoriile-umane-si-serviciile-funerare.html">http://www.juridice.ro/130122/cerere-de-reexaminare-asupra-legii-privind-cimitirele-crematoriile-umane-si-serviciile-funerare.html</a> (last visit 13.10.2011).
<b>State-religious denominations partnership for social services Act</b>	PL-x nr. 630/2009 Proiect de Lege pentru stabilirea parteneriatului dintre stat și biserică în domeniul asistenței sociale	State-religious denominations partnership for social services Act ( <i>PL-x nr. 630/2009 Proiect de Lege pentru stabilirea parteneriatului dintre stat și biserică în domeniul asistenței sociale</i> ), 8 March 2011, available at <a href="http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&amp;idp=10655">http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&amp;idp=10655</a> (13.10.2011).
<b>The Government opinion on the draft law of 19.02.2010</b>	Punct de vedere al Guvernului privind proiectul de lege din 19.02.2010	The Government opinion on the draft law ( <i>Punct de vedere al Guvernului privind Proiectul de lege</i> ), 19.02.2010, available at <a href="http://www.cdep.ro/proiecte/2009/600/30/0/pvg630.pdf">http://www.cdep.ro/proiecte/2009/600/30/0/pvg630.pdf</a> (last visit 13.10.2011).
<b>President of Romania request of 05.04.2011</b>	Cererea Președintelui României din 05.04.2011	President of Romania request ( <i>Cererea Președintelui României</i> ), 05.04.2011, available at <a href="http://www.cdep.ro/proiecte/2009/600/30/0/cerere630rx.pdf">http://www.cdep.ro/proiecte/2009/600/30/0/cerere630rx.pdf</a> (last visit 13.10.2011).
<b>NCCD, Decision No.240/2010</b>	CNCD, Hotărârea nr.240/2010	Romania/NCCD, Decision No.240 of 23.11.2010.
<b>Bucharest Court of Appeal, File No.1490/2/2011</b>	Curtea de Apel București, Dosar nr. 1490/2/2011	Bucharest Court of Appeal ( <i>Curtea de Apel București</i> ), File No.1490/2/2011 regarding the appeal against the NCCD decision No.366/24.11.2010.
<b>NCCD, Decision No.131/2011</b>	CNCD, Hotărârea nr.131/2011	Romania/NCCD, Decision No.131 of 6 April 2011.
<b>NCCD, Decision No.153/2011, Romanian Church United with Rome v. Romanian Orthodox Church and 18 local administrations</b>	CNCD, Hotărârea nr.153/2011, <i>Biserica Română Unită cu Roma v. Biserica Ortodoxă Română și 18 administrații locale</i>	Romania/NCCD, Decision No.153 of 18 April 2011, <i>Romanian Church United with Rome v. Romanian Orthodox Church and 18 local administrations</i> .

<b>US State Department (2011), The July-December 2010 International Religious Freedom Report</b>		US State Department (2011), The July-December 2010 International Religious Freedom Report, available at <a href="http://romania.usembassy.gov/2010-irfr-en.html">http://romania.usembassy.gov/2010-irfr-en.html</a> (last visit 13.10.2011).
<b>Soros Foundation Romania (2011), Religion and religious behaviour)</b>	Fundația Soros România (2011), Religie și Comportament Religios	Soros Foundation Romania (Fundația Soros România) (2011), Religie și Comportament Religios (Religion and religious behaviour), September 2011.
<b>Draft law on religious defamation</b>	BP264/2011 Propunere legislativă pentru prevenirea intoleranței religioase	Draft law on religious defamation ( <i>BP264/2011 Propunere legislativă pentru prevenirea intoleranței religioase</i> ), available at <a href="http://www.senat.ro/Legis/PDF/2011/11b264FG.pdf">http://www.senat.ro/Legis/PDF/2011/11b264FG.pdf</a> (last visit 13.10.2011).
<b>NCCD, Decision No.141/2011, X v. ASG Security</b>	CNCD, Hotărârea nr.141/2011, X v. ASG Security	Romania/NCCD, Decision No.141 of 13 April 2011, <i>X v. ASG Security</i> .
<b>NCCD, Decision No.215/2011, Ialomița Prefecture v. Mayor of Urziceni Town</b>	CNCD, Hotărârea nr. 215/2011, <i>Ialomița Prefecture v. Mayor of Urziceni Town</i>	Romania/NCCD, Decision No.215 of 1 June 2011, <i>Ialomița Prefecture v. Mayor of Urziceni Town</i> .
<b>Emergency Government Ordinance No.230/2008</b>	Ordonanța de Urgență a Guvernului nr. 230/2008 pentru modificarea unor acte normative in domeniul pensiilor din sistemul public, pensiilor de stat si al celor de serviciu	Emergency Government Ordinance No.230/2008 ( <i>Ordonanța de Urgență a Guvernului nr. 230/2008 pentru modificarea unor acte normative in domeniul pensiilor din sistemul public, pensiilor de stat si al celor de serviciu</i> ), published in the Official Monitor No.4/2009.
<b>Romanian Constitutional Court, Decision No.82/2009</b>	Curtea Constituțională a României, Hotărârea nr.82/ 2009	Romanian Constitutional Court (Curtea Constituțională a României), Decision No.82 of 15 January 2009.
<b>Law No.329/2009</b>	Legea nr.329/2009	Law No.329 of 15 November 2009 the reorganization of authorities and public institutions, rationalization of public expenses, supporting the business sector and respecting the framework agreements with the European Commission and the International Monetary Fund ( <i>Legea 329/2009 privind reorganizarea unor autoritati si institutii publice, rationalizarea cheltuielilor publice, sustinerea mediului de afaceri si respectarea acordurilor-cadru cu Comisia Europeana si Fondul Monetar International</i> ), published in the Official Journal No.761/2009.
<b>Romanian Government, Press Statement 07.01.2009</b>	Guvernul României, Declarație de presă din 07.01.2009	Romanian Government, Media Office, Prime Minister Emil Boc brings clarifications regarding the cumulating of state pension and salary, Press statement on 07.01.2009, available at: <a href="http://www.gov.ro/premierul-emil-boc-aduce-clarificari-in-privinta-cumularii-pensiei-cu-salariul-din-bugetul-de-stat_11a103844.html">http://www.gov.ro/premierul-emil-boc-aduce-clarificari-in-privinta-cumularii-pensiei-cu-salariul-din-bugetul-de-stat_11a103844.html</a>

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<b>NCCD, TOTEM, The phenomenon of discrimination in Romania. Opinion survey</b>	NCCD, TOTEM, Fenomenul discriminării în România. Sondaj de opinie	NCCD, TOTEM, Fenomenul discriminării în România. Sondaj de opinie (The phenomenon of discrimination in Romania. Opinion survey), November 2010.
<b>NCCD, INSOMAR, The phenomenon of discrimination in Romania. Perceptions and attitudes</b>	NCCD, INSOMAR, Fenomenul discriminării în România. Percepții și atitudini	NCCD, INSOMAR, Fenomenul discriminării în România. Percepții și atitudini (The phenomenon of discrimination in Romania. Perceptions and attitudes), August 2009
<b>European Commission Special Eurobarometer, Discrimination in the EU in 2009</b>		European Commission Special Eurobarometer, Discrimination in the EU in 2009, available at: <a href="http://ec.europa.eu/public_opinion/archives/ebs/ebs_317_fact_ro_en.pdf">http://ec.europa.eu/public_opinion/archives/ebs/ebs_317_fact_ro_en.pdf</a> (13.10.2011).
<b>European Commission Flash Eurobarometer, Intergenerational Solidarity, 2009</b>		European Commission Flash Eurobarometer, Intergenerational Solidarity, 2009, available at: <a href="http://ec.europa.eu/public_opinion/flash/fl_269_en.pdf">http://ec.europa.eu/public_opinion/flash/fl_269_en.pdf</a> (13.10.2011).
<b>Institute for the research of the Quality of Life, The Quality of Life in Romania</b>	Institutul pentru cercetarea calității vieții, Calitatea vieții în România	Institute for the research of the Quality of Life (Institutul pentru cercetarea calității vieții), The Quality of Life in Romania (Calitatea vieții în România), 2010, available at: <a href="http://www.iccv.ro/sites/default/files/Calitatea%20Vietii%202010.pdf">http://www.iccv.ro/sites/default/files/Calitatea%20Vietii%202010.pdf</a> (13.10.2011).
<b>National Council of the Elderly, The socio-economic situation of older persons in Romania and in other European union Countries, 2009</b>	Consiliul Național al Persoanelor în Vârstă, Situația socio-economică a persoanelor în vârstă în România și în alte țări ale Uniunii Europene, 2009	National Council of the Elderly (Consiliul Național al Persoanelor în Vârstă), The socio-economic situation of older persons in Romania and in other European union Countries (Situația socio-economică a persoanelor în vârstă în România și în alte țări ale Uniunii Europene), March, 2009, available at: <a href="http://www.cnpv.ro/Situatia_socio_ec2.pdf">http://www.cnpv.ro/Situatia_socio_ec2.pdf</a> (27.05.2011).
<b>National Council of the Elderly, The socio-economic situation of older persons in Romania and in other European Union Countries – present and evolution perspectives, 2011</b>	Consiliul Național al Persoanelor în Vârstă, Situația socio-economică a persoanelor în vârstă în România și în alte țări ale Uniunii Europene, 2011	National Council of the Elderly (Consiliul Național al Persoanelor în Vârstă), The socio-economic situation of older persons in Romania and in other European Union Countries – present and evolution perspectives (Situația socio-economică a persoanelor în vârstă în România și în alte țări ale Uniunii Europene – actualitate și perspective), 2011.

### 5.3. DISABILITY

Official exact title	Official title	Full reference
EN	RO	

<b>Rights of the Persons with Disabilities Act</b>	Legea nr.448/2006 privind protecția și promovarea drepturilor persoanelor cu handicap	Romania/Rights of the Persons with Disabilities Act ( <i>Legea nr.448/2006 privind protecția și promovarea drepturilor persoanelor cu handicap</i> ) of 6 December 2006, published in the Official Journal No.1006/2006.
<b>Anti-discrimination Law</b>	Ordonanța Guvernului nr.137/2000 privind prevenirea și sancționarea tuturor formelor de discriminare, republicată	Romania/Anti-discrimination Law ( <i>Ordonanța Guvernului nr.137/2000 privind prevenirea și sancționarea tuturor formelor de discriminare, republicată</i> ) of 8 February 2007, republished in the Official Journal No.99/2007.
<b>NCCD, Decision No.47 of 9 February 2011</b>	CNCD, Hotărârea nr.47 din 9 februarie 2011	Romania/NCCD, Decision No.47 of 9 February 2011.
<b>NCCD, Decision No.365 of 14 September 2011</b>	CNCD, Hotărârea nr.365 din 14 septembrie 2011	Romania/NCCD, Decision No.365 of 14 September 2011.
<b>NCCD, Decision No.28 of 4 May 2010</b>	CNCD, Hotărârea nr.28 din 4 mai 2010	Romania/NCCD, Decision No.28 of 4 May 2010.
<b>NCCD, Decision No.51 of 6 May 2010</b>	CNCD, Hotărârea nr.51 din 6 mai 2010	Romania/ NCCD, Decision No.51 din 6 mai 2010.
<b>NCCD, Decision No.300 of 20 October 2010</b>	CNCD, Hotărârea nr.300 din 20 octombrie 2010	Romania/ NCCD, Decision No.300 of 20 October 2010.
<b>Institutul pentru Politici Publice, In the late years, cases of discrimination against persons with disabilities, among the most serious ones, have been sanctioned with a warning by the NCCD, 15 April 2011</b>	Institutul pentru Politici Publice, În ultimii ani, cazurile de discriminare a persoanelor cu dizabilități, inclusiv cele grave, au fost sancționate cu avertisment de către CNCD	Institutul pentru Politici Publice (2011), <i>În ultimii ani, cazurile de discriminare a persoanelor cu dizabilități, inclusiv cele grave, au fost sancționate cu avertisment de către CNCD</i> [In the late years, cases of discrimination against persons with disabilities, among the most serious ones, have been sanctioned with a warning by the NCCD], 15 April 2011, available at <a href="http://www.ipp.ro/protfiles.php?IDfile=99">http://www.ipp.ro/protfiles.php?IDfile=99</a> (last visit 25.11.2011).
<b>DRAFT – Government Decision concerning the approval of technical-economic indicators for 210 investments in kindergartens with regular timetable with 2 classrooms, included in the project ”Early Education Reform in Romania”,</b>	PROIECT - Hotărâre de Guvern privind aprobarea indicatorilor tehnico-economici pentru 210 obiective de investiții, grădinițe cu program normal cu 2 săli de grupă, cuprinse în Proiectul "Reforma educației timpurii în România", Componentele 1.a, 1.b și 1.c	Romania, DRAFT – Government Decision concerning the approval of technical-economic indicators for 210 investments in kindergartens with regular timetable with 2 classrooms, included in the project „Early Education Reform in Romania”,

<b>Components 1.a, 1.b and 1.c</b>		Components 1.a, 1.b and 1.c (PROIECT - Hotărâre de Guvern privind aprobarea indicatorilor tehnico-economici pentru 210 obiective de investiții, grădinițe cu program normal cu 2 săli de grupă, cuprinse în Proiectul "Reforma educației timpurii în România", Componentele 1.a, 1.b și 1.c), 19.09.2011, published at <a href="http://www.edu.ro/index.php/articles/16161">www.edu.ro/index.php/articles/16161</a>
<b>Law of National Education</b>	Legea Educației Naționale	Romania, Law of National Education (Legea Educației Naționale), no. 1/2011.
<b>Law no. 359/2009 on the amendment of Article 20 par. (2), item b of Law no. 448 on the Protection and Promotion of the Rights of Persons with Disabilities , 6 December 2006</b>	Legea nr. 359/2009 pentru amendarea articolului 20 alin 2 lit. b) din Legea privind protecția și promovarea drepturilor persoanelor cu handicap nr. 448 din 2006	Romania/Article 1 of Law no. 359/2009 on the amendment of Article 20 par. (2), item b of Law no. 448 on the Protection and Promotion of the Rights of Persons with Disabilities (Legea privind protecția și promovarea drepturilor persoanelor cu handicap), 6 December 2006
<b>Romania/Gov. Decision no.1175 of 29/09/2005</b>	Strategia națională pentru protecția, integrarea și incluziunea socială a persoanelor cu handicap în perioada 2006-2013	Romania/Gov. Decision no.1175 of 29/09/2005 (Strategia națională pentru protecția, integrarea și incluziunea socială a persoanelor cu handicap în perioada 2006-2013) , available in English at: <a href="http://www.anph.ro/eng">http://www.anph.ro/eng</a>
<b>Academic Society of Romania</b>	Societatea Academica Romana, Diagnostic: exclus de pe piata muncii. Impedimente in angajarea persoanelor cu dizabilitati in Romania.	Academic Society of Romania, 'Diagnostic: excluded from the labor market. Impediments in the employment of persons with disabilities in Romania', <a href="http://observator.sas.unibuc.ro/wp-content/uploads/2011/01/Diagnostic-exclus-de-pe-piata-muncii.pdf">http://observator.sas.unibuc.ro/wp-content/uploads/2011/01/Diagnostic-exclus-de-pe-piata-muncii.pdf</a> , accessed at 9.09.2011
<b>Junjan, V., Ciumageanu M., Miclutia I. and Craciun I</b>	Integrarea persoanelor cu dizabilitati pe piata muncii in institutiile publice din Romania, Revista transilvana de stiinte administrative	Junjan, V., Ciumageanu M., Miclutia I. and Craciun I., 'Labor integration of persons with disabilities in public institutions in Romania', Transylvanian Review of Administrative Sciences, No. 33 E/2011, pp 109-123
<b>Pentru Voi Foundation</b>	Fundatia "Pentru Voi"	Pentru Voi Foundation

		<a href="http://www.pentruvoi.ro/content/content/index/24/news/23">http://www.pentruvoi.ro/content/content/index/24/news/23</a> , accessed at 21.10.2011
<b>Motivation Foundation</b>	Fundatia Motivation	Motivation Foundation, <a href="http://www.motivation.ro/ro/programe-proiecte/angajarea-persoanelor-cu-dizabilitati">http://www.motivation.ro/ro/programe-proiecte/angajarea-persoanelor-cu-dizabilitati</a> , accessed on 21.10.2011
<b>Association to support physically disabled children</b>	Asociatia de sprijin a copiilor handicapati fizic	Association to support physically disabled children (Asociatia de sprijin a copiilor handicapati fizic), Neamt, Media reactions from press conference by the National Council of Disability in August 30, Persons with disability: social assistance law encourages institutionalization and begging on the street <a href="http://aschfroman.blogspot.com/2011/09/reactii-media-in-urma-conferintei-de.html">http://aschfroman.blogspot.com/2011/09/reactii-media-in-urma-conferintei-de.html</a>
<b>The General Directorate for the Protection of Persons with Disabilities, the Ministry of Labor, Family and Social Protection</b>	Directia Generala Protectia Persoanelor cu Handicap, Ministerul Muncii, Familiei si Protectiei Sociale	The General Directorate for the Protection of Persons with Disabilities, the Ministry of Labor, Family and Social Protection (MMFPS), June 30, 2011, <a href="http://www.anph.ro/tematica.php?id=13&amp;idss=41">http://www.anph.ro/tematica.php?id=13&amp;idss=41</a>
<b>Institute for Public Policies, Plea for Transparency</b>	Pledoarie pentru transparenta, Institutul pentru Politici Publice	Institute for Public Policies, Plea for Transparency (Pledoarie pentru transparenta), 2009, <a href="http://www.ipp.ro/pagini/pledoarie-pentru-transparenta355259--1.php">http://www.ipp.ro/pagini/pledoarie-pentru-transparenta355259--1.php</a> , accessed at 19.09.2011
<b>Law no. 221/2010 on ratifying the UN Convention on the Rights of Persons with Disabilities</b>	Legea nr. 211/2010 pentru ratificarea Conventiei privind drepturile persoanelor cu dizabilitati, adoptata la New York de Adunarea Generala a Organizatiei Natiunilor Unite la 13 decembrie 2006, deschisa spre semnare la 30 martie 2007 si semnata de Romania la 26 septembrie 2007	Law no. 221/2010 on ratifying the UN Convention on the Rights of Persons with Disabilities (Legea nr. 211/2010 pentru ratificarea Conventiei privind drepturile persoanelor cu dizabilitati, adoptata la New York de Adunarea Generala a Organizatiei Natiunilor Unite la 13 decembrie 2006, deschisa spre semnare la 30 martie 2007 si semnata de Romania la 26 septembrie 2007) published in Official Gazette no. 792 of November 26, 2011
<b>Law no. 487/2002 on the Mental Health and Protection of People with</b>	Legea ,nr. 487/2002, legea sanatatii mintale si a protectiei	Articles 10 and 11 of law no. 487/2002 on the Mental Health

<b>Mental Health Disorders</b>	persoanelor cu tulburari psihice.	and Protection of People with Mental Health Disorders (Legea sanatatii mintale si a protectiei persoanelor cu tulburari psihice.), published in Part I of Official Journal No. 589 of August 08, 2002
<b>Center for Legal Resources</b>	Centrul de Resurse Juridice	The first case concerning patients' deaths at the Poiana Mare Psychiatric Hospital communicated to the Romanian Government, <a href="http://www.crj.ro/EN/First-case-concerning-patients-deaths-at-the-Poiana-Mare-Psychiatric-Hospital-communicated-to-the-Romanian-Government-828">http://www.crj.ro/EN/First-case-concerning-patients-deaths-at-the-Poiana-Mare-Psychiatric-Hospital-communicated-to-the-Romanian-Government-828</a>
<b>The National Center for Mental Health</b>	Centrul National de Sanatate Mintala	The National Center for Mental Health, "Challenges of the Mental Health Reform in Romania", presentation given during the conference that was held in Bucharest, 2010.
<b>Ministerial Order no. 1372 of 29 September 2010 for approving the procedure for authorisation of protected units</b>	<i>Ordinul nr. 1372 din 29 Septembrie 2010 privind aprobarea procedurii de autorizare a unităților protejate</i>	Ministerial Order no. 1372 of 29 September 2010 given by my Ministry of Labour, Family and Social Protection for approving the procedure for authorisation of protected units ( <i>Ordinul nr. 1372 din 29 Septembrie 2010 al Ministerului Muncii, Familiei și Protecției Sociale privind aprobarea procedurii de autorizare a unităților protejate</i> ), published in Official Gazette no. 676 of 5 October 2010.
<b>Project of law on social assistance</b>	<i>Proiect de lege: Legea-cadru a asistenței sociale</i>	Draft law on social assistance ( <i>Legea-cadru a asistenței sociale</i> ) adopted by the Romanian Government on 1 June 2011.
<b>National Council for Combating Discrimination, No. 244, 22 June 2011</b>	<i>Consiliul Național pentru Combaterea Discriminării, no. 244 din 22 iunie 2011</i>	Bucharest, National Council for Combating Discrimination ( <i>Consiliul Național pentru Combaterea Discriminării</i> ) no.244 of 22 June 2011. NCCD, Response no. 4875/ 15.09/2011, 3.IV, pp. 4-5 on file with national FRANET expert
<b>National Council for Combating Discrimination,</b>	<i>Consiliul Național pentru Combaterea Discriminării, no.</i>	Bucharest, National Council for



<b>No. 454, 21 December 2010</b>	<i>454 din 21 decembrie 2010.</i>	Combating Discrimination ( <i>Consiliul Național pentru Combaterea Discriminării</i> ) no 454 of 21 December 2010. NCCD, Response no. 4875/ 15.09/2011, 3.IV, pp. 4-5 on file with national FRANET expert
<b>National Council for Combating Discrimination, No. 191, 27 July 2010.</b>	<i>Consiliul Național pentru Combaterea Discriminării, no. 191 din 27 iulie 2010.</i>	Bucharest, National Council for Combating Discrimination ( <i>Consiliul Național pentru Combaterea Discriminării</i> ) no. 191 of 27 July 2010. NCCD, Response no. 4875/ 15.09/2011, 3.IV, pp. 4-5 on file with national FRANET expert
<b>National Council for Combating Discrimination, no. 199, 1 August 2007</b>	<i>Consiliul Național pentru Combaterea Discriminării, no. 199 din 1 august 2007.</i>	Bucharest, National Council for Combating Discrimination ( <i>Consiliul Național pentru Combaterea Discriminării</i> ) no. 199, 1 August 2007. NCCD, Response no. 4875/ 15.09/2011, 3.IV, pp. 4-5 on file with national FRANET expert
<b>National Council for Combating Discrimination (2010), Phenomenon of discrimination in Romania.</b>	<i>Consiliul Național pentru Combaterea Discriminării (2010) Fenomenul discriminării în România</i>	National Council for Combating Discrimination (NCCD) (2010) <i>Phenomenon of discrimination in Romania- Synthetic Report 2010</i> , Bucharest, Totem, 2010.
<b>National Council for Combating Discrimination (2011), Report on implementing the Framework Directive 2000/78/CE in Romania 2003-2010.</b>	<i>Raport privind implementarea Directivei cadru (2000/78/CE) în România 2003-2010</i>	National Council for Combating Discrimination (NCCD) (2011), Report on implementing the Framework-Directive in Romania 2003-2010, <i>Raport privind implementarea Directivei cadru (2000/78/CE) în România 2003-2010.</i>
<b>National Council on Disability in Romania on the project of law on social assistance</b>	<i>Consiliul Național al Dizabilității din România: Proiectul legii Asistenței Sociale în România încalcă drepturile persoanelor cu dizabilități</i>	National Council on Disability in Romania ( <i>Consiliul Național al Dizabilității din România, CNDR</i> ), <i>Proiectul legii Asistenței Sociale în România încalcă drepturile persoanelor cu dizabilități</i> , available at <a href="http://cndr.anvr.ro/">http://cndr.anvr.ro/</a>
<b>Institute for Public Policies (2011) In the last years, NCCD has only sanctioned by</b>	<i>Institutul pentru politici publice (2011) În ultimii ani, cazurile de discriminare a persoanelor cu</i>	Institute for Public Policies (2011) <i>În ultimii ani, cazurile de</i>

warning even in the most serious cases of discrimination against persons with disabilities	dizabilități, inclusiv cele grave au fost sancționate cu avertisment de către	discriminare a persoanelor cu dizabilități, inclusiv cele grave au fost sancționate cu avertisment de către CNCD, Bucharest, 15 April 2011.
Institute for Public Policies (2011) Providing services for persons with mental disabilities in the residential system: indicators, benching marks, challenges	Institutul pentru politici publice (2011), Furnizarea serviciilor oferite persoanelor cu dizabilități mentale din sistemul rezidențial- Indicatori, Repere, Provocări	Institute for Public Policies (2010) Furnizarea serviciilor oferite persoanelor cu dizabilități mentale din sistemul rezidențial- Indicatori, Repere, Provocări, Bucharest.
Barometer of Social Inclusion (2010): Survey at national level: Asking employers and employees	Barometrul de Incluziune Socială- Sondaj reprezentativ la nivel național în rândul angajaților și angajatorilor din România	Barometer of Social Inclusion (2010) (Barometrul de Incluziune Socială- Sondaj reprezentativ la nivel național în rândul angajaților și angajatorilor din România, Proiect finanțat din Fondul Social European prin Programul Operațional Sectorial pentru Dezvoltarea Resurselor Umane 2007-2013). Available at <a href="http://media.unibuc.ro/attachments/article/909/Barometrul%20de%20Incluziune%20Sociala%202010_Angajati_Angajatori_07.10.2010.pdf">http://media.unibuc.ro/attachments/article/909/Barometrul%20de%20Incluziune%20Sociala%202010_Angajati_Angajatori_07.10.2010.pdf</a>

#### 5.4. SEXUAL ORIENTATION

Official exact title	Official title	Full reference
EN	RO	
<b>Administrative Procedures for Name Change Act</b>	Ordonanța Guvernului nr.41/2003 privind dobândirea și schimbarea pe cale administrativă a numelor persoanelor fizice	Romania/Administrative Procedures for Name Change Act ( <i>Ordonanța Guvernului nr.41/2003 privind dobândirea și schimbarea pe cale administrativă a numelor persoanelor fizice</i> ) of 30 January 2003, published in the Official Journal No.68/2003.
<b>New Civil Code</b>	Legea nr.287/2009 privind Codul civil	Romania/New Civil Code ( <i>Legea nr.287/2009 privind Codul civil</i> ) of 17 July 2009, published in the Official Journal No.511/2009.
<b>Government Emergency Ordinance</b>	OUG 80/2011 pentru modificarea si completarea Legii	Romania/Government Emergency Ordinance No.80/2011 ( <i>OUG 80/2011 pentru modificarea si completarea Legii nr. 119/1996 cu privire la actele de stare civilă</i> ) of 30

<b>No.80/2011</b>	nr. 119/1996 cu privire la actele de stare civilă	September 2011, published in the Official Journal, No.694/2011
<b>Bucharest Second District First Instance Court, Civil Judgment No.11198 of 16.11.2010</b>	Judecătoria Sectorului 2 București, Sentința civilă nr.11198 din 16.11.2010	Romania/Judecătoria Sectorului 2 (Bucharest Second District First Instance Court), Civil Judgment No.11198 of 16.11.2010.
<b>NCCD, Decision No.276 of 13.10.2010</b>	CNCD, Hotărârea nr.276 din 13.10.2010	Romania/NCCD, Decision No.276 of 13.10.2010.
<b>NCCD, Annual Report 2010</b>	CNCD, Raport anual 2010	Romania/NCCD (2010), Annual Report 2010.
<b>Draft law on civil partnership</b>	PL nr. L98/2011 Propunere legislativă privind parteneriatul civil	Draft law on civil partnership ( <i>PL nr. L98/2011 Propunere legislativă privind parteneriatul civil</i> ) on file with national FRANET expert.
<b>US State Department, 2010 Human Rights Report: Romania</b>		US State Department (2010), 2010 Human Rights Report: Romania, available at <a href="http://romania.usembassy.gov/2010_rhr_en.html">http://romania.usembassy.gov/2010_rhr_en.html</a> (last visit 17.10.2011).
<b>Criminal Code 1968</b>	Codul penal 1968	Romania/Criminal Code of 21 June 1968, republished in Official Journal No.65/1997.
<b>HCCJ, Decision No.III of 23 May 2005</b>	ICCJ, Decizia nr.III din 23 mai 2005	Romania/High Court of Cassation and Justice (HCCJ) ( <i>Înalta Curte de Casație și Justiție</i> , ICCJ), Decision No.III of 23 May 2005, published in the Official Journal No.867/2005.
<b>Freedom of Movement Act</b>	Ordonanța de Urgență a Guvernului Nr.102 din 14 iulie 2005 privind libera circulație pe teritoriul României a cetățenilor statelor member ale Uniunii Europene și Spațiului Economic European	Romania/ Freedom of Movement Act ( <i>Ordonanța de Urgență a Guvernului Nr.102 din 14 iulie 2005 privind libera circulație pe teritoriul României a cetățenilor statelor member ale Uniunii Europene și Spațiului Economic European</i> ), published in the Official Journal No.646/2005, amended.
<b>NCCD, Decision No.64 of 19.05.2010</b>	CNCD, Hotărârea nr.64 din 19.05.2010	Romania/NCCD, Decision No.64 of 19.05.2010.
<b>NCCD, Decision No.191 of 27.07.2010</b>	CNCD, Hotărârea nr.191 din 27.07.2010	Romania/NCCD, Decision No.191 of 27.07.2010.

<b>NCCD, Decision No.284 of 20.10.2010</b>	CNCD, Hotărârea nr.284 din 20.10.2010	Romania/NCCD, Decision No.284 of 20.10.2010.
<b>Decision No.410 of 15.12.2010</b>	CNCD, Hotărârea nr.410 din 15.12.2010	Romania/NCCD, Decision No.410 of 15.12.2010.
<b>NCCD, Decision No.454 of 21.12.2010</b>	CNCD, Hotărârea nr.454 din 21.12.2010	Romania/NCCD, Decision No.454 of 21.12.2010.

## 6 RACISM AND ETHNIC DISCRIMINATION

### 6.1 Employment

#### 6.1.1 Policy and institutional developments

The draft of the National Strategy for Roma Inclusion 2011-2020 (*Strategia Guvernului României de incluziune a cetătenilor români aparținând minorităților romilor pentru perioada 2011-2020*) has been open for public consultations until August 31<sup>st</sup> 2011.<sup>410</sup> The draft strategy contains a set of 25 measures on employment to be implemented. Promoting entrepreneurship, identifying opportunities for income generating activities, providing vocational training and counselling, awareness raising campaigns on anti-discrimination, starting a micro-credit scheme for vulnerable groups, partnerships with relevant actors, developing a monitoring mechanism for the inclusion of Roma on the labour market, stimulating agricultural activities, support for traditional crafts of Roma, are the most important measures provided for by the draft strategy. Nonetheless, NGOs have criticized the proposed implementation mechanism as ineffective and as repeating the previous inefficient institutional setup, while some measures have been qualified by a mainstream NGO as racist (See section 6.6 below). The document, taking into account NGO comments and proposals, or not, remains to be finalized and approved by the Government.

#### 6.1.2 Legislative developments

No relevant legislative developments were noted during the reference period.

#### 6.1.3 National case law

Since October 2010, there were four cases of alleged racial discrimination as regards employment decided by the National Council for Combating Discrimination (NCCD) (*Consiliul Național pentru Combaterea Discriminării*, CNCD).<sup>411</sup> All four complaints have been dismissed, two complaints were dismissed because the complaint was submitted to NCCD more than a year after the facts occurred and the period of prescription included in the statute of limitations was reached, and two complaints were dismissed due to the interpretations of the facts as not qualifying as racial discrimination under the definition of the Romanian anti-discrimination law. No relevant development as regards standards could be noticed during the reference period.

#### 6.1.4 Statistical data made available in the reference period

No relevant statistical data were made available in the reference period.

#### 6.1.5 Research and studies

A 2010 World Bank research covering Bulgaria, Czech Republic, Romania and Serbia offers relevant data on integration on labour market of Roma.<sup>412</sup> The research relies on a combination of nationally representative household survey data from 2008 and the findings from consultations with 99 stakeholders. According to the research data, the total productivity gains in 2008 for Romania, had equal labour market opportunities been in place, would have

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<sup>410</sup> Romania/General Secretariate of the Government (*Secretariatul general al Guvernului*), website, available at: <http://www.sgg.ro/index.php?Strategia-de-incluziune-2011-2020>

<sup>411</sup> NCCD, Response No.4875/CA of 9 September 2011 on file with national FRANET expert.

<sup>412</sup> The World Bank (WB) (2010), *Roma inclusion: An economic opportunity for Bulgaria, Czech Republic, Romania and Serbia - Policy note*, Washington D.C., available at: [www.worldbank.org/roma](http://www.worldbank.org/roma)

ranged between €887 million to €2.9 billion in 2008.<sup>413</sup> The productivity losses calculated were €2,596 per each working age Roma in Romania.<sup>414</sup> The government revenues would have been substantially higher if Roma were not excluded from the labour market in Romania, the estimated increase ranged between €202 and 675 million.<sup>415</sup> The research found also that Roma employees were paid less than non-Roma employees “the labour earnings for individual employed Roma in Romania [we]re a mere 39% of the labour earnings for employed non-Roma.”<sup>416</sup> The importance of inclusion of Roma on the labour market derives also from the fact that 21% of new labour market entrants in Romania are Roma.<sup>417</sup>

According to a 2010 research conducted by the Research Institute for Quality of Life (RIQL) (*Institutul de Cercetare a Calității Vieții*, ICCV), 36.6% of the Roma feel that ethnic background is important for finding a job to a large extent while other 19.3% think that ethnic background is to a very large extent important in finding a job.<sup>418</sup> Also, more than 40% of the Roma believe that they will be treated worst than members of other ethnic groups while applying for a job.<sup>419</sup>

### 6.1.6 Promising ‘good’ practices

No promising “good” practices have been identified for the reference period.

### 6.1.7 Key issues in public debate

A specific issue for public debate was the informal work on the labour market as well as temporary work by day that was not taxed. The debates were in the context of increasing state revenues. These jobs were performed by those who found it difficult to integrate on the formal labour market: Roma, immigrants, people facing extreme poverty.<sup>420</sup>

### 6.1.8 Information on trends until 2011

According to data from the National Institute of Statistics (NIS) (*Institutul Național de Statistică*, INS) cited by the research conducted by the RIQL research, the general unemployment rate increased from 4.4% in 2008 to 7.8%, while the employment rate decreased from 66% to 64.6%.<sup>421</sup> The number of Roma that participated in the vocational training programs of the National Agency for Employment Occupation has decreased from 2,283 in 2006 to 1,613 in 2007, to 1,109 in 2008 and to 775 in 2009.<sup>422</sup> The number of Roma participating in temporary employment programs has also decreased from 5,570 in 2006 to 4,846 in 2007, to 3,660 in 2008, and to 2,322 in 2009.<sup>423</sup>

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<sup>413</sup> WB (2010), *Roma inclusion: An economic opportunity for Bulgaria, Czech Republic, Romania and Serbia - Policy note*, Washington D.C. p.17.

<sup>414</sup> WB (2010), *Roma inclusion: An economic opportunity for Bulgaria, Czech Republic, Romania and Serbia - Policy note*, Washington D.C., p. 4.

<sup>415</sup> WB (2010), *Roma inclusion: An economic opportunity for Bulgaria, Czech Republic, Romania and Serbia - Policy note*, Washington D.C., p.19.

<sup>416</sup> WB (2010), *Roma inclusion: An economic opportunity for Bulgaria, Czech Republic, Romania and Serbia - Policy note*, Washington D.C., p.8.

<sup>417</sup> WB (2010), *Roma inclusion: An economic opportunity for Bulgaria, Czech Republic, Romania and Serbia - Policy note*, Washington D.C., p.5.

<sup>418</sup> RIQL (2010), *Legal and equal on the labor market for the Roma communities: Diagnosis of the factors influencing the employment rate of the Roma population in Romania*, Bucuresti, p.67, available at: [http://issuu.com/fundatiasoros/docs/raport\\_legal-english](http://issuu.com/fundatiasoros/docs/raport_legal-english)

<sup>419</sup> RIQL (2010), *Legal and equal on the labor market for the Roma communities: Diagnosis of the factors influencing the employment rate of the Roma population in Romania*, Bucuresti, p.68.

<sup>420</sup> RIQL, p. 119.

<sup>421</sup> RIQL, p. 33.

<sup>422</sup> RIQL, p. 24.

<sup>423</sup> RIQL, p.25.

### 6.1.9 Identification of future challenges

Collection of data as regards inclusion of Roma on labour market is needed to assess progress in policy implementation and outcomes as well as in order to identify trends.

Considering the effects of the economic crisis on the employment rate, job creation represents a difficult task as there is no policy document yet aiming at Roma inclusion on the labour market.

## 6.2 Education

### 6.2.1 Policy and institutional developments

The draft National Strategy for Roma Inclusion 2011-2020 (*Strategia Guvernului României de incluziune a cetătenilor români aparținând minorității romilor pentru perioada 2011-2020*) has two major objectives under ‘Education’:

- 1) “ensure free and universal access for children/ youth belonging to the Roma minority to quality education, at all levels, including pre-primary education, in the public education system” [...]; and
- 2) “promote an inclusive education system by eliminating segregation and combating discrimination based on ethnicity, social status, disability or other criteria that affect children and youth from disadvantaged groups, including the Roma.”<sup>424</sup>

### 6.2.2 Legislative developments

Article 2, paragraphs 5 and 6 of the Law of National Education (*Legea Educației Naționale*) no. 1/2011<sup>425</sup> stipulate that the Romanian State grants the same rights to education to citizens of the other EU Member States, of States belonging to the European Economic Area or of the Swiss Confederation, and also to minors who seek or have been granted a form of protection in Romania, immigrant minors or stateless minors, whose stay on the territory of Romania is officially recognised according to law. In Article 3 the new Law of National Education states its intention to secure “the recognition and the guarantee of rights of persons belonging to national minorities, the right to preserve, develop and express ethnic, cultural, linguistic and religious identity” as well as the principle of “ensuring equal opportunities.”

Different from previous legislation and prior drafts of the law, only discrimination in tertiary education is prohibited expressly in Article 118 and in Article 202. While the previous Education Code defined segregation in education in Article 5(48) and in Article 8, such provisions are not included in the current law. The disappearance of the prohibition of discrimination and of the definition of segregation is worrying, particularly given the number of cases in courts and before the national equality body regarding segregation in education.

### 6.2.3 National case law

No major cases to be reported for the reference period.

### 6.2.4 Statistical data made available in the reference period

No relevant data to be reported for reference period.

### 6.2.5 Research and studies

Research supported by the UNICEF representation in Romania points out that in the opinion of 39.9% of 985 interviewed Roma parents, Roma children are treated worse in school than

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<sup>424</sup> Agenția Națională pentru Romi (Romania, National Agency for the Roma), [www.anr.gov.ro](http://www.anr.gov.ro).

<sup>425</sup> Available in Romanian at [http://www.dreptonline.ro/legislatie/legea\\_educatiei\\_nationale\\_lege\\_1\\_2011.php](http://www.dreptonline.ro/legislatie/legea_educatiei_nationale_lege_1_2011.php).



non-Roma children.<sup>426</sup> Economic reasons head the list of causes perceived by parents that lead to their children dropping out of school; nevertheless, 12.5% of the surveyed parents blame the education system, which treats children inequitably to the disadvantage of Roma children.<sup>427</sup> Close to 60% of the Roma children who attend preschool go to segregated kindergartens (that is, where over 50% of the children are Roma), and 11.7% of the Roma children are in all-Roma kindergarten groups.<sup>428</sup>

The economic reasons that the parents stated are twofold: a) the parents cannot afford the costs of schooling; b) the children need to work outside of the household to earn money to help the family ensure basic living needs. The study notes that although school education should be free, the parents insisted on expenditure directly or indirectly incurred by their children's attending school. Such costs can include: clothing (especially if the school imposes a uniform), stationery, auxiliary material (special notebooks, exercise books), contribution to common class expenditure, or occasional costs for extracurricular activities. The situation of children working outside the household is described by the study as being common in poor communities which are involved in subsistence economy. Some examples of work in rural communities given are: fruit, herb or mushroom picking. In the short run, such situations lead to masked drop-out (although they appear as being enrolled, children do not attend for a long period of time but are not expelled) further determining the children falling behind in school work, failing classes, and finally dropping out of school altogether. The study also mentioned the particular situation of communities where poverty is aggravated by improper living conditions, such as communities recently created through the displacement of Roma persons without property documentation from within the city to the outskirts, in improper living areas, without access to utilities, situated next to garbage collection sites or sewage plants. The situation in two such communities was presented in the study with information gathered through focus-groups. Aside from poverty, in these cases, parents invoked the precarious living conditions as one of the causes for school drop-out and the difficulty of getting to school, with the road considered dangerous for children in some cases (crossing a high-traffic road of a rail track where people know of accidents having happened to members of the community) and thus the parents refusing to allow their children go unaccompanied. In one of the two cases, one person from the community had been hired by the municipality to accompany the children to school, but the position was no longer available and the children now seemed to be accompanied by people from the community taking turn, on a volunteer basis.<sup>429</sup>

Discrimination is present in schools attended by Roma students. Interviews conducted with teachers and school directors reveal the persistence of profoundly discriminatory attitudes

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<sup>426</sup> Surdu, L. (coord.) (2011) *Participare, absenteeism școlar și experiența discriminării în cazul romilor în România*, București, Vanemonde. The research was conducted by a team coordinated by Laura Surdu, also including Eniko Vincze and Marius Wamsiedel. The publication bears the logos of UNICEF and the NGO Romani CRISS, and the inscription "Work done and printed in 2000 copies with support of the UNICEF representation in Romania." There is a disclaimer on the inside cover, "Opinions expressed in this work belong to the authors or the persons interviewed and do not necessarily represent the official position of UNICEF in Romania." On Page 11 of the publication it is stated: "The present research responds to the need to gain clear understanding of the dimensions of non-participation in education and of school drop-out, and of their underlying causes, using a nationally representative sample. Research was done within the project „Dimensions of preschool participation of the Roma in Romania, funded by Unicef.”“The survey was conducted in December 2009-January 2010, on a sample of 985 Roma adults with at least one child who has dropped out of education in the household, and a sample of 979 Roma adults with all children in the household either neverhaving attended or having dropped out of preschool or school.” (page 13 of the publication)

<sup>427</sup> *Ibid.*

<sup>428</sup> *Ibid*

<sup>429</sup> *Ibid*, p. 80-83

towards Roma children.<sup>430</sup> Discrimination is revealed by school staff who mention positive examples of Roma children as the exceptions to the norm, while the general Roma school population is persistently perceived as having negative characteristics.<sup>431</sup>

An increasing number of immigrants benefit from Romanian language and cultural orientation courses. However, research points out that there are a number of obstacles immigrants face in accessing such courses: they do not know what is on offer; where to look for the offer; or how to enrol; the timetable fails to take into account the potential beneficiaries' work schedule; the courses are not adapted to the cultural specificities of the immigrant communities; the courses should provide for accelerated learning of the language; the providers should issue certificates that prove the level of Romanian language mastery.<sup>432</sup>

## **6.2.6 Promising 'good' practices**

Nothing to report.

## **6.2.7 Key issues in public debate**

Leading non-governmental organisations have developed a comprehensive document in response to the public consultation launched by the General Secretariat of the Government in relation to the draft National Strategy for Roma Inclusion 2011-2020, which includes the proposals of Roma and non-Roma non-governmental organisations and activists from diverse fields that work for the benefit of Roma communities.<sup>433</sup>

## **6.2.8 Information on trends until 2011**

Access to learning Romanian language for immigrants has increased, but it is merely due to project-based provision of language courses by non-governmental organisations.

## **6.2.9 Identification of future challenges**

There is no data available to allow analysis of the integration of immigrants in the Romanian education system. Informal discussions with non-governmental organization representatives and representatives of public institutions on the topic of education provision for immigrants reveal the need for: intercultural education, introduction of the issue of immigrants in the curriculum, as well as of religious education about the religions of immigrants; teaching staff

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<sup>430</sup> Ivasiuc, A, Duminică, G (2010) *O școală pentru toți? Accesul copiilor romi la o educație de calitate*, București, Vanemonde The research used a mixed qualitative and quantitative approach. (p.39). The goal of the study that the publication reports on was to "analyse a segment of the education system, namely the schools where the Roma ethnics are present, to reveal the correlations occurring between the ethnicity of the student population and the quality of education provision in these school." (p. 32) Data and information from the following sources was analysed: 100 schools and preschool attended by Roma children from 70 communities; Interviews conducted with 85 school principals or teachers designated by the principals, as well as interviews with 104 teachers: Interviews with 25 school mediators in the communities included in the study: 772 parents of school-aged children: 763 school-aged children. The research project was carried out in April 2009-May 2010. (p. 6) The cover of the publication bears the logos of AgentiaImpreuna (a non-governmental organization) and of UNICEF. Stated on page 3: "The publication was printed in 1,500 copies with the support of UNICEF representation in Romania." "The opinions expressed in this work are of the authors and of the persons interviewed and they do not necessarily represent the official position of UNICEF representation in Romania."

<sup>431</sup> Ivasiuc, A, Duminică, G (2010) *O școală pentru toți? Accesul copiilor romi la o educație de calitate*, București, Vanemonde

<sup>432</sup> Alexe, I, Păunescu, B. (2011) *Studiu asupra fenomenului imigrației în România. Integrarea străinilor în societatea românească*, București, Fundația Soros România

<sup>433</sup> Propunerile de revizuire a proiectului Strategiei Guvernului României de incluziune a cetățenilor romani aparținând minorității romilor pentru perioada 2011-2020 (Proposals for the revision of the draft Strategy of the Romanian Government for the inclusion of the Roma minority in the period 2011-2010), available at [www.romaniciiss.org](http://www.romaniciiss.org).

openness to acceptance of foreign teachers; adjustment of education to the needs of migrant children or children from mixed families, etc.<sup>434</sup>

The main challenges for the future as concerns immigrants access to education, and as identified by the Romanian Immigration Office (*Oficiul Român pentru Imigrări*) are lack of Romanian language skills, and, as a result, the impossibility for migrants to continue or complete their studies in Romanian, lack of school certificates issued in the county of origin, as well as difficulties encountered in having school certificates recognised and years of education considered in the absence of specific methodology that should regulate this area.<sup>435</sup>

Elimination of segregation and discrimination based on ethnicity, social status or any other criterion in education, which affect Roma children and youth is still a standing challenge, and as such is one of the main objectives NGOs consider the National Strategy for Roma Inclusion 2011-2020 should target in the area of education.<sup>436</sup>

## 6.3 Health

### 6.3.1 Policy and institutional developments

The draft of the National Strategy for Roma Inclusion 2011-2020 (*Strategia Guvernului României de incluziune a cetătenilor români aparținând minorităților romilor pentru perioada 2011-2020*) is has been open for public consultations until August 31<sup>st</sup> 2011.<sup>437</sup> Health is one of the priority areas of the strategy. The goal is to raise access to public healthcare services for disadvantaged categories, including Roma people, and increase their life expectancy. Among main interventions, it includes raising awareness and information campaigns targeting especially women and children. These campaigns focus on disease prevention (including HIV, STIs and tuberculosis), family planning, vaccination, and the risks associated with early marriages, domestic violence and trafficking in human beings. The strategy also aims to strengthen the health mediation program and develop action plans on Roma health at the local level.<sup>438</sup> NGOs have brought several proposed amendments and additions to the area of health and criticized the implementation mechanism as ineffective (See also section 6.6).<sup>439</sup>

Started in June 2009, the consultation for the adoption of a national strategy on sexual and reproductive health and rights continued in 2011.<sup>440</sup> One of the objectives of this strategy is to create a system of medical assistance in the community, centred on the needs of the pregnant woman and the child, with a particular focus on vulnerable people; Roma minority is not

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<sup>434</sup> Alexe, I, Păunescu, B. (2011) *Studiu asupra fenomenului imigrației în România. Integrarea străinilor în societatea românească*, București, Fundația Soros România.

<sup>435</sup> Ministerul Administrației și Internelor, Oficiul Român pentru Imigrări (Romania, Ministry of Administration and Internal Affairs, Romanian Office for Immigrations), correspondence no. 1727914 of 15.09.2011

<sup>436</sup> Propunerile de revizuire a proiectului Strategiei Guvernului României de incluziune a cetățenilor români aparținând minorității romilor pentru perioada 2011-2020 (Proposals for the revision of the draft Strategy of the Romanian Government for the inclusion of the Roma minority in the period 2011-2010), available at

[http://www.romanicriss.org/index.php?option=com\\_content&task=view&id=360&Itemid=8](http://www.romanicriss.org/index.php?option=com_content&task=view&id=360&Itemid=8).

<sup>437</sup> Romania/General Secretariate of the Government (*Secretariatul general al Guvernului*), website, available at: <http://www.sgg.ro/index.php?Strategia-de-incluziune-2011-2020>.

<sup>438</sup> NAR, Strategy for Roma inclusion (2011-2020) (*Strategia Guvernului României de incluziune a cetătenilor români aparținând minorităților romilor pentru perioada 2011-2020*), § C, p.14, available at [http://www.anr.gov.ro/html/Politici\\_Publice.html](http://www.anr.gov.ro/html/Politici_Publice.html).

<sup>439</sup> Propunerile de revizuire a proiectului Strategiei Guvernului României de incluziune a cetățenilor români aparținând minorității romilor pentru perioada 2011-2020 (Proposals for the revision of the draft Strategy of the Romanian Government for the inclusion of the Roma minority in the period 2011-2010), available at <http://www.sgg.ro/index.php?Strategia-de-incluziune-2011-2020>.

<sup>440</sup> Interview with Florin Buhuceanu, Executive President of the Euroregional Center for Public Initiatives, 12.09.2011.

explicitly mentioned among vulnerable people.<sup>441</sup> This process of consultation was organized by the Ministry of Health with the technical support from the UNFPA and WHO. The draft has not been adopted by the Government, yet.

### **6.3.2 Legislative developments**

There have been no relevant developments in the reporting period.

### **6.3.3 National case law**

During 2011, the Romanian Medical Professional Order (MPO) (*Colegiul Medicilor din România*, CMR) investigated only one case of alleged discrimination on the ground of ethnic origin (Roma). The 2009 case filed by SASTIPEN, a Roma health advocacy NGO, was about alleged discrimination by a gynaecologist from Târgu Neamț Hospital denying three Roma women access to healthcare and infringing their right to personal dignity.<sup>442</sup> In July 2010, the NCCD issued a decision sanctioning the discriminatory acts conducted by the Ob-GYN doctor against one of the pregnant women of Roma origin. The discriminatory behaviour found by the NCCD consisted of refusal to provide healthcare to the Roma patient compared to other patients and insulting remarks connected to ethnicity. The behaviour was qualified as harassment according to Art.2.(5) of the Governmental Ordinance 137/2000, infringing the human dignity of the Roma woman. The NCCD also stated that given the disadvantaged socio-economic and educational status of Roma community compared to the non-Roma population and the particularly vulnerable situation of the woman related to pregnancy, the reaction of the doctor was disproportionate to the patient behaviour who allegedly did not have a referral, did not ask to be hospitalized and did not have any tests made to document her medical condition. The administrative sanction issued was a warning.<sup>443</sup> Despite the NCCD finding discrimination, the case was dismissed by the local MPO. SASTIPEN appealed this decision in November 2010 and the appeal is still pending before the national MPO.<sup>444</sup>

### **6.3.4 Statistical data made available in the reference period**

MPO does not have a national level data collection of complaints filed with local MPOs. It has information only about the appeals introduced at the national level against the local MPO's decisions.<sup>445</sup>

Although, the NCCD does not disaggregate data based on the type of public service provided in a discriminatory manner, information on the number of cases of race discrimination in access to health is provided upon request. Thus, in 2010, the NCCD found discrimination in one case (the case against the Ob-GYN from Târgu Neamț Hospital, mentioned above) and dismissed the other two for insufficient evidence. In 2011, no case was reviewed by the NCCD on race discrimination regarding health.

### **6.3.5 Research and studies**

In 2010, SASTIPEN, an NGO advocating for Roma rights in the field of health, published a report evaluating the implementation and impact in nine counties throughout the country of public policies aimed at improving Roma access to public health services.<sup>446</sup> The report indicates lack of awareness and know-how among local authorities to undertake several tasks

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<sup>441</sup> Ministry of Health, Sexual and reproductive health national strategy 2012-2016 (*Strategia Națională pentru Sănătatea Reproductivei și Sexualității 2012-2016*), draft version of 27 July 2011, General Objective 2, Specific Objective 1 on file with the NFP.

<sup>442</sup> This case was presented in the Complementary Data Collection Contribution to the FRA Annual Report 2011.

<sup>443</sup> NCCD, Decision No.149 of 7 July 2010.

<sup>444</sup> MPA, Response No.4594 of 7 September 2011 on file with the NFP.

<sup>445</sup> MPA, Response No.4594 of 7 September 2011 on file with the NFP.

<sup>446</sup> Centrul Romilor pentru Politici de Sănătate - SASTIPEN, Roma's access to public health services. Final Report, 2010, available at [www.sastipen.ro](http://www.sastipen.ro)

regarding the administration of public healthcare services within the decentralisation processes, in particular with regards to addressing behavioural and environmental determinants of health status of the population. The report concludes that the impact of public policies in the field of improving Roma access to health services was very limited. The only initiative that was actually transformed into a public policy – the Roma health mediator – was severely affected by decentralization. Currently only one third of Roma, preponderantly from urban areas, have a Roma health mediator in their community.<sup>447</sup>

### **6.3.6 Promising ‘good’ practices**

The project “A generation of Roma specialists in the medical field,” implemented with European structural funds, started in January 2011 building upon a prior project piloted by the Open Society Institute Roma Health Program, Roma Education Fund, The Association of Resident Doctors (*Asociația Medicilor Rezidenți*), SASTIPEN and ActiveWatch NGOs.<sup>448</sup> It aims to support young Roma’s access to academic education in the medical field and combat stereotypes about Roma’s lack of interest in education and jobs that require a high degree of qualification. See ANNEX 3.

### **6.3.7 Key issues in public debate**

The topic of the impact of the health reform on access to quality health services in the case of vulnerable groups such as Roma has not been picked up by the media or the general public. While public health in general is a topic of interest, the focus remains on the braindrain of medical personnel and on the poor quality of medical services and not on access to health services for particular groups.

### **6.3.8 Information on trends until 2011**

It is particularly difficult for patients to show they were subjected to discrimination, especially when there are no eye witnesses. NGOs and practitioners taking cases of discrimination in access to health services mention that many times providing evidence is hampered by the fact that patients are refused healthcare on a particular ground of discrimination before their request for consultation is actually registered. A NCCD decision from September 2010 in which a group of Roma patients complained against being refused access to consultations by their General Practitioner (GP) at different moments in time, showed the difficulty of establishing a timeline for acts of discrimination. The case was dismissed by the NCCD due to inconclusive evidence of the exact dates the alleged facts took place and the content of the statements allegedly made by the GP, without an investigation conducted by the NCCD looking for further evidence.<sup>449</sup>

Another recent NCCD case in the field of healthcare infringes the standards of burden of proof. Thus, a Roma patient’s complaint was dismissed in November 2011. He complained about the standard of care applied by a doctor, who allegedly left him for eight hours without necessary care for respiratory insufficiency because he is Roma.<sup>450</sup> The NCCD stated that the patient should have brought “evidence determining on a level of certainty” the different treatment applied and the causality link between this different treatment and the patient’s ethnicity thus infringing the provisions regarding the sharing of the burden of proof applied in Romania in cases of discrimination.<sup>451</sup>

In December 2010, 150 mediators from 39 counties established the first professional association of Roma health mediators, called Association of Health Mediators – “Zurale

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<sup>447</sup> Centrul Romilor pentru Politici de Sănătate - SASTIPEN, Roma’s access to public health services. Final Report, 2010, pp.170-173, available at [www.sastipen.ro](http://www.sastipen.ro).

<sup>448</sup> More information available at <http://www.burseromi.ro/>.

<sup>449</sup> NCCD, Decision No.258 of 29 September 2010.

<sup>450</sup> NCCD, Decision No.335 of 18 November 2010.

<sup>451</sup> NCCD, Decision No.335 of 18 November 2010, 5.2.8-5.2.11.



Romnia". Romani CRISS, the Roma NGO which initiated the health mediators program back in 1997, facilitated the establishment of this association. This initiative comes in response to the weakening of the health mediators program caused by decentralisation (many local administrations did not agree to hire the Roma health mediators although the Government allocated money, mostly short-term employment contracts were concluded with them, additional assignment were given to them not related to their profession, etc.).<sup>452</sup>

Another initiative has started in January 2011, in eight regions of the country, supported from European structural funds. It is designed to establish a Centre for Training and Certification of Health Mediators, a Unit for Technical Assistance, Monitoring and Evaluation of health mediators. Lobby and advocacy campaigns among local authorities will aim at raising the employment rate among health mediators.<sup>453</sup>

Foreigners granted a form of protection in Romania have access to medical assistance in the same conditions as Romanian citizens.<sup>454</sup> Foreigners or apatrides who were granted prolongation of temporary residence or permanent residence in Romania by the ROI and who can prove that they contributed to the public health assistance fund are recognized as being ensured and have access to medical services.<sup>455</sup> Art. 213 of the Law 95/2006 on the reform of the public health system provides for certain categories of population which are entitled to medical insurance without contributing to the public health fund such as children and youth between 18-26 if enrolled in education, certain groups of persons with disabilities or pregnant women under specific conditions. Third country nationals fitting in one of these categories might also benefit of free medical insurance. Asylum seekers continue to face difficulties with access to specialized healthcare, partially because of the lack of interpreters.<sup>456</sup> In addition, only primary healthcare and emergency healthcare are ensured free of charge; these services are to be provided through the healthcare services from the asylum seekers' centers or/and other accredited and authorized healthcare units.<sup>457</sup> In order to access free public healthcare in Romania, one must register with a family doctor and pay the health insurance fee of around EUR7 per month, which is unaffordable for persons who have no income.<sup>458</sup> Another problem reported is the lack of information of the healthcare personnel about which healthcare services the asylum-seekers are entitled to access in Romania.<sup>459</sup>

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<sup>452</sup> Romani CRISS, Press Release, 'Romani CRISS marks history for the health mediation program Zurale Romnia - Association of Health Mediators', Bucharest, 14 December, 2010. Romaworld, 'Mediatorii sanitari afectati de marea descentralizare' (Health mediators affected by the big decentralization), 17 January 2011.

<sup>453</sup> SASTIPEN, 'Programul de mediere sanitară: oportunitatea de creștere a ratei de ocupare în rândul femeilor rome' (Health mediators' program: opportunity to raise the employment rate of Roma women), available at <http://sastipen.ro/Mediere-sanitara-PMS/>.

<sup>454</sup> Art. 7 of the Governmental Ordinance 44/2004 from 31 January 2004 on social integration of foreigners granted a form of protection in Romania.

<sup>455</sup> Art. 122 of Law 95 of 14 April 2006 on reform in the health system.

<sup>456</sup> US State Department (2010), 2010 Human Rights Report: Romania, p.15, available at [http://romania.usembassy.gov/2010\\_rhr\\_en.html](http://romania.usembassy.gov/2010_rhr_en.html).

<sup>457</sup> Law No.122 of 4 May 2006 regarding asylum in Romania, Art.17.(1).(m), as amended by Government Emergency Ordinance No.55 of 20 June 2007, published in the Official Journal No.424 of 26 June 2007.

<sup>458</sup> United Nations High Commissioner for Refugees Regional Representation for Central Europe, 2009 Report, Being a Refugee.How Refugees and Asylum Seekers Experience Life in Central Europe, Budapest, August 2010, p.49, available at [http://ec.europa.eu/ewsi/UDRW/images/items/doc1\\_15752\\_460824336.pdf](http://ec.europa.eu/ewsi/UDRW/images/items/doc1_15752_460824336.pdf)

<sup>459</sup> United Nations High Commissioner for Refugees Regional Representation for Central Europe, 2009 Report, Being a Refugee.How Refugees and Asylum Seekers Experience Life in Central Europe, Budapest, August 2010, p.51, available at [http://ec.europa.eu/ewsi/UDRW/images/items/doc1\\_15752\\_460824336.pdf](http://ec.europa.eu/ewsi/UDRW/images/items/doc1_15752_460824336.pdf).

### 6.3.9 Identification of future challenges

A draft law on co-payment in health services initiated by the Government is presently under the debate in the Parliament.<sup>460</sup> It introduces the co-payment system for accessing healthcare for all persons, except children, low-income retired persons and persons suffering of particular diseases covered by national health programs if they have no income. The annual limit for co-payment is RON 600 (€140).<sup>461</sup> The law does not specify for which specific services the co-payment will apply. It only states that certain medical services from the basic package of health services insured from the national social fund will be co-paid by the insured persons. The list of services will be established by secondary legislation. A larger part of the Roma population is living in poverty compared to the majority population. Consequently, the measure could impact them disproportionately.

## 6.4 Housing

### 6.4.1 Policy and institutional developments

In 2008, the Government of Romania adopted a pilot program “Social housing for Roma communities” through the Government Decision No.1237/2008 (*Locuințe sociale pentru comunitățile de romi*) Hotărârea Guvernului nr.1.237/2008). According to information provided by the National Agency for Roma (NAR) (*Agenția Națională pentru Romi*, ANR), the programme aims at building 300 flats. The allocated budget for 2010 was of RON 200,000 (approximately €47,619) while the used budget was of RON13,000 (€30,952) . The funds allocated from the state budget for 2011 are of RON6,000,000 (approximately €1,400,000).<sup>462</sup> However, similar to 2010, the actual funds spent were significantly below the approved budget meaning of RON16,000 (€3,809).<sup>463</sup> For 2012, it is foreseen a budget of RON30,000,000 (approximately €6,978,000) and for the year 2013 an amount of RON9,000,000 (approximately €2,093,000) is foreseen for the implementation of the programme.<sup>464</sup> It is unclear if the programme addresses in any way the issue of segregation of Roma as regards the flats that will be built, or if there is a particular dead-line by when the flats have to be finished. Among the criteria for assessing priorities within the pilot programme, the implementing order mentions: percentage of Roma population in the locality where social housing is requested, surface of the land available for transfer to this programme, viability of the land, the highest number of members of Roma community in a particular location.<sup>465</sup>

The draft of the National Strategy for Roma Inclusion 2011-2020 (*Strategia Guvernului României de incluziune a cetățenilor români aparținând minorităților romilor pentru perioada 2011-2020*) includes a section on housing proposing improvement of the legal framework as regards protection of the rights of tenants and the implementation of the access to adequate housing at local level. Another set of measures included in the draft strategy regards the development of programmes for building social housing. Roma NGOs brought comments, proposals as well as criticisms to the draft strategy which remains to be finalized.<sup>466</sup>

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<sup>460</sup> Draft Law on Amendment of the Health Reform Law (*PL-x nr. 123/2011 Proiect de Lege pentru modificarea și completarea Legii nr.95/2006 privind reforma în domeniul sănătății*).

<sup>461</sup> *Idem*.

<sup>462</sup> NAR, Response No.4078 of 9 September 2011 on file with national FRANET expert.

<sup>463</sup> Ministry of Regional Development and Tourism, Response No. 69683 from 31.10.2011 on file with national FRANET expert.

<sup>464</sup> NAR, Response No.4078 of 9 September 2011 on file with national FRANET expert..

<sup>465</sup> Ministry of Regional Development and Tourism, Response No. 69683 from 31.10.2011 on file with national FRANET expert

<sup>466</sup> NAR, Response No.4078 of 9 September 2011 on file with national FRANET expert..



#### **6.4.2 Legislative developments**

No relevant legislative development took place during the reference period.

#### **6.4.3 National case law**

No relevant case law during the reference period.

#### **6.4.4 Statistical data made available in the reference period**

No statistical data were made available in the reference period.

#### **6.4.5 Research and studies**

In a 2011 brief report, Amnesty International identified four major issues as regards realization of the right to housing of Roma in Romania: lack of protection from forced evictions, resettlement to inadequate housing, location and habitability.<sup>467</sup> The Romanian Housing Law<sup>468</sup> does not provide protection from forced evictions contrary to the international and regional legal standards that require states to ensure that all people are provided with a minimum degree of security of tenure, regardless of whether they rent, own, or informally occupy the homes or land that they live in, guaranteeing them legal protection against forced eviction, harassment and other threats.” The Romanian Housing Law focuses on physical aspects and does not take into consideration social, economic, cultural, climatic, ecological and other factors without offering any standards as regards location, availability of services, material, facilities and infrastructure and proximity to hazardous environments.<sup>469</sup> Amnesty International visited 12 Roma communities that have been resettled or offered to be resettled by the local authorities in housing with limited or no access to basic services such as water and electricity, sanitation and other facilities, noting that habitability is an issue when those evicted are provided with alternative housing.<sup>470</sup>

In December 2010, the European Roma Rights Center published a report on housing conditions of Roma in Romania and other countries. It notes that there is a lack of improvement in Romani housing conditions in Romania since the start of the Decade of Roma Inclusion, housing being the lowest priority of the Government.<sup>471</sup> Access to social housing for Roma is difficult due to denial of the applications from the side of local authorities, often without explanation, or ill-treatment by public servants when Roma tried to apply for social housing.<sup>472</sup> The report considers that the most important impediment in access to social housing is the law as the Romanian legislation on housing conditions the availability of social housing by not owning a dwelling, having not sold a house after 1 January 1990, not benefiting at any point from help from authorities in building a house and not owning as a tenant another house from the authorities.<sup>473</sup>

#### **6.4.6 Promising ‘good’ practices**

No promising “good” practices to be reported for the reference period but worrying trends regarding forced eviction of Roma continued over the reference period and local authorities

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<sup>467</sup> Amnesty International (2011), *Mind the legal gap: Roma and the right to housing in Romania*, London.

<sup>468</sup> Romania/Housing Law, Law 114/1996 (*Legea locuinței nr.114/1996*) as revised by 12 October 2009.

<sup>469</sup> Amnesty International (2011), *Mind the legal gap: Roma and the right to housing in Romania*, London, p.9.

<sup>470</sup> Amnesty International (2011), *Mind the legal gap: Roma and the right to housing in Romania*, London, p.10.

<sup>471</sup> European Roma Rights Center (2010), *Standards do not apply: Inadequate housing in Roma communities*, Budapest, p.45.

<sup>472</sup> ERRC (2010), *Standards do not apply: Inadequate housing in Roma communities*, Budapest, p.59.

<sup>473</sup> ERRC (2010), *Standards do not apply: Inadequate housing in Roma communities*, Budapest, p.61.

continue to separate Roma from the rest of the community by building walls around the area inhabited by Roma.

#### 6.4.7 Key issues in public debate

Some of the initiatives of local authorities have brought to the public debate several issues. One important issue is the isolation of Roma following the building of walls to separate Roma communities. While anti-Roma rhetoric proved to be a good strategy for some politicians, there were also voices underlining that isolation of Roma does not lead to their inclusion.

The evictions of Roma, mainly the cases from Baia Mare and Cluj-Napoca, was another topic for debate in the media. The debates focused rather on public order and urban planning and to a lesser extent on the right to adequate housing, social protection and human rights.

On 17 December 2010, following a warning received the day before, 270 residents from a central street in the city of Cluj-Napoca were evicted and their houses demolished by the local authorities. The 270 Romani residents were relocated to social housing in Pata-Rât, the location of the Cluj-Napoca garbage dump and toxic waste site.<sup>474</sup> According to research conducted by the European Roma Rights Center (ERRC) and its local partners, “the modular homes provided lack heating, hot water and kitchens; between seven and 13 people are crammed into maximum 18 meter square single-room apartments and four apartments share a single bathroom.”<sup>475</sup> According to Amnesty International, access to school, employment, health services and other public services is difficult as the closest bus stop is located at approximately three km away.<sup>476</sup> On 19 January 2011, the evicted Roma residents and local NGOs organized a protest in front of the mayor’s office in Cluj-Napoca regarding the forced eviction and the improper conditions of the new location.<sup>477</sup>

In May 2011, the national railway company Căile Ferate Române (CFR) filed a complaint with a court for evicting 120 Roma families (500 people) from Cantonului street in Cluj-Napoca for threatening the security of the railway transport. On 19 September 2011, the Cluj-Napoca Court has rejected the CFR request, the written decision remaining to be issued. The decision might be appealed by CFR.<sup>478</sup>

The local authorities in Baia Mare, a city in North West Romania, built a three meters high<sup>479</sup> wall surrounding a block inhabited mostly by Roma.<sup>480</sup> The decision adopted by the municipal council to build the wall surrounding the block attracted criticism from the human rights groups such as Amnesty International and Romani Criss<sup>481</sup> and an investigation of the

<sup>474</sup> ERRC (2011), *ERRC raises concerns as Roma protest in Romania*, 19 January 2011, available at: <http://www.errc.org/cikk.php?cikk=3804>.

<sup>475</sup> ERRC (2011), *ERRC raises concerns as Roma protest in Romania*, 19 January 2011, available at: <http://www.errc.org/cikk.php?cikk=3804>.

<sup>476</sup> Amnesty International (2011), *Mind the legal gap: Roma and the right to housing in Romania*, London, p.8.

<sup>477</sup> ERRC (2011), *ERRC raises concerns as Roma protest in Romania*, 19 January 2011, available at: <http://www.errc.org/cikk.php?cikk=3804>

<sup>478</sup> Amnesty International (2011), *Cluj-Napoca Court rejects National Railways request to remove homes of Romani families from Cantonului Street*, 23 September 2011, available at: <http://www.amnesty.org/en/library/info/EUR39/010/2011/en>.

<sup>479</sup> **In the end, the wall measured 1.80 meters tall and did not surround but separated the Roma community from the rest.** See Radu Marinaş (2012), “Roma relocation scores Romania mayor a major vote win” in *Reuters*, 14.06.2012, available at: <http://www.reuters.com/article/2012/06/14/romania-roma-idUSL5E8HE6F020120614>

<sup>480</sup> EMaramures.ro (2011), *The great Gypsy wall – Baia Mare municipality erects a 3m-high wall around 46B Horea building (Marele zid țigănesc – primăria Baia Mare ridică un zid de 3 metri în jurul blocului Horea 46B)*, 28 June, 2011, available at <http://www.emm.ro/Stiri/Tipareste-Stire.aspx?NewsID=51287>.

<sup>481</sup> Romani Criss, Amnesty International, Equal Chances Association (Asociația Șanse Egale), Open letter – *Stop Baia Mare municipality’s actions to Roma ghettoisation*, 29 June 2011, on file with the FRANET expert.

NCCD. The Romanian NGO Center for Legal Resources (CLR) qualified the initiative as racist and falling under the Criminal Code Article 247 for abuse in office through the restriction of certain rights (abuse in office on discriminatory grounds).<sup>482</sup> During the electoral campaign for the local election in May 2011, the newly elected mayor of Baia Mare announced his intention to evict all Roma that do not have legal residence in the city and to demolish their houses, mainly at the outskirts of the city. On August 23, 2011, the mayor of Baia Mare announced in an interview with a local newspaper eMaramures<sup>483</sup> a plan to evict “hundreds” of Roma and other socially disadvantaged persons that lack official residence in the city. Following criticism from human rights groups and US Embassy,<sup>484</sup> the mayor Cătălin Cherecheș reacted by declaring in a statement made on Cinemar TV on September 6, 2011 that Roma residing in the Craica neighbourhood of the Baia Mare will be relocated to another area, as a way to “civilize” them.<sup>485</sup>

#### 6.4.8 Information on trends until 2011

Forced evictions of Roma, destruction of Roma dwellings, segregation measures are increasingly present in the last ten years. Just to list a few cases documented by NGOs or reported on by the media which underline these trends:

- According to media reports, in 2008, in Târlungeni, a town located at 10 km from Brașov, the mayor isolated the 1,000 members of the Roma community by building a two meters high wall around his private property.<sup>486</sup> As a result, Roma were supposed to take a two km longer way to the town center where local institutions are located. Due to the wall positioning, the school administration built a separate entrance for Roma pupils. The case is not isolated as reported by the media. In Drobeta Turnu Severin, the National Water Company (Apele Române) has built a three meter high wall to isolate the Roma community living next to its headquarters on 12 Aleea Nuferilor L2 building.<sup>487</sup>
- On 11 October 2006, about 20 Romani families were evicted from a building on Alunișului Street in Tulcea, eastern Romania. Most of the evicted families were provided alternative housing in a location away from the city in an industrial port with unsafe

<sup>482</sup> Center for Legal Resources, Press Statement – *Racism reaches a new level: ghettos are coming back to Baia Mare*, available at: <http://www.crj.ro/EN/Racism-reaches-a-new-level-ghettos-are-coming-back-to-Baia-Mare-815/>.

<sup>483</sup> Emaramures.ro (2011), *Press Release – Amnesty International, Romani Criss and Equal Chances – Hundreds of Roma from Baia Mare risk to loose their dwellings (Comunicat - Amnesty International, Romani CRISS si Șanse Egale - Sute de Romi din Baia Mare riscă să își piardă locuințele)*, 29 August 2011, available at: <http://www.emm.ro/stiri/54192/COMUNICAT-Amnesty-International-Romani-CRISS-si-Sanse-Egale-Sute-de-Romi-din-Baia-Mare-risca-sa-isi-piarda-locuintele>.

<sup>484</sup> United States Embassy in Romania, *Press Release – US Embassy expresses concern over planned evictions in Baia Mare*, 31 August 2011, available at: <http://romania.usembassy.gov/policy/media/pr-08312011.html>.

<sup>485</sup> Herman V. (2011), *Mayor Cătălin Cherecheș promises to move Gypsies of Craica until the end of his mandate: See what rules he will impose on them (Primarul Cătălin Cherecheș promite mutarea țiganilor de pe Craica până la sfârșitul mandatului: Vezi ce reguli le va impune acestora)*, ziarMM.ro, 7 September 2011, available at <http://www.ziarMM.ro/primarul-catalin-chereches-promite-mutarea-tiganilor-de-pe-craica-pana-la-sfaristul-mandatului-sau-vezi-ce-reguli-le-va-impune-acestora/>.

<sup>486</sup> Realitatea Tv (2009), *The mayor of a town from Brașov county has separated Roma from the rest of the community by a two meters high wall (Primarul unui comune din Brașov i-a separat pe romi de restul comunității printr-un zid de doi metri)*, 23 January 2009, available at: [http://www.realitatea.net/video\\_618126\\_primarul-unui-comune-din-brasov-i-a-separat-pe-romi-de-restul-comunitatii-printr-un-zid-de-doi-metri\\_443012.html#ixzz1bSIa8QbX](http://www.realitatea.net/video_618126_primarul-unui-comune-din-brasov-i-a-separat-pe-romi-de-restul-comunitatii-printr-un-zid-de-doi-metri_443012.html#ixzz1bSIa8QbX).

<sup>487</sup> Ghiciulescu, A., Bologheanu, M. (2009), *I build the wall to stop the quarrels (Am făcut zidul ca să înceteze scandalurile)*, Libertatea, 28 January 2009, available at: <http://www.libertatea.ro/detalii/articol/am-facut-zidul-ca-sa-inceteze-scandalurile-228125.html>.

conditions. The remaining families were made homeless for two months until they were provided with mobile housing units, which were placed on a garbage dump.<sup>488</sup>

- According to ERRC and Parudimos Association, “in the morning of 12 December 2006, city workers supported by approximately thirty police officers arrived in the Blascovici area of Timișoara where around five Romani families had been living in improvised housing for periods of up to five years. The city workers set most of the barracks on fire, and asked the Romani families to leave Timișoara. At the same time, many of their belongings were dumped into a garbage truck and taken away. Upon leaving, the authorities threatened they would come back to see whether the Roma left, and reportedly stated that they would destroy any new structures erected on that land. The municipality had not given any notice about its intentions prior to the raid of 12 December. It appears that the actions of the municipality were motivated by complaints from Romanian neighbors about the stray dogs living in the neighborhood, and which were associated with the Roma, as well as about the Roma’s alleged anti-social behavior.”<sup>489</sup>
- In August 2004, more than 100 Roma living on 27 Peter Imre Street in Miercurea Ciuc Romania, were evicted by the local authorities and placed in eight metal barracks located in an area with high risk of infection. The barracks were located near the town's water filtering station.<sup>490</sup> According to a June 2011 Amnesty International report, the Roma are ever since there.<sup>491</sup>

#### **6.4.9 Identification of future challenges**

Amending the Housing Law and bringing its provisions in full compliance with international standards as regards the right to housing is of utmost importance as numerous abuses occur due to the gaps in the legislation. Allocation of resources to implement policies and programmes aiming at building social housing is a necessity if progress is to be reported in the future. The Government still has to find ways to oblige local authorities to provide adequate alternative housing to those evicted taking into account location and habitability. Another challenge is that authorities must put an end to any initiative to isolate Roma communities.

### **6.5 Specific information**

#### **6.5.1 Update tables in ANNEX 2**

See updated tables in ANNEX 2.

#### **6.5.2 Specific information on racist violence and crime**

The US State Department’s 2010 Human Rights Report mentioned a racist incident from Harghita County taking place on 24 October 2010. Some villagers set a Romani family’s house on fire, which led to material damages amounting to €9,500. At the end of 2010, the

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<sup>488</sup> ERRC, *Romanian authorities forcibly evict Roma in Romania*, 18 May 2007, available at: <http://www.errc.org/cikk.php?cikk=2780>.

<sup>489</sup> ERRC and Parudimos Association letter to Gheorghe Ciuhandu, Mayor of Timisoara of 24 January 2007, available at: <http://www.errc.org/cikk.php?cikk=2716>.

<sup>490</sup> Romani Criss Foundation, *Miercurea Ciuc case – environmental racism (Caz Miercurea Ciuc - rasism de mediu)*, available at: <http://www.romanicriss.org/Prezentare%20caz%20Miercurea%20Ciuc.pdf>.

<sup>491</sup> Amnesty International (2011), *Mind the legal gap: Roma and the right to housing in Romania*, London, p.12.

authorities were conducting investigations against three villagers for violation of domicile and destruction of property.<sup>492</sup>

### 6.5.3 Specific information on data collection and information gathering mechanisms

There is no official data collection and information gathering mechanism that addresses specifically racist crime, anti-Semitic, Islamophobic and homophobic incidents/crimes/cases or related hate crime incidents/crimes/cases.<sup>493</sup> There are only data collection mechanisms that address all crimes – judicial statistics. These mechanisms are organized at each level of the Romanian criminal justice – police statistics, prosecution service statistics, and court statistics. There is no automatic coordination between them: a criminal case is filed under different numbers at the police and prosecution level and the courts. This year, an inter-ministerial working group was established to find ways of correlating statistical data of the Ministry of Administration and Internal Affairs with data of the General Prosecutor's Office.<sup>494</sup> The Ministry of Justice also reports that when the new Criminal and Criminal Procedure Codes will come into force, data about the criminal offences will be collected jointly by courts and prosecutors' offices.<sup>495</sup>

Only the prosecution collects the indicator “aggravating circumstance” of Article 75 point c<sup>1</sup> of the Criminal Code. The other data collection systems do not collect it.<sup>496</sup>

The way data is currently collected by the police is not useful for the analysis of hate crimes because numbers are mixed with others that reflect common crimes.<sup>497</sup> This is also the case for the General Prosecutor's Office with regard to the criminal offence of Abuse in service against the rights of the person (Article 247 of the Criminal Code).<sup>498</sup> However, the Superior Council of Magistracy (SCM) (*Consiliul Superior al Magistraturii*, CSM) registers it separately.<sup>499</sup>

Another shortcoming is that there are still no indicators available about how the cases have started in order to show the number of incidents/complaints reported by the public. The police collect data without differentiating as to criminal complaints made by the alleged victim, notifications by the public, *ex officio* investigations.<sup>500</sup>

The police and the General Prosecutor's Office report not registering the ethnicity, religion, race, and sexual orientation of the victim or perpetrator of an offence.<sup>501</sup> They make no exception, not even when the crime is motivated by hate on one of these grounds. The police

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<sup>492</sup> US State Department (2010), 2010 Human Rights Report: Romania, p.15, available at [http://romania.usembassy.gov/2010\\_rhr\\_en.html](http://romania.usembassy.gov/2010_rhr_en.html).

<sup>493</sup> Romanian Police, Response No.708959/S4/ID/14.09.2011, Ministry of Justice, Response No. 71454/15.09.2011, Ministry of Public Affairs, Response No.1540/C/7694/2011 of 15 September 2011, SCM, Response No.21681/1154/2011, on file with the NFP.

<sup>494</sup> Romanian Police, Response No.708959/S4/ID/14.09.2011, 3, pp.1-2 on file with the NFP.

<sup>495</sup> Ministry of Justice, Response No. 71454/15.09.2011, 18, p.6 on file with the NFP.

<sup>496</sup> General Prosecutor Order No.319/2008 (*Ordin Nr.319/2008 al Procurorului general al Parchetului de pe langa Inalta Curte de Casatie si Justitie*).

Ministry of Public Affairs, Response No.1540/C/7694/2011 of 15 September 2011, 5, p.2 on file with national FRANET expert.

<sup>497</sup> Romanian Police, Response No.708959/S4/ID/14.09.2011, 5, p.2 on file with national FRANET expert.

<sup>498</sup> Ministry of Public Affairs, Response No.1540/C/7694/2011 of 15 September 2011, 5, p.2 on file with national FRANET expert.

<sup>499</sup> SCM, Response No.21681/1154/2011, 5,6, p.2 on file with national FRANET expert.

<sup>500</sup> Romanian Police, Response No.708959/S4/ID/14.09.2011, 6, p.2 on file with national FRANET expert.

<sup>501</sup> Romanian Police, Response No.708959/S4/ID/14.09.2011, 4, p.2 on file with national FRANET expert. Ministry of Public Affairs, Response No.1540/C/7694/2011 of 15 September 2011, 4, p.2 on file with national FRANET expert. SCM, Response No.21681/1154/2011, 4, p.2 on file with national FRANET expert.

argue that this is forbidden by the Data Protection Act,<sup>502</sup> being considered sensitive data.<sup>503</sup> However, the SCM and the Ministry of Justice report having as indicators ethnicity, religion and other grounds only when the data refers to Article 247 (Abuse in service against the rights of the person) and Article 317 (Instigation to discrimination).<sup>504</sup>

#### 6.5.4 Specific information on EU-MIDIS

In 2011, EU-MIDIS surveys were not reflected in the Romanian mass media and not referred upon by the public authorities nor discussed during events.

#### 6.5.5 Specific information on the implementation of the Council Framework Decision

The Ministry of Justice states that part of the Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law has already been transposed by the Government.<sup>505</sup> This was done by the provisions of the Criminal Code and the Emergency Ordinance 31/2002 forbidding organizations and symbols having a fascist, racist or xenophobic nature (Special Statute) (*Ordonanța de Urgență nr.31 din 13 martie 2002 privind interzicerea organizațiilor și simbolurilor cu caracter fascist, rasist și xenofob și a promovării cultului persoanelor vinovate de săvârșirea unor infracțiuni contra păcii și omeniri*). In addition, the full implementation will be achieved in the future, when the New Criminal Code (*Legea nr.286/2009 privind Codul Penal*) will come into force (unspecified date)<sup>506</sup> and the Draft law for the entering into force of the Criminal Code (*Proiect de Lege pentru punerea în aplicare a Codului penal și pentru modificarea și completarea unor acte normative care cuprind dispoziții penale*) will be adopted by the Parliament.<sup>507</sup>

The implementation of Article 1.(1) of the Framework Decision is ensured by sanctioning certain criminal offences concerning racism and xenophobia, both in the Criminal Code and the Emergency Ordinance 31/2002 which is currently under revision in the Parliament.

### 6.6 Important information not covered above

The adoption mechanism of the draft of the National Strategy for Roma Inclusion 2011-2020 (*Strategia Guvernului României de incluziune a cetățenilor români aparținând minorităților romilor pentru perioada 2011-2020*) proposes several steps: the Strategy to be adopted through a Government Decision, the inter-institutional cooperation mechanism through a Decision of the Prime Minister and the plans of measures and multi-annual budgets adopted through Orders of the Ministers/Presidents of relevant institutions. The previous Strategy included these aspects in a single document, a Government Decision. A Law debated and adopted by the Parliament would give more strength and stability to such a Strategy. The current draft proposal includes no clear budgetary commitment, except in the case of a few proposed measures in the action plan developed on culture.

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<sup>502</sup> Romania/ Data protection Act (*Legea nr. 677/2001 pentru protecția persoanelor cu privire la prelucrarea datelor cu caracter personal și libera circulație a acestor date*), Article 7, published in Official Journal No.790 of 12 December 2001.

<sup>503</sup> Romanian Police, Response No.708959/S4/ID/14.09.2011, 4, p.2 on file with national FRANET expert.

<sup>504</sup> SCM, Response No.21681/1154/2011, 4, p.2 on file with national FRANET expert. Ministry of Justice, Response No. 71454/15.09.2011, 19, p.6 on file with national FRANET expert.

<sup>505</sup> Ministry of Justice, Response No. 71454/15.09.2011, 12, 14, p.5 on file with national FRANET expert.

<sup>506</sup> Romania/New Criminal Code (*Legea nr.286/2009 privind Codul Penal*) of 24 July 2009.

<sup>507</sup> Draft law for the entering into force of the Criminal Code (*PL-x nr. 100/2011, Proiect de Lege pentru punerea în aplicare a Codului penal și pentru modificarea și completarea unor acte normative care cuprind dispoziții penale*).



The National Agency for the Roma (NAR) (*Agencia Națională pentru Romi*, ANR ) is to develop a monitoring and evaluation mechanism for the Strategy implementation in 90 days after its adoption. According to Article 19 of the Government Decision on drafting, monitoring and evaluation public policies<sup>508</sup> the monitoring and evaluation methodology of public policies is foreseen in the proposal itself and not subsequently.

In their proposals on amending the draft Strategy, NGOs<sup>509</sup> have raised several criticisms among which:

- unquantifiable indicators formulated as objectives;
- lack of the description of the situation *ex ante* in order to allow for an evaluation *ex post*;
- no concrete reference to planned financial resources and the proposed solution of mainly using external resources instead of budgetary ones;
- it does not bring any new solutions from the previous strategy or ongoing initiatives in order to overcome current problems;
- the National Agency for the Roma is allocated extensive monitoring, evaluation and implementation responsibilities although it was previously evaluated as being extremely deficient in this sense;
- it does not define the specific responsibilities at central level and the way these responsibilities are being transferred at county and local level;
- it repeats the organizational setup of the previous strategy not correlated with the general public administration system with decentralization and local autonomy principles which would lead to another failure, especially at local level, responsibilities almost exclusively placed at local level in absence of an adequate human resource infrastructure locally.

On the draft Strategy for Roma inclusion, the NGO Center for Legal Resources (CLR) (*Centrul de Resurse Juridice*, CRJ) issued a statement<sup>510</sup> pointing to discriminatory provisions, measures or actions included in the draft proposal, or departing from discriminatory premises. One problem identified by CLR is that the Strategy aims to have as result the establishment of an intellectual and economic elite to act as an interface between the Government and the Roma minority for the implementation of public policies. In the NGO's view, this reflected the idea that the state needs a buffer in order to implement policies for its own citizens when they are of Roma ethnicity. Another aspect considered as being discriminatory by the NGO is proposing to professionally train vulnerable groups in greening jobs and activities (greening is mainly associated in Romania with removing garbage from green areas), in the context where the Roma are being emblematically associated with garbage collecting within the process of ethnicizing jobs, specific to societies which discriminate. Similarly, the NGO deemed as racist the proposed measure of undertaking campaigns to teach the Roma to use water and soap. The CLR concludes that including discriminatory provisions in such a document shows without doubt that the Romanian

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<sup>508</sup> Romania/ Government Decision No. 775/2005 from 14 July 2005 for the approval of the Regulations on drafting, monitoring and evaluating public policies at central level, *Hotărâre nr 775/2005 pentru aprobarea Regulamentului privind procedurile de elaborare, monitorizare și evaluare a politicilor publice la nivel central*

<sup>509</sup> Proposals of amendment of the Draft Strategy of the Romanian Government for the Inclusion of Romanian Citizens Belonging to the Roma Minority, (*Propuneri de revizuire a proiectului strategiei Guvernului României de incluziune a cetățenilor români aparținând minorității romilor*), signed by 21 entities, most of them Roma NGOs but also representatives of UN bodies in Romania, available at: [http://www.romaniciress.org/index.php?option=com\\_content&task=view&id=359&Itemid=34](http://www.romaniciress.org/index.php?option=com_content&task=view&id=359&Itemid=34)

<sup>510</sup> Center for Legal Resources, *The Center for Legal Resources draws the attention upon the discriminatory provisions from the Draft Strategy of the Romanian Government for the Inclusion of the Romanian citizens belonging to the Roma minority (2011- 2020)*, 27.10.2011, available at: [http://www.crj.ro/\\*articleID\\_934-articles](http://www.crj.ro/*articleID_934-articles)



Government is not able to assume the inclusion of its citizens of Roma ethnicity as it does not understand the underlying cause for their exclusion.

Official exact title EN	Official title RO	Full reference
<b>NAR, Strategy for Roma inclusion (2011-2020)</b>	ANR, Strategia Guvernului României de incluziune a cetățenilor români aparținând minorităților romilor pentru perioada 2011-2020	Romania/NAR, Strategy for Roma inclusion (2011-2020) ( <i>Strategia Guvernului României de incluziune a cetățenilor români aparținând minorităților romilor pentru perioada 2011-2020</i> ), available at <a href="http://www.anr.gov.ro/html/Politici_Publice.html">http://www.anr.gov.ro/html/Politici_Publice.html</a> (last visit 17.10.2011).
<b>NCCD, Decision No.149 of 7 July 2010</b>	CNCD, Decizia nr.149 din 7 iulie 2010	Romania/NCCD, Decision No.149 of 7 July 2010.
<b>MPO, Response No.4594 of 7 September 2011</b>	CMR, Răspunsul nr.4594 din 7 septembrie 2011	Romania/Medical Profession Order (MPO) ( <i>Colegiul Medicilor din România</i> , CMR), Response No.4594 of 7 September 2011 on file with national FRANET expert
<b>SASTIPEN, Roma's access to public health services. Final Report, 2010</b>	SASTIPEN, Accesul romilor la servicii de sănătate public. Raport final 2010	Centrul Romilor pentru Politici de Sănătate - SASTIPEN, Accesul romilor la servicii de sănătate public. Raport final 2010 [Roma's access to public health services. Final Report, 2010], available at <a href="http://www.sastipen.ro">www.sastipen.ro</a> (last visit 17.10.2011).
<b>Liga Pro Europa, Press Release, Preventing forced marriages, 8 September 2010</b>	Liga Pro Europa, Comunicat de presă, Prevenirea căsătoriilor forțate, 8 septembrie 2010	Liga Pro Europa, Press Release, Preventing forced marriages, 8 September 2010, available at <a href="http://www.proeuropa.ro/documente2010/Comunicat_de_presa_8_septembrie_2010_03.pdf">http://www.proeuropa.ro/documente2010/Comunicat_de_presa_8_septembrie_2010_03.pdf</a> (last visit 17.10.2011).
<b>Romani CRISS, ECPI, Submission to Support the Development of a General Comment/Recommendation on Harmful Practices, 23 August 2011</b>	Romani CRISS, ECPI, Comunicare pe tema unui comentariu general privind practicile vătămătoare, 23 august 2011	Romani CRISS, Euroregional Center for Public Initiatives, Submission to Support the Development of a General Comment/Recommendation on Harmful Practices, 23 August 2011, on file with national FRANET expert.
<b>NCCD, Decision No.258 of 29 September 2010</b>	CNCD, Hotărârea nr.258 din 29 septembrie 2010.	Romania/NCCD, Decision No.258 of 29 September 2010.
<b>NCCD, Decision No.355 of 18 November 2010</b>	CNCD, Hotărârea nr.355 din 18 noiembrie 2010.	Romania/NCCD, Decision No.355 of 18 November 2010.
<b>NCCD, Decision No.355 of 18 November 2010</b>	CNCD, Hotărârea nr.355 din 18 noiembrie 2010	Romania/NCCD, Decision No.355 of 18 November 2010

<b>SASTIPEN, Health mediators' program: opportunity to raise the employment rate of Roma women</b>	SASTIPEN, 'Programul de mediere sanitară: oportunitatea de creștere a ratei de ocupare în rândul femeilor rome'	SASTIPEN, 'Programul de mediere sanitară: oportunitatea de creștere a ratei de ocupare în rândul femeilor rome' (Health mediators' program: opportunity to raise the employment rate of Roma women), available at <a href="http://sastipen.ro/Mediere-sanitara-PMS/">http://sastipen.ro/Mediere-sanitara-PMS/</a> (last visit 25.09.2011).
<b>Draft Law on Amendment of the Health Reform Law</b>	PL-x nr. 123/2011 Proiect de Lege pentru modificarea și completarea Legii nr.95/2006 privind reforma în domeniul sănătății	Romania/Draft Law on Amendment of the Health Reform Law ( <i>PL-x nr. 123/2011 Proiect de Lege pentru modificarea și completarea Legii nr.95/2006 privind reforma în domeniul sănătății</i> ).
<b>General Prosecutor Order No.319/2008</b>	Ordin Nr.319/2008 al Procurorului general al Parchetului de pe langa Înalta Curte de Casație și Justiție	Romania/General Prosecutor Order No.319/2008 (Ordin Nr.319/2008 al Procurorului general al Parchetului de pe langa Înalta Curte de Casație și Justiție).
<b>Data protection Act</b>	Legea nr. 677/2001 pentru protecția persoanelor cu privire la prelucrarea datelor cu caracter personal și libera circulație a acestor date	Romania/Data protection Act (Legea nr. 677/2001 pentru protecția persoanelor cu privire la prelucrarea datelor cu caracter personal și libera circulație a acestor date), published in Official Journal No.790/2001.
<b>New Criminal Code</b>	Legea nr.286/2009 privind Codul Penal	Romania/New Criminal Code (Legea nr.286/2009 privind Codul Penal) of 24 July 2009, published in Official Journal No.510/2009.
<b>Draft law for the entering into force of the Criminal Code</b>	PL-x nr. 100/2011, Proiect de Lege pentru punerea în aplicare a Codului penal și pentru modificarea și completarea unor acte normative care cuprind dispoziții penale	Draft law for the entering into force of the Criminal Code (PL-x nr. 100/2011, Proiect de Lege pentru punerea în aplicare a Codului penal și pentru modificarea și completarea unor acte normative care cuprind dispoziții penale).
<b>Emergency Ordinance on prohibition of fascist, racist and xenophobic associations and symbols</b>	Ordonanța de Urgență nr.31 din 13 martie 2002 privind interzicerea organizațiilor și simbolurilor cu caracter fascist, rasist și xenofob și a promovării cultului persoanelor vinovate de săvârșirea unor infracțiuni contra păcii și omeniri aprobată, amendată	Romania/Emergency Ordinance on prohibition of fascist, racist and xenophobic associations and symbols (Ordonanța de Urgență nr.31 din 13 martie 2002 privind interzicerea organizațiilor și simbolurilor cu caracter fascist, rasist și xenofob și a promovării cultului persoanelor vinovate de săvârșirea unor infracțiuni contra păcii și omeniri aprobată, amendată), published in Official Journal No.214/2002.
<b>Criminal Code 2006 Amendment Act</b>	Legea nr.278 din 4 iulie 2006 privind modificarea și completarea Codului penal precum și modificarea altor legi	Romania/Criminal Code 2006 Amendment Act (Legea nr.278 din 4 iulie 2006 privind modificarea și completarea Codului penal precum și modificarea altor legi), published in Official Journal No.601/2006
<b>Romanian Constitution of 2003</b>	Constituția României of 2003	Romanian Constitution of 31.10.2003 published in Official Journal No.767/2003.
<b>Law of National Education</b>	Legea Educației Naționale	Romania, Law of National Education (Legea Educației Naționale), no. 1/2011, available at <a href="http://www.dreptonline.ro">www.dreptonline.ro</a>

<b>Migrant Integration Policy Index III Romania</b>	Migrant Integration Policy Index III România	British Council and Migration Policy Group (2011) Migrant Integration Policy Index III România, <a href="http://www.mipex.eu">www.mipex.eu</a>
<b>National Strategy on Roma Inclusion for 2011-2020</b>	Strategia Guvernului României de incluziune a cetățenilor români aparținând minorității romilor pentru perioada 2011-2020	Strategy of the Romanian Government for the Inclusion of Romanian Citizens belonging to the Roma Ethnic Minority for 2011-2020 (Strategia Guvernului României de incluziune a cetățenilor români aparținând minorității romilor pentru perioada 2011-2020), <a href="http://www.anr.gov.ro">www.anr.gov.ro</a>
<b>Participation, school absenteeism and the experience of discrimination of Roma in Romania</b>	Participare, absenteeism școlar și experiența discriminării în cazul romilor în România	Surdu, L. (coord.) (2011) Participation, school absenteeism and the experience of discrimination of Roma in Romania (Participare, absenteeism școlar și experiența discriminării în cazul romilor în România), București, Vanemonde
<b>A school for all? Access of Roma children to quality education</b>	O școală pentru toți? Accesul copiilor romi la o educație de calitate	Ivasiuc, A, Duminică, G (2010) A school for all? Access of Roma children to quality education(O școală pentru toți? Accesul copiilor romi la o educație de calitate), București, Vanemonde
<b>Study on the phenomenon of immigration in Romania. Integration of foreigners in the Romanian society</b>	Studiu asupra fenomenului imigrației în România. Integrarea străinilor în societatea românească	Alexe, I, Păunescu, B. (2011) Study on the phenomenon of immigration in Romania. Integration of foreigners in the Romanian society (Studiu asupra fenomenului imigrației în România. Integrarea străinilor în societatea românească), București, Fundația Soros România
<b>The World Bank (WB) (2010), <i>Roma inclusion: An economic opportunity for Bulgaria, Czech Republic, Romania and Serbia - Policy note</i>, Washington D.C.</b>		The World Bank (WB) (2010), <i>Roma inclusion: An economic opportunity for Bulgaria, Czech Republic, Romania and Serbia - Policy note</i> , Washington D.C., available at: <a href="http://www.worldbank.org/roma">www.worldbank.org/roma</a> (last visited on October 20, 2011)
<b>RIQL (2010), <i>Legal and equal on the labor market for the Roma communities: Diagnosis of the factors influencing the employment rate of the Roma population in Romania, Bucuresti.</i></b>	<b>Institutul de Cercetare a Calității Vieții (2010), <i>Legal și egal pe piața muncii pentru comunitățile de romi: diagnoza factorilor care influențează nivelul de ocupare la populația de romi din România, București.</i></b>	<b>Research Institute for Quality of Life (2010), <i>Legal and equal on the labor market for the Roma communities: Diagnosis of the factors influencing the employment rate of the Roma population in Romania, Bucuresti</i>, available in english at: <a href="http://issuu.com/fundatiasoros/docs/raport_legal-english">http://issuu.com/fundatiasoros/docs/raport_legal-english</a> (last visited on October 20, 2011)</b>  <b>and in Romanian at: <a href="http://www.soros.ro/ro/publicatii.php?pag=1">http://www.soros.ro/ro/publicatii.php?pag=1</a> (last visited on October 20, 2011)</b>
<b>Amnesty International (2011), <i>Mind the legal gap: Roma and the right to</i></b>		Amnesty International (2011), <i>Mind the legal gap: Roma and the right to housing in Romania</i> , London.

<i>housing in Romania, London.</i>		
<b>The housing law no.114/1996</b>	LEGE nr.114 din 11 octombrie 1996, Legea locuinței	The law no.114 of 11 October 1996, the law on housing, republished in the Official Gazette no.393 from 31 December 1997
<b>European Roma Rights Center (2010), <i>Standards do not apply: Inadequate housing in Roma communities</i>, Budapest.</b>		European Roma Rights Center (2010), <i>Standards do not apply: Inadequate housing in Roma communities</i> , Budapest.
<b>ERRC (2011), <i>ERRC raises concerns as Roma protest in Romania</i>, 19 January 2011.</b>		European Roma Rights Center (2011), <i>ERRC raises concerns as Roma protest in Romania</i> , 19 January 2011, available at: <a href="http://www.errc.org/cikk.php?cikk=3804">http://www.errc.org/cikk.php?cikk=3804</a> (last visited 21 October 2011).
<b>Amnesty International (2011), <i>Cluj-Napoca Court rejects National Railways request to remove homes of Romani families from Cantonului Street</i>, 23 September 2011.</b>		Amnesty International (2011), <i>Cluj-Napoca Court rejects National Railways request to remove homes of Romani families from Cantonului Street</i> , 23 September 2011, available at: <a href="http://www.amnesty.org/en/library/info/EUR39/010/2011/en">http://www.amnesty.org/en/library/info/EUR39/010/2011/en</a> (last visited on 21 October 2011).

## **7 PARTICIPATION OF EU CITIZENS IN THE UNION'S DEMOCRATIC FUNCTIONING**

### **7.1 European Citizens' Initiative**

#### **7.1.1 Policy and institutional developments**

There are no developments to report although this should change in the next few months as we approach the 12 months deadline for the appointment of a national relevant authority under Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative which came into force on 1 April 2011.

#### **7.1.2 Legislative developments**

No legislative developments in the reporting period.

#### **7.1.3 National case law**

Nothing to report.

#### **7.1.4 Statistical data made available in the reference period**

Nothing to report as no major initiatives for participatory democracy were carried out in the reference period.

#### **7.1.5 Research and studies**

Nothing to report.

#### **7.1.6 Promising 'good' practices**

Nothing to report.

#### **7.1.7 Key issues in public debate**

In September 2011, a minority group in the Central Region of Romania Szekely (*Secui*) issued a statement regarding the collection of signatures in order to bring forth a citizens' initiative to have two counties in Romania declared autonomous.<sup>511</sup> The National Szekely Council (NSC) (*Consiliul Național Secuiesc*, CNS), the driving force behind the proposed initiative, intends to request the EU to recognize a legal right to territorial independence and grant special status to the region NSC calls "Szekely land" ("*Ținutul Secuiesc*"). According to the CNS, the rest of signatories (apart from the 24,750 needed in Romania) making up to the million signatures required will be collected from regions of Europe with a strong ethnic minority element.

#### **7.1.8 Information on trends until 2011**

Nothing to report.

#### **7.1.9 Identification of future challenges**

The current legislation enshrines the citizens' right to bring a legislative initiative within the Constitution Article 74(1) and the Citizens' Legislative Initiative Law nr. 189/1999<sup>512</sup> sets out

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<sup>511</sup> <http://www.ziuaaveche.ro/actualitate-interna/politica-interna/secuii-cer-autonomia-judetelor-harghita-si-covasna-51805.html>.

<sup>512</sup> Romania, Citizens' Legislative Initiative Act nr. 189/1999 (*Legea 189 din 14 decembrie 1999 privind exercitarea inițiativei legislative de către cetățeni*), available at [http://legislatie.resurse-pentru-democratie.org/189\\_1999.php](http://legislatie.resurse-pentru-democratie.org/189_1999.php).

the relevant procedure. The national legislation will have to be amended to allow for different rules to apply depending whether the legislative initiative is at national or European level. Additionally, the government must appoint the national authority responsible for certifying the online collection of petitions and for verifying the information provided in such petitions before 1 April 2012. There is no indication that the process has started.

## **7.2 The right to vote in municipal elections**

### **7.2.1 Policy and institutional developments**

No major municipal elections were held during the relevant period. The next electoral year will be 2012 and the only relevant public discussions during 2011 relates to the draft legislation regarding the right to vote of Romanian citizens living abroad.

The Council of Europe GRECO (Group of States against Corruption) Report on Romania was presented at the 49<sup>th</sup> Plenary Meeting of GRECO in Strasbourg 29<sup>th</sup> November – 3<sup>rd</sup> December 2010 evaluating the transparency of funding of political parties in Romania.<sup>513</sup> The Report found that:

- The legal framework is adequate although it imposes many limitations that are probably difficult to enforce in practice and there are some important loopholes regarding donations, loans and movements of assets which need to be re-addressed.
- PEA should take over the lead responsibility in this area and be given the means to comply with this task.
- The sanctions in case of non-compliance with the law are not adequate enough.

GRECO made a number of recommendations including requests to increase accountability of political parties' financial activity including donations, increase the transparency of contributions by "third parties" to political parties and candidates, require political parties to present their consolidated accounts to the PEA and to make an adequate summary available to the public, give PEA full authority to monitor compliance with Law 334/2006<sup>514</sup> and strengthen sanctions.

GRECO invited the Romanian authorities to present a report on the implementation of the above-mentioned recommendations by 30 June 2012 and to authorise, as soon as possible, the publication of the report.

### **7.2.2 Legislative developments**

On 18 March 2011, the Permanent Electoral Authority (PEA) (*Autoritatea Electorală Permanentă*, AEP) submitted a draft law for a new comprehensive Electoral Code designed to regulate all aspects of elections and referendums including European parliamentary elections and public local elections.<sup>515</sup> The declared purpose of this initiative is to unify the legislative basis for the electoral process, simplify procedures, ensure a fair system and prevent electoral fraud.

Though there was no development in the legislative process, media speculates that the Government will attempt to introduce the new Electoral Code by means of an

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<sup>513</sup> GRECO reports are available at:

[http://www.coe.int/t/dghl/monitoring/greco/documents/2010/Greco\(2010\)25\\_SummaryReport49\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/documents/2010/Greco(2010)25_SummaryReport49_EN.pdf)

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)1\\_Romania\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)1_Romania_Two_EN.pdf).

<sup>514</sup> Romania, Political Parties and Elections Funding Law nr. 334/2006 (*Legea nr. 334 din 17 iulie 2006 privind finanțarea activității partidelor politice și a campaniilor electorale*) from 17 July 2006.

<sup>515</sup> Information available at: <http://www.roaep.ro/ro/getdocument.php?id=5293>.

Emergency Ordinance (delegated legislation) and it will make changes to the elections regime very close to the time of the next scheduled elections.<sup>516</sup> Critics of the draft highlighted potential negative effects of the proposed legislation on the 2012 elections including:

- The extension of the mandate of the locally elected officers by six months in order to synchronise the local and parliamentary elections in November 2012;
- Perceived adverse effect on the transparency of political campaign funding; and
- Making the electorate focus on local administration issues and overlook wider political issues.

The proponents of the Code state that the key arguments for simultaneous local and parliamentary elections relate to cost efficiency at a time when the Government is working on reducing the budget deficit.

PEA also produced a draft law amending and supplementing the Political Parties and Elections Funding Law nr. 334/2006 regulating the conduct of electoral funding practices. The draft implements the recommendations of the GRECO (Group of States against Corruption) Report.

### **7.2.3 National case law**

On 27 September 2011, the European Court of Human Rights (Third Section) issued a partial decision as to the admissibility of Application 30842/05 by Dumitru Constantin against Romania. This is the case of a police officer found guilty of bribery and sentenced to four years imprisonment with the suspension of his right to vote for a period of seven years starting at the beginning of the sentence. The applicant complained that the voting ban based on Articles 64 and 65 of the Romanian Criminal Code (as it stood at the time of the sentence) was made in breach of Article 3 of Protocol no. 1 to the Convention. The European Court of Human Rights notified the respondent Government as it stated it could not determine the admissibility of this complaint based on the case file.<sup>517</sup>

### **7.2.4 Statistical data made available in the reference period**

PEA received 53 requests from Romanian citizens domiciled in Italy to stand for local elections in their host country which took place in May 2011 and approved all 53 requests.<sup>518</sup> PEA has not made available any other statistical data on electoral processes during the relevant period on the official website or upon request.

### **7.2.5 Research and studies**

A survey published by the NGO Fundația Soros Romania on November 29<sup>th</sup> 2011 found that more than a half of the population does not believe in the correctness of the elections.<sup>519</sup> The

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<sup>516</sup>Information available at <http://www.evz.ro/detalii/stiri/alegeri-2012-comasare-da-regionalizare-pa-953909.html>

<sup>517</sup> Notification available at:

<http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=80873229&skin=hudoc-cc-en&action=request>.

<sup>518</sup> Response 4559 from 7.09.2011 of the Autoritatea Electorală Permanentă to FOIA request 297 from 18.08.2011, on file with CRJ Romania.

<sup>519</sup>Fundația Soros România, „Românii despre sistemul electoral românesc” available at: [http://soros.ro/ro/program\\_articol.php?articol=327](http://soros.ro/ro/program_articol.php?articol=327). The survey was conducted by the Gallup Organization Romania at the request of the Soros Foundation within its programme Romanian Electoral Studies, between 6-19 November 2011, on an echantion of 1200 persons of at least 18, with an margin of error of +/- 2,7% for a level of trust of 95%.



survey also found that 11% of the population consider that they are not free to vote with whomever they want. Romanians oppose to the idea of postal voting, with 59% rejecting it out of fear of electoral frauds and 63% oppose electronic voting as well. The study also identified a large segment of population not interested or not educated on electoral issues, with a constant 20% of the population not responding to such questions, 78% believing that they are not informed enough or at all on electoral legislation and 68 % stating that they are not informed enough on the electoral procedures. As for the overlapping of the general parliamentary and the local elections in 2012, 43% agree with the overlap, 34% believe that the two elections should take place in different days. 77% of the interviewees do not know the date of the elections or the candidates for the local elections. The current electoral system combining uninominal with proportional voting is supported only by 12 %, with 32% supporting instead the uninominal and majoritarian system.

### **7.2.6 Promising ‘good’ practices**

PEA conducted a campaign to increase youth participation in elections, including at European level, by providing information and encouraging voting by means of meetings, debates and photographic and essay competitions. PEA also held talks at a number of education institutions (high school and university level) and used modern communication means targeting the internet generation including setting up a website with information for those voting for the first time.<sup>520</sup>

### **7.2.7 Key issues in public debate**

At the beginning of 2011, the Ministry for Foreign Affairs (*Ministerul Afacerilor Externe*, MAE) initiated a debate for a draft law specifically aimed at increasing electoral participation of Romanian citizens residing outside Romania. The proposal aimed to facilitate voting by introducing postal voting as an alternative to voting at polling stations.<sup>521</sup> This proposal caused concern with some political parties and NGOs as the public perceives such a system as inherently unsafe and open to abuse.<sup>522</sup>

A separate draft law for the establishment of postal voting for Romanian citizens who live abroad initiated by the Democrat Liberal Party (*Partidul Democrat Liberal*) is now pending in the Chamber of Deputies.<sup>523</sup>

### **7.2.8 Information on trends until 2011**

In spite of the very low presence of EU citizens in the electoral process, a gradual increase indicating a slight improvement is suggested by the absolute numbers of participation provided by PEA although the available data is as provided by PEA in 2010.<sup>524</sup>

### **7.2.9 Identification of future challenges**

The draft law introducing the postal vote has passed through the Senate and is pending in the Chamber of Deputies since May 2011. The bill would need to be passed by the end of 2011 in order to be applicable for the general elections in 2012. The big challenge will be the correct and timely application of the law and ensuring there are strong safeguards in place to avoid the abuse of the system.

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<sup>520</sup> See information available on: <http://www.primulvot.ro/>.

<sup>521</sup> MAE draft law available at: <http://www.cdep.ro/proiecte/2011/300/30/6/se444.pdf>.

<sup>522</sup> Comments regarding the dangers of postal voting available at: <http://www.ziare.com/articole/abuzuri+la+vot>.

<sup>523</sup> Draft law available at: <http://www.cdep.ro/proiecte/2011/300/30/6/se444.pdf>.

<sup>524</sup> Response 12692 from 2.09.2010 of the Autoritatea Electorală Permanentă on file with FRANET..

## **7.3 Limitation of voting rights in case of disability**

### **7.3.1 Policy and institutional developments**

Nothing to report.

### **7.3.2 Legislative developments**

There is a current proposal to amend the Mental Health Act no. 487/2002<sup>525</sup> but the proposed amendment does not impact on the right to vote in case of persons with disabilities as provided in Article 59.1(d).<sup>526</sup>

The new Civil Code came into force on 1 October 2011<sup>527</sup> introducing changes to legal capacity provisions none of which have an impact on voting rights of persons with disabilities.<sup>528</sup>

### **7.3.3 National case law**

Nothing to report.

### **7.3.4 Statistical data made available in the reference period**

Nothing to report.

### **7.3.5 Research and studies**

There are no studies further to the Report concerning observance of the rights of persons with mental disabilities published by the Centre of Legal Resources (*Centrul de Resurse Judiciare, CRJ*) in 2009.<sup>529</sup>

### **7.3.6 Promising 'good' practices**

PEA run a campaign to increase election participation of persons with disabilities (including sensory perception disabilities) and sought to identify the challenges encountered by such persons in the electoral process including access to information and voting. PEA held consultation meetings with the National Authority for Persons with Disabilities (NAPD) (*Autoritatea Națională pentru Persoane cu Handicap, ANPH*) as well as a wide range of relevant non-governmental organisation focusing on the physical aspects of access to the voting process.<sup>530</sup>

### **7.3.7 Key issues in public debate**

The limitation of voting rights in the case of disability either due to lack of physical access in case of persons with physical disabilities or due to disenfranchisement of persons with intellectual or mental disabilities is not an issue in the public agenda.

### **7.3.8 Information on trends until 2011**

No major trends to be reported.

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<sup>525</sup> Romania/ Mental Health Act (*Legea nr. 487 din 8 august 2002, legea sănătății mintale și a protecției persoanelor cu tulburări psihice*).

<sup>526</sup> Text of amendment available at <http://www.cdep.ro/proiecte/2011/000/30/0/se30.pdf>.

<sup>527</sup> Romania/New Civil Code (*Legea nr.287/2009 privind Codul civil*) of 17 July 2009.

<sup>528</sup> Romania/New Civil Code (*Legea nr.287/2009 privind Codul civil*) of 17 July 2009.

<sup>529</sup> See 2009 report at: <http://www.crj.ro/Raport-respectarea-drepturilor-persoanelor-cu-dizabilitati-mintale-319/>.

<sup>530</sup> Response 4559 from 7.09.2011 of the Autoritatea Electorală Permanentă on file with FRANET expert.

### 7.3.9 Identification of future challenges

The authorities still have to take adequate measures to ensure free access to persons with physical and sensory disabilities to the upcoming general elections to be held in 2012. While the legislation in force is adequate, more needs to be done on a practical level to allow persons with disabilities to cast a direct, secret vote, especially in the context of Romania's ratification of the UN Convention on the Rights of Persons with Disabilities (UNCRPD).<sup>531</sup>

## 7.4 Specific information

### 7.4.1 Update table

	Exclusion	Limited Participation	Participation
RO	Art. 36 -2 Constitution of Romania <sup>532</sup>		

## 7.5 Important information not covered above (including the right to good administration)

Nothing to report.

Official exact title EN	Official title (original lang.)	Full reference
<b>Citizens' Legislative Initiative Act</b>	Legea privind exercitarea inițiativei legislative de către cetățeni	Romania, Citizens' Legislative Initiative Act nr. 189/1999 ( <i>Legea 189 din 14 decembrie 1999 privind exercitarea inițiativei legislative de către cetățeni</i> ), Monitorul Oficial nr. 516 / 8 June 2004 last amended by Legea nr. 76/2004
<b>Political Parties and Elections Funding Act</b>	Legea privind finanțarea activității partidelor politice și a campaniilor electorale	Romania, Political Parties and Elections Funding Law nr. 334/2006 ( <i>Legea nr. 334 din 17 iulie 2006 privind finanțarea activității partidelor politice și a campaniilor electorale</i> ), Monitorul Oficial nr. 433 / 21 June 2011 last amended by Legea no.124/2011
<b>Mental Health Act</b>	Legea sănătății mintale și a protecției persoanelor cu tulburări psihice	Romania, Mental Health Act ( <i>Legea nr. 487 din 8 august 2002, legea sănătății mintale și a protecției persoanelor cu tulburări psihice</i> ), Monitorul Oficial nr. 589 / 8 August 2002
<b>New Civil Code</b>	Legea nr.287/2009 privind Codul civil	Romania/New Civil Code ( <i>Legea nr.287/2009 privind Codul civil</i> ) of 17 July 2009, published in the Official Journal No.511/2009.

<sup>531</sup> Romania/Law Ratifying the UN Convention on the Rights of Persons with Disabilities (*Legea nr. 221 din 11 noiembrie 2010 pentru ratificarea Convenției privind drepturile persoanelor cu dizabilități*) from 11 November 2010.

<sup>532</sup> Romanian Constitution, Art. 36 Right to vote:

- (1) Every citizen having turned eighteen up to or on the election day shall have the right to vote.
- (2) The mentally deficient or alienated persons, laid under interdiction, as well as the persons disenfranchised by a final decision of the court cannot vote.

Full text of Romanian Constitution is available on the Chamber of Deputies website at: [http://www.cdep.ro/pls/dic/site.page?den=act2\\_2&par1=2#t2c2s0a36](http://www.cdep.ro/pls/dic/site.page?den=act2_2&par1=2#t2c2s0a36).

Group of States against Corruption, Strasbourg, Third Evaluation Round, Evaluation Report on Romania on Transparency of Party Funding (Theme II), 2010.		Council of Europe, Group of States against Corruption, Strasbourg, Third Evaluation Round, Evaluation Report on Romania on Transparency of Party Funding (Theme II), 3 December 2010 available at: <a href="http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)1_Romania_Two_EN.pdf">http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)1_Romania_Two_EN.pdf</a>
Fundația Soros România, Romanians about the Romanian electoral system.	Românii despre sistemul electoral românesc	Fundația Soros România, „Românii despre sistemul electoral românesc” available at: <a href="http://soros.ro/ro/program_articol.php?articol=327">http://soros.ro/ro/program_articol.php?articol=327</a>

## 8 ACCESS TO EFFICIENT AND INDEPENDENT JUSTICE

### 8.1 Length of proceedings

#### 8.1.1 Policy and institutional developments

Following a petition claiming excessive duration of judicial proceedings, the Supreme Council of Magistracy (SCM) (*Consiliul Superior al Magistraturii (CSM)*) has decided that the Judicial Inspection (*Inspecția Judiciară*) will constantly monitor court cases that have not been decided within one year, as well as analyse how applications are registered and processed by courts.<sup>533</sup>

#### 8.1.2 Legislative developments

Law 202/2010 contains several procedural provisions aimed at eliminating possible causes of delay and ensuring that a case is tried within a reasonable time frame.<sup>534</sup> For instance, parties may be subpoenaed and documents communicated by fax or e-mail.<sup>535</sup> A range of procedural exceptions (such as the fact that the court is not competent to try a certain case or that the preliminary procedure has not been followed) may be raised only at the beginning of the proceedings.<sup>536</sup> Court actions concerning a debt of less than RON2,000 (approx. €500), as well as complaints directed at police reports are no longer subjected to an appeal.<sup>537</sup> Judges may set short terms for hearings and take active measures to compel parties to present evidence and fulfil their obligations without unnecessary delays.<sup>538</sup> Other provisions are meant to simplify and accelerate the enforcement of judicial decisions.<sup>539</sup> In criminal cases, the defendant may choose to plead guilty and thus benefit from shorter procedures,<sup>540</sup> while the admissibility of extraordinary appeals will be first examined in chambers.<sup>541</sup>

These provisions can also be found in the New Civil Procedure Code<sup>542</sup> and New Criminal Procedure Code,<sup>543</sup> which will enter into force at an yet unknown date. The new Criminal Procedure Code aims to reduce the number of files sent back by court to the prosecution on procedural grounds by the introduction of a preliminary chamber which is designed to ensure cases do not proceed without sufficient evidence. If any irregularities are found in the pre-trial stage, the file may be returned to the prosecutor's office.

#### 8.1.3 National case law

In 2011, the European Court of Human Rights has issued several decisions sanctioning Romania for previously failing to ensure reasonable length of judicial proceedings. One decision was deemed as presenting a particular interest, since it criticised the repeated

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<sup>533</sup> Romania, Superior Council of Magistracy (*Consiliul Superior al Magistraturii*) (2011), 'Hotărârea Secției pentru Judecătoria a CSM, urmare a memoriului adresat Consiliului Superior al Magistraturii de către petenta Thyssen Stahl GmbH', Press release, 30 May 2011, <http://www.csm1909.ro/csm/index.php?cmd=0501&pg=4>.

<sup>534</sup> Law 202/2010 concerning some measures for accelerating judicial proceedings, 25 October 2010.

<sup>535</sup> *Ibid*, Articles 5 and 16.

<sup>536</sup> *Ibid*, Article 17.

<sup>537</sup> *Ibid*, Article I.1.

<sup>538</sup> *Ibid*, Article 16.

<sup>539</sup> *Ibid*, Articles 34-37.

<sup>540</sup> *Ibid*, Article 43.

<sup>541</sup> *Ibid*, Article 52.

<sup>542</sup> Law 134/2010 of the Civil Procedure Code, 1 July 2010,.

<sup>543</sup> Law 135/2010 on the Criminal Procedure Code, 1 July 2010.

remanding of cases for re-examination due to errors committed by lower courts, an issue which the new procedure codes seek to address<sup>544</sup>.

The Administrative and Tax Litigation section of the High Court of Cassation and Justice has taken stand on the issue of lengthy proceedings in administrative and judicial proceedings concerning civil rights such as, for instance, obtaining the Romanian citizenship or compensation for property confiscated by the Communist regime. See Annex 4 for relevant jurisprudence of the European Court of Human Rights and of the High Court of Cassation and Justice condemning length of procedures.

#### 8.1.4 Statistical data made available in the reference period

According to SCM statistics, in 2010 more than 80% of court actions have been tried within six months.<sup>545</sup> See Annex 5 for more information.

However, in October 2011, 4,001 pending court cases have recently been found to be 5 to 10 years old, while 586 cases, still pending before courts, have been registered more than 10 years ago.<sup>546</sup>

#### 8.1.5 Research and studies

During a survey undertaken by SCM, 75% of judges agreed that recent legal developments have so far a positive impact on the act of justice and length of proceedings.<sup>547</sup>

A policy brief released by the NGO Romanian Academic Society (RAS) (*Societatea Academică Română*) (*SAR*) pinpoints some previous underlying causes for unreasonable delays in court proceedings: raising procedural and substantial exceptions that determine the court to adjourn proceedings, petitions to move the case to another court, delays in appointing experts and handing in experts' opinion, abuse of procedure by lawyers and failure to turn up for the trial. The paper concludes that the recently adopted Law 202/2010,<sup>548</sup> as well as the amendments<sup>549</sup> to the Law of the Constitutional Court,<sup>550</sup> are likely to address the misuse of procedural rules as delaying tactics and ensure celerity of the judicial process.

Meanwhile, a report issued in October 2011 by SCM's Judiciary Inspection (*Inspekția Judiciară*)<sup>551</sup> has concluded that the largest part of court cases identified as having been registered more than one year ago (some even older than 10 years) are insolvency cases. The length of proceedings is justified by the fact that the entire insolvency procedure entails

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<sup>544</sup> EctHR, Case of Florin Ionescu v. Romania, Application no. 24916/05.

<sup>545</sup> Consiliul Superior al Magistraturii (2011), *Report on the State of Justice in 2010*, Bucharest, Consiliul Superior al Magistraturii, available in Romanian on [www.csm1909.ro](http://www.csm1909.ro).

<sup>546</sup> Superior Council of Magistracy (*Consiliul Superior al Magistraturii*) (2011), Comunicat de presă privind hotărârea Secției pentru judecători a Consiliului Superior al Magistraturii asupra Raportului privind monitorizarea la nivelul Inspekției Judiciare de pe lângă Plenul CSM a dosarelor mai vechi de 6 luni (în recurs), respectiv 1 an (fond, apel)', Press release 18 October 2011, available on [www.csm1909.ro](http://www.csm1909.ro).

<sup>547</sup> *Ibid.*, p. 103.

<sup>548</sup> *Ibid.*

<sup>549</sup> Romania/Law no. 177/2010 to amend Law 47/1992 for the organisation and functioning of the Constitutional Court, the Civil Procedure Code and the Criminal Procedure Code of Romania (*Legea nr. 177/2010 pentru modificarea Legii nr. 47/1992 privind organizarea și funcționarea Curții Constituționale, a Codului de procedură civilă și a Codului de Procedură Penală a României*), 4 October 2010.

<sup>550</sup> Romania/Law no. 47/1992 for the organisation and functioning of the Constitutional Court (*Legea nr. 47/1992 privind organizarea și funcționarea Curții Constituționale*), 22 May 1992.

<sup>551</sup> Consiliul Superior al Magistraturii (2011), 'Report on the assessment by the Judiciary Inspection of court files older than 1 year within the judicial system', Consiliul Superior al Magistraturii, Bucharest, 2011, available in Romanian at: [http://www.csm1909.ro/csm/linkuri/20\\_10\\_2011\\_\\_44620\\_ro.pdf](http://www.csm1909.ro/csm/linkuri/20_10_2011__44620_ro.pdf).

several gradual stages of reorganising the legal entity before declaring insolvency and liquidating its assets.<sup>552</sup>

The latest Report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism<sup>553</sup> also concludes that the so-called “Small Reform Law”<sup>554</sup> has brought improvements for the celerity and efficiency of the judicial process.

### 8.1.6 Promising ‘good’ practices

Nothing to report.

### 8.1.7 Key issues in public debate

Tensions appeared between the commitment to reduce duration of judicial proceedings and the need to ensure manageable workload for judges and auxiliary staff. A project implemented by the SCM, aiming to establish the optimum workload and ensure quality management in court activity had the effect of significantly extending the duration of proceedings after limiting the number of case files that could be assigned to a judge per session. The Romanian MoJ took a public stance and demanded to stop the project, criticising SCM’s methods for calculating the optimum workload and the methodology of the project.<sup>555</sup> SCM has so far refused to do so, claiming that the project has had a positive impact on court activity, that there are not enough data to allege all courts will be faced with an unreasonable duration of proceedings and that the real outcomes of the project are yet to be assessed.<sup>556</sup>

A private company has petitioned to the SCM and MoJ complaining about the excessive duration of judicial proceedings in a commercial case, namely 27 years. As a result, the SCM has decided that all courts that were involved in trying the case be verified by the Judicial Inspection.<sup>557</sup>

### 8.1.8 Information on trends until 2011

Romania has repeatedly been sanctioned by the European Court of Human Rights on the issue of unreasonable delays in court proceedings.<sup>558</sup>

Reports under the Cooperation and Verification Mechanism have previously noted little effective progress on improving the efficiency of judicial procedures.<sup>559</sup>

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<sup>552</sup> *Ibid.*, p. 284-285.

<sup>553</sup> European Commission (2011), *Report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism*, Brussels, 20 July 2011, available on [http://ec.europa.eu/dgs/secretariat\\_general/cvm/docs/com\\_2011\\_460\\_en.pdf](http://ec.europa.eu/dgs/secretariat_general/cvm/docs/com_2011_460_en.pdf)

<sup>554</sup> Romania/Law 202/2010 concerning some measures for accelerating judicial proceedings (Legea nr. 202/2010 privind unele măsuri pentru accelerarea soluționării proceselor), 25 October 2010.

<sup>555</sup> Romania, Ministry of Justice (*Ministerul de Justiție*) (2011), ‘Poziția Instituțională a Ministerului Justiției în Legătură cu Evaluarea Rezultatelor Programului Pilot Privind Stabilirea Volumului Optim de Activitate al Instanțelor’, Press release, 17 November 2010. <http://www.just.ro/Sections/Comunicate/Comunicatenoieimbrie2010/17noiembrie2010/tabid/1586/Default.aspx>.

<sup>556</sup> Consiliul Superior al (2011), *Report on the State of Justice in 2010*, Bucharest, Consiliul Superior al Magistraturii, available in Romanian on [www.csm1909.ro](http://www.csm1909.ro), p.70.

<sup>557</sup> Romania, Superior Council of Magistracy (*Consiliul Superior al Magistraturii*) (2011), ‘Hotărârea Secției pentru Judecători a CSM, urmare a memoriului adresat Consiliului Superior al Magistraturii de către petenta Thyssen Stahl GmbH’, Press release, 30 May 2011, <http://www.csm1909.ro/csm/index.php?cmd=0501&pg=4>.

<sup>558</sup> For instance, ECHR, Case of Stoianova and Nedelcu v. Romania, No.77517/01 and No.77722/01, 4 August 2005..

<sup>559</sup> European Commission (2010b), *Report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism*, Brussels, 20



### 8.1.9 Identification of future challenges

As the number of case files is on the raise,<sup>560</sup> and consequently the workload per judge is heavier,<sup>561</sup> it is questionable to what extent legal provisions aiming to speed up judicial proceedings will prove efficient and how this will affect the quality of the act of justice.

The implementation of the recent procedural provisions has not been assessed yet. However, some concerns have already been raised as to the capacity of the new codes to improve the celerity of proceedings, in the context of staff shortages, limited resources, as well as possible interpretations that could lead to the misuse of procedural provisions to unduly delay trials.<sup>562</sup>

## 8.2 Courts

### 8.2.1 Policy and institutional developments

Both MoJ and SCM have reaffirmed the need to reorganize the court system by closing some smaller courts of first instance with low activity or merging such courts, as well as re-allocating staff to courts with a high level of activity.<sup>563</sup> A project seeking to amend thus Law 304/2004 on the organisation of the judicial system was sent to the Parliament by the MoJ.<sup>564</sup>

Elections to the SCM took place at the end of 2010, but full establishment of the Council was delayed until June 2011 pending legal challenges and partial re-elections.<sup>565</sup>

Nominations to the High Court of Cassation and Justice (HCCJ) (*Înalta Curte de Casație și Justiție*) (*ÎCCJ*) have been suspended since November 2010, while MoJ, SCM and HCCJ itself sought agreement on new procedures, meant to be in line with recommendations made under the Cooperation and Verification Mechanism.<sup>566</sup> Finally, the draft bill containing the proposed new procedure has been rejected by the Senate.<sup>567</sup> A new appointments procedure took place in August 2011, under guidelines previously adopted by SCM in March 2011.<sup>568</sup>

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July 2010, available on [http://ec.europa.eu/dgs/secretariat\\_general/cvm/docs/com\\_2010\\_401\\_en.pdf](http://ec.europa.eu/dgs/secretariat_general/cvm/docs/com_2010_401_en.pdf) p.4.

<sup>560</sup> Consiliul Superior al (2011), *Report on the State of Justice in 2010*, Bucharest, Consiliul Superior al Magistraturii, available in Romanian on [www.csm1909.ro](http://www.csm1909.ro), p.70.

<sup>561</sup> *Ibid.*

<sup>562</sup> *Ibid.* See also European Commission *Report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism*, Brussels, 20 July 2010, available on [http://ec.europa.eu/dgs/secretariat\\_general/cvm/docs/com\\_2010\\_401\\_en.pdf](http://ec.europa.eu/dgs/secretariat_general/cvm/docs/com_2010_401_en.pdf) and European Commission *Report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism*, Brussels, 20 July 2011, available on [http://ec.europa.eu/dgs/secretariat\\_general/cvm/docs/com\\_2011\\_460\\_en.pdf](http://ec.europa.eu/dgs/secretariat_general/cvm/docs/com_2011_460_en.pdf) (2011).

<sup>563</sup> Superior Council of Magistracy (2011a), *Report on the State of Justice in 2010*, Bucharest, Consiliul Superior al Magistraturii, available in Romanian on [www.csm1909.ro](http://www.csm1909.ro) p. 93.

<sup>564</sup> Romania/Law no. 304/2004 on the organisation of the justice system (*Legea nr. 304/2004 privind organizarea judiciară*), 29 June 2004.

<sup>565</sup> European Commission (2011), *Report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism*, Brussels, 20 July 2011, available on [http://ec.europa.eu/dgs/secretariat\\_general/cvm/docs/com\\_2011\\_460\\_en.pdf](http://ec.europa.eu/dgs/secretariat_general/cvm/docs/com_2011_460_en.pdf) p.3.

<sup>566</sup> European Commission *Report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism*, Brussels, 20 July 2010, available on [http://ec.europa.eu/dgs/secretariat\\_general/cvm/docs/com\\_2010\\_401\\_en.pdf](http://ec.europa.eu/dgs/secretariat_general/cvm/docs/com_2010_401_en.pdf).

<sup>567</sup> According to the web page of the Romanian Senate, <http://www.senat.ro/Legis/Lista.aspx?cod=16166>.

<sup>568</sup> Romania, Superior Council of Magistracy (*Consiliul Superior al Magistraturii*) (2011), 'Declanșarea unei noi proceduri de ocupare a locurilor vacante de judecători la ÎCCJ', Press release, 29 August 2011, available on <http://www.csm1909.ro/csm/index.php?lb=ro>.

### 8.2.2 Legislative developments

Law 202/2010<sup>569</sup> has ruled out appeals for cases when the object of the litigation is a debit of less than €500<sup>570</sup>, or a complaint against a police report<sup>571</sup> sanctioning a contravention under Government Ordinance no. 195/2002.<sup>572</sup> Judicial decisions concerning certain applications in civil or commercial matters may be subjected to only one degree of appeal.<sup>573</sup>

The new Civil Procedure Code<sup>574</sup> will introduce measures for unifying jurisprudence, such as the preliminary ruling, which allows judges to request a preliminary ruling of the HCCJ in an ongoing case if conflicting jurisprudence can be identified,<sup>575</sup> as well as simplifies the existing appeal in the interest of the law.<sup>576</sup>

The new Criminal Procedure Code will introduce the preliminary chamber procedure and delegates search and arrest warrants to a judge specialised in rights and freedoms ( *judecătorul de drepturi și libertăți*).

### 8.2.3 National case law

Nothing to report in spite of requests of information filed with relevant authorities and search of legal databases.

### 8.2.4 Statistical data made available in the reference period

The Romanian court system comprises 188 courts of first instance, of which nine are not functional, 42 tribunals (one not yet functional) and four specialised tribunals (one as a family court and the other three as commercial courts), 16 courts of appeal (one of which is the Military Court of Appeal) and one High Court of Cassation and Justice.<sup>577</sup>

In 2010, 2,916,776 case files have been processed by Romanian courts, 22% more than in 2009 and 40% more than in 2008.<sup>578</sup>

During the first 6 months of 2011, a number of 2,084,409 case files have been processed (16% more than in the first 6 months of 2010), of which 1,296,683 saw a decision (17% more than in 2010).<sup>579</sup>

In 2010, the total budget allocated to courts was of RON1,307,148,000 (approx. €300,000,000)<sup>580</sup> which counts as €15,24 per citizen.<sup>581</sup> Out of this, 90.46% of the budget (€281,535,952) was allocated for human resources, while funds for other expenses (such as goods and services) were at the lowest level since 2006 (RON29,689,762).<sup>582</sup>

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<sup>569</sup> Law 202/2010 concerning some measures for accelerating judicial proceedings, 25 October 2010.

<sup>570</sup> *Ibid.*, Article I.1.

<sup>571</sup> *Ibid.*, Article X.

<sup>572</sup> Romania/Government Ordinance no.195/2002 concerning traffick on public roads (*Legea nr. 195/2002 privind circulația pe drumurile publice*), 20 August 2002.

<sup>573</sup> *Ibid.*, Articles XIII and XIV.

<sup>574</sup> Law no. 134/2010 on the Civil Procedure Code, 1 July 2010.

<sup>575</sup> *Ibid.*, Article 512.

<sup>576</sup> *Ibid.*, Articles 508-511.

<sup>577</sup> Superior Council of Magistracy (2011a), *Report on the State of Justice in 2010*, Bucharest, Consiliul Superior al Magistraturii, available in Romanian on [www.csm1909.rop](http://www.csm1909.rop).10.

<sup>578</sup> *Ibid.*, p.54.

<sup>579</sup> Superior Council of Magistracy, *2011 Report – The First Semester*, available on-line at <http://www.csm1909.ro/csm/index.php?cmd=2301>.

<sup>580</sup> *Ibid.*, p.17.

<sup>581</sup> *Ibid.*, p.20.

<sup>582</sup> *Ibid.*, p. 20.

At the beginning of 2010, out of 4,486 positions as judge, 558 were vacant, while, out of 2,873 positions as prosecutor, 621 were vacant.<sup>583</sup> At the beginning of 2011, out of 4,544 positions as judge, 302 were still vacant.<sup>584</sup>

### 8.2.5 Research and studies

A report issued in January 2011 by the Centre for Analysis and Institutional Development (*Centrul de Analiză și Dezvoltare Instituțională*)<sup>585</sup> has criticised the absence of an efficient human resources policy for the justice system, which causes, among others, capacity imbalances (in some courts, workload per judge is higher than the national average) and affects the quality of the act of justice. The report expressed mistrust in SCM's capacity to devise public policies for the justice system in the absence of instruments allowing for quality measurement, coherent statistical data and effective inter-institutional cooperation.<sup>586</sup>

The latest Report under the Cooperation and Verification Mechanism noted that the pressing capacity imbalances of the Romanian justice system have not yet been addressed and that measures to strengthen the recruitment and training of magistrates have not been yet adopted.<sup>587</sup> The document has also criticised the fact that, although the Civil Code is to come into force on 1 October 2011 and implementing laws for the other codes are being drafted and finalised, impact studies are not foreseen to be completed until the end of the summer, little training has been delivered and a comprehensive implementation plan is still missing.<sup>588</sup>

### 8.2.6 Promising 'good' practices

At the end of 2010, SCM has started broadcasting its plenary sessions on its web page.

### 8.2.7 Key issues in public debate

MoJ, SCM and the HCCJ, as well as civil society organisations, have debated for months on the appointment of judges to HCCJ,<sup>589</sup> a procedure which has been, consequently, blocked, although the Criminal Section of the High Court has reportedly been severely understaffed. HCCJ requested to play a more prominent role in the selection and appointment process, while SCM was concerned with establishing an objective and transparent procedure.

In June 2011, MoJ has submitted to the Parliament a draft bill concerning the procedure of appointment to HCCJ.<sup>590</sup> The bill, which provided that judges seeking to be appointed to HCCJ must meet strict requirements concerning work experience and be subjected to an examination, previous to the interview held by SCM,<sup>591</sup> has been rejected by the Romanian

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<sup>583</sup> *Ibid*, p.198.

<sup>584</sup> *Ibid*, p.12.

<sup>585</sup> Centrul de Analiză și Dezvoltare Instituțională, *An analysis of the vulnerabilities of the Romanian justice system*, Bucharest, Centrul de Analiză și Dezvoltare Instituțională (2011).

<sup>586</sup> *Ibid*, p.13.

<sup>587</sup> European Commission, *Report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism*, Brussels, 20 July 2011, available on [http://ec.europa.eu/dgs/secretariat\\_general/cvm/docs/com\\_2011\\_460\\_en.pdf](http://ec.europa.eu/dgs/secretariat_general/cvm/docs/com_2011_460_en.pdf), p.4.

<sup>588</sup> *Ibid*, p. 4.

<sup>589</sup> National Union of Judges (*Uniunea Națională a Judecătorilor*) (2011), 'Procedura de numire a judecătorilor la ÎCCJ nu asigură garanțiile de obiectivitate', Press release, 18 April 2011, <http://e-juridic.manager.ro/articole/unjr:-procedura-de-numire-a-judecatorilor-la-iccj-nu-asigura-garantiile-de-obiectivitate-6724.html>; Superior Council of Magistracy (Consiliul Superior al Magistraturii) (2011), Consiliul Superior al Magistraturii se implică cu maximă seriozitate în soluționarea situației resurselor umane la Înalta Curte de Casație și Justiție', Press release, 24 March 2011, <http://www.csm1909.ro/csm/index.php?cmd=0501&pg=5>.

<sup>590</sup> Romania, Ministry of Justice (*Ministerul de Justiție*) (2011), 'Ministerul Justiției tranșează promovarea la ÎCCJ', Press release, 9 June 2011.LINK

<sup>591</sup> Romania, Draft bill to amend Law no. 303/2004 on the statute of judges and prosecutors and Law no. 304/2004 on the organisation of the justice system, available on <http://www.juridice.ro/wp-content/uploads/2011/09/Camera-Deputatilor.pdf>.

Senate in October 2011.<sup>592</sup> Currently, a new appointments procedure, seeking to fill seven vacancies, of which six within the Criminal Section, has opened in September 2011,<sup>593</sup> under guidelines previously adopted by SCM in March 2011.

Court presidents are complaining about the insufficient number of judges. For instance, the vice-president of the Bucharest Tribunal, one of the courts with the largest number of cases per year (around 200,000 registered in 2011 only) has recently stated that the court needs 35 additional judges, that judges are requesting to be transferred under the pressure of a heavy workload and that its activity may become paralysed in November due to staff shortages.<sup>594</sup>

### 8.2.8 Information on trends until 2011

The number of case files has steadily increased every year. The workload (number of case files per judge) has also increased. For instance, at the beginning of 2011, a judge from a court of first instance had received 632 files, compared to 711 for the same time interval in 2010, 512 in the first semester of 2009 and 417 in the first semester of 2008.<sup>595</sup>

Since mid-2009, no effective improvement could be noted for the difficult human resourcing situation in the judiciary.<sup>596</sup>

Starting with 2008, SCM has implemented pilot-projects to establish the optimal workload per judge, in order to ensure a fairer allocation of work within courts<sup>597</sup> or transfer certain administrative tasks to auxiliary personnel.<sup>598</sup>

### 8.2.9 Identification of future challenges

The issue of human resources and capacity imbalances may be difficult to address in the future. Recruitment procedures through the National Institute of Magistracy (NIM) (*Institutul Național al Magistraturii*) (INM) and direct exams have previously ensured half of vacancies are filled, but their number of vacant positions remains constant every year due to retirements or transfer to positions outside the court system.

The pilot-project to establish the optimal workload per judge is still implemented on a small scale and has generated controversies,<sup>599</sup> while the outcomes of the project to transfer certain administrative tasks to auxiliary personnel has still to find its way into a draft bill.<sup>600</sup>

The number of petitions registered by courts will continue to increase,<sup>601</sup> thus adding pressure on existing human resources.

The recent changes in court competence and appeals procedures may increase the caseload of Tribunals.

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<sup>592</sup> According to the web page of the Romanian Senate,

<http://www.senat.ro/Legis/Lista.aspx?cod=16166>.

<sup>593</sup> Romania, High Court of Cassation and Justice (*Înalta Curte de casație și Justiție*) (2011) ,Anunț privind publicarea posturilor vacante de judecător la Înalta Curte de Casație și Justiție', 28 September 2011.

<sup>594</sup> Superior Council of Magistracy, Plenary session of 27 September 2011, [www.csm1909.ro](http://www.csm1909.ro).

<sup>595</sup> Superior Council of Magistracy, 2011 Report – *The First Semester*, available on-line at <http://www.csm1909.ro/csm/index.php?cmd=2301> p.20.

<sup>596</sup> European Commission, *Interim Report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism*, Brussels, 23 March 2010, available on [http://ec.europa.eu/dgs/secretariat\\_general/cvm/docs/com\\_2010\\_113\\_en.pdf](http://ec.europa.eu/dgs/secretariat_general/cvm/docs/com_2010_113_en.pdf) p.5.

<sup>597</sup> *Ibid*, p. 4.

<sup>598</sup> Superior Council of Magistracy , *Report on the State of Justice in 2010*, Bucharest, Consiliul Superior al Magistraturii, available in Romanian on [www.csm1909.ro](http://www.csm1909.ro) p.193.

<sup>599</sup> See section 8.1.7.above.

<sup>600</sup> Superior Council of Magistracy , *Report on the State of Justice in 2010*, Bucharest, Consiliul Superior al Magistraturii, available in Romanian on [www.csm1909.ro](http://www.csm1909.ro) p. 194.

<sup>601</sup> *Ibid*, p.21

## 8.3 Alternative dispute resolution

### 8.3.1 Policy and institutional developments

SCM and the Mediation Council (MC) (*Consiliul de Mediere*) (CM) have signed a cooperation agreement to facilitate the exchange of data and case referral, as well as to ensure public information about the advantages of mediation and publicity for the Mediators Panel.<sup>602</sup>

### 8.3.2 Legislative developments

Law 202/2010<sup>603</sup> states that mediation is compulsory in commercial litigation and must be recommended by the court to parties in divorce proceedings.<sup>604</sup> Parties will first attend an information meeting with the mediator, free of charge. The person who has accepted to attend the meeting will be fined if he/she subsequently refuses to come.<sup>605</sup> The mediation settlement agreement will be submitted to the court. The judicial decision adopted following a mediation agreement is irrevocable.<sup>606</sup> Mediation is available in criminal proceedings as well, for the purpose of settling any damage claims.<sup>607</sup>

The Regulation of Internal Procedure for Courts has been amended to accommodate the processing of mediation agreements by the court registrars.<sup>608</sup> The Internal Regulation of the Mediation Council (*Consiliul de Mediere*)<sup>609</sup> has also been completed to detail the rights and duties of mediators, access to the profession and code of ethics.<sup>610</sup>

### 8.3.3 National case law

**8.3.4 A collection of judicial decisions based on mediation agreements was published in October 2011 by the Romanian section of the European Association of Judges who Support Mediation (GEMME) and the Romanian Judges' Forum.<sup>611</sup> Analysing (and criticising, at the same time) the selected decisions, the authors have pointed out that judges are still unsure how to apply the various legal provisions regulating the use mediation agreements, which rights may be the object of mediation agreements and how much should courts interfere and exercise control on the matter. One of the judicial decisions praised by the authors has been included in Annex 4. The decision is relevant, since, according to the above-mentioned book, mediation agreements seem to be used mostly in family**

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<sup>602</sup> Romania, Superior Council of Magistracy (*Consiliul Superior al Măgistraturii*), 'Comunicat privind semnarea protocolului inter-instituțional de colaborare dintre Consiliul Superior al Măgistraturii și Consiliul de Mediere', Press release, 27 May 2011, [www.csm1909.ro](http://www.csm1909.ro).

<sup>603</sup> Law 202/2010 concerning some measures for accelerating judicial proceedings, 25 October 2010.

<sup>604</sup> *Ibid.*, Articles 40 and 47.

<sup>605</sup> *Ibid.*, Article 9.

<sup>606</sup> *Ibid.*, Article 47.

<sup>607</sup> *Ibid.*, Article XVIII.2.

<sup>608</sup> Decision no.504/2011 of the Superior Council of Magistracy, 9 August 2011.

<sup>609</sup> Romania/Mediation Council Decision no. 5/2007, 15 July 2007.

<sup>610</sup> Romania/Mediation Council Decision no. 2247/2011 to amend the Internal regulation concerning the organisation and functioning of the Mediation Council (*Hotărârea Consiliului de Mediere nr. 2247/2011 pentru modificarea și completarea Regulamentului de organizare și funcționare a Consiliului de Mediere*), 17 August 2011.

<sup>611</sup> GEMME (2011), *A Collection of judicial decisions adopted in the matter of mediation*, Bucharest, Editura Universitară.



### **proceedings with a similar object. Statistical data made available in the reference period**

In 2010, 258 court cases were settled through mediation.<sup>612</sup>

#### **8.3.5 Research and studies**

A report to the European Parliament on the implementation of the directive on mediation in the Member States, its impact on mediation and its take-up by the courts,<sup>613</sup> praised Romania for fully reimbursing court fees, as an incentive, to parties who refer cases for mediation. Other noteworthy provisions concerned the extra-judicial mediation agreements, which can afterwards be presented to the judge or to the notary public and establishing the Mediation Council, an autonomous public body devoted to promoting mediation activity, developing training standards, preparing training-course providers, issuing documents certifying mediators' professional qualifications, adopting a code of ethics, and formulating proposals for more legislation.

#### **8.3.6 Promising 'good' practices**

Nothing to report.

#### **8.3.7 Key issues in public debate**

Nothing to report.

#### **8.3.8 Information on trends until 2011**

The Law on Mediation<sup>614</sup> was adopted in 2006 and stated that mediation represents an amiable settlement of conflicts / disputes, with the support of a third person specialized as a mediator, under neutrality, impartiality and confidentiality conditions and based on the free consent of the involved parties.<sup>615</sup> The procedure of mediation was detailed, as well as the rights and duties of the mediator and the parties involved. A Mediation Council was created as an autonomous public body devoted to promoting mediation activity, developing training standards, preparing training-course providers, issuing documents certifying mediators' professional qualifications, adopting a code of ethics, and formulating proposals for more legislation.<sup>616</sup>

Mediation has been gradually promoted by legal professionals and courts of law, and finally, in 2010, by legislation regulating civil and criminal procedure, including the new procedure codes.<sup>617</sup>

The number of trainings for professionals who seek to qualify as mediators has increased, and the current official number of authorised mediators is of 2,807.<sup>618</sup>

#### **8.3.9 Identification of future challenges**

The general public is still reluctant to mediation.<sup>619</sup>

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<sup>612</sup> Superior Council of Magistracy, *Report on the State of Justice in 2010*, Bucharest, Consiliul Superior al Magistraturii, available in Romanian on [www.csm1909.ro](http://www.csm1909.ro) p. 65.

<sup>613</sup> Committee on Legal Affairs, *Report to the European Parliament on the implementation of the directive on mediation in the Member States, its impact on mediation and its take-up by the courts* (2011/2026 (INI)) (A7-0275/2011), Brussels, 13 July 2011.

<sup>614</sup> Law no. 192/2006 on mediation and organising the mediation, 22 May 2006.

<sup>615</sup> *Ibid*, Article 1.

<sup>616</sup> *Ibid*, Articles 17-21.

<sup>617</sup> Law 202/2010 concerning some measures for accelerating judicial proceedings, 25 October 2010; Law 134/2010 of the Civil Procedure Code, 1 July 2010; Law 135/2010 on the Criminal Procedure Code, 1 July 2010.

<sup>618</sup> Information available on <http://www.cmediere.ro/mediatori/>.

## 8.4 National Human Rights Institutions

### 8.4.1 Policy and institutional developments

In Romania, there are no NHRI in the sense of accreditation according to the Paris Principles. An odd exception is the Romanian Institute for Human Rights (RIHR) (*Institutul Român pentru Drepturile Omului*) (IRDO), which is listed by the ICC as (C) accredited and poses as NGO though established by law and funded from public budget<sup>620</sup>

Some of the other government agencies with a mandate in protecting particular aspects pertaining to human rights have previously been dissolved or turned into mere departments within a ministry.<sup>621</sup>

In September 2011, a new Ombudsperson (*Avocat al Poporului*) was appointed by the Parliament for a five years' mandate. The new chairperson of the Ombudsman has a substantial professional record of formerly working at the Romanian Parliament.<sup>622</sup>

### 8.4.2 Legislative developments

Law 35/1997 concerning the Romanian Ombudsman has been amended in December 2010.<sup>623</sup> The amendments do not bring any significant changes to the mandate of the Ombudsman, but simply clarify some of the concepts used by the law.

A draft bill seeking to establish a Children's Ombudsman (*Avocatul Copilului*) was submitted to the Parliament in June 2011 by the President of the Chamber of Deputies<sup>624</sup> and is currently analysed by the Legal Commission.<sup>625</sup> The Children's Ombudsman would second the Ombudsman and act to protect the child against violence, cruelty, exploitation and maltreatment, upon petition of the child alone, even in the absence of parental consent or support of the petition.

In 2011, the Romanian Parliament has debated and finally rejected a draft bill seeking to protect and support human rights defenders, who would act to monitor how human rights are observed in Romania.<sup>626</sup> "Human rights defenders" included any person, group or NGO which promoted and protected human rights and would, among others, acquire legal standing in any civil or criminal proceedings, acting in their own name or representing a third party.

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<sup>619</sup> Superior Council of Magistracy, *Report on the State of Justice in 2010*, Bucharest, Consiliul Superior al Magistraturii, available in Romanian on [www.csm1909.ro](http://www.csm1909.ro), p. 65.

<sup>620</sup> List of accredited National Institutions as of 2008 available at <http://www.demotemp360.nic.in/default.asp?PID=253>.

<sup>621</sup> Romania, Government Emergency Ordinance no. 68/2010 concerning some measures to reorganise the Ministry for Labour, Family and Social Protection and the activity of the institutions under its subordination, coordination or under its authority (Ordonanță de Urgență nr. 68/2010 privind unele măsuri de reorganizare a Ministerului Muncii, Familiei și Protecției Sociale și a activității instituțiilor aflate în subordinea, în coordonarea sau sub autoritatea sa), 30 June 2010, Official Monitor no.446/2010, Part I.

<sup>622</sup> CV of the Ombudsperson available at <http://www.avp.ro/>.

<sup>623</sup> Law no. 258/2010 to amend and complete Law no. 35/1997 concerning the organization and functioning of the Ombudsman (*Legea nr. 258/2010 pentru modificarea și completarea Legii nr. 35/1997 privind organizarea și funcționarea instituției Avocatul Poporului*), 14 December 2010.

<sup>624</sup> Romania/Draft Bill to amend Law no. 35/1997 concerning the organization and functioning of the Ombudsman (*Lege pentru modificarea și completarea Legii nr. 35/1997 privind organizarea și funcționarea instituției Avocatul Poporului*), 29 June 2011.

<sup>625</sup> According to the web page of the Chamber of Deputies, [http://www.cdep.ro/pls/proiecte/upl\\_pck.proiect?cam=2&idp=12162](http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=12162).

<sup>626</sup> Romania, Draft Bill concerning the protection and support of human rights defenders (*Lege privind protejarea și susținerea apărătorilor drepturilor omului*), Pl-x 277/09.05.2011, [http://www.cdep.ro/pls/proiecte/upl\\_pck.proiect?cam=2&idp=11520](http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=11520).



The Parliament found that granting such legal entities tax exemptions was contrary to Articles 1 (4), 21 and 138 (5) of the Romanian Constitution and that such a bill was not necessary.<sup>627</sup>

#### **8.4.3 National case law**

Nothing to report. This conclusion has been reached after consulting the Court Content Document Management System and sending requests of information to relevant actors.

#### **8.4.4 Statistical data made available in the reference period**

In 2010, the Ombudsman institution has received 8,895 petitions and has met 17,470 petitioners. The institution has carried out 18 investigations of human rights violations, has submitted 599 advisory opinions for the Constitutional Court and has filed seven objections of unconstitutionality.<sup>628</sup>

#### **8.4.5 Research and studies**

Nothing to report. This conclusion has been reached after consulting available on-line resources and sending requests of information to relevant actors.

#### **8.4.6 Promising 'good' practices**

Nothing to report.

#### **8.4.7 Key issues in public debate**

During the appointment of the new Ombudsman, media discussed the politicization of the position.

#### **8.4.8 Information on trends until 2011**

There are no fully accredited national human rights institutions in Romania under the criteria established by the International Coordinating Committee of National Human Rights Institutions (ICC) for (A) accredited NHRIs within the EU.<sup>629</sup>

##### **8.4.9 Identification of future challenges**

The role of the Ombudsman institution in defending human rights may dilute due to a possible attempt to politicise the institution, following the recent appointment of a new Ombudsperson. The former agencies, now part of MLFSP, currently focus on delivering services, rather than on promoting human rights.

### **8.5 Other bodies**

#### **8.5.1 Policy and institutional developments**

Government agencies including various relevant aspects for human rights in their mandate before 2011 included:

- The National Council for Combating Discrimination (NCCD) (*Consiliul Național pentru Combaterea Discriminării*) (CNCD);
- The National Authority for Persons with a Disability (NAPD) (*Autoritatea Națională pentru Persoanele cu Handicap*) (ANPH);

<sup>627</sup> Romania, the Romanian Parliament (*Parlamentul României*), the Chamber of Deputies (*Camera Deputaților*), Comisia Juridică, de Disciplină și Imunități/Comisia pentru Drepturile Omului, Culte și Minorități Naționale, 'Raport comun asupra propunerii legislative privind protejarea și susținerea apărătorilor drepturilor omului', available in Romanian on [http://www.cdep.ro/caseta/2011/06/20/pl11277\\_rp.pdf](http://www.cdep.ro/caseta/2011/06/20/pl11277_rp.pdf).

<sup>628</sup> Avocatul Poporului, *Annual Report 2010*, Bucharest, Avocatul Poporului.

<sup>629</sup> See list provided on the National Human Rights Institutions Forum available at <http://www.nhri.net/NationalDataList.asp?MODE=1&ID=1>.

- The National Authority for the Protection of Child's Rights (NAPCR) (*Autoritatea Națională pentru Protecția Drepturilor Copilului (ANPDC)*);
- The National Agency against Trafficking in Persons (NAATP) (*Agenția Națională împotriva Traficului de Persoane (ANTP)*);
- The National Agency for Roma (NAR) (*Agenția Națională pentru Romi (ANR)*);
- The National Agency for Equal Opportunities (NAEO) (*Agenția Națională pentru Egalitate de Șanse (ANES)*);
- The National Authority for the Oversight of Use of Personal Data (NAOUPD) (*Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal (ANSPDCP)*);
- National Agency for the Protection of Family (NAPF) (*Agenția Națională pentru Protecția Familiei (ANPF)*);
- [National Council of the Audio-Visual (NCAV) (*Consiliul Național al Audio-vizualului (CNA)*).

In 2010, NAPD, NAPCR, NAPF and NAEO have been reorganised and have been absorbed by MLFSP, mainly by reason of budgetary constraints.<sup>630</sup>

### **8.5.2 Legislative developments**

Nothing to report.

### **8.5.3 National case law**

Nothing to report.

### **8.5.4 Statistical data made available in the reference period**

Nothing to report.

### **8.5.5 Research and studies**

Nothing to report.

### **8.5.6 Promising 'good' practices**

Nothing to report.

### **8.5.7 Key issues in public debate**

Nothing to report.

### **8.5.8 Information on trends until 2011**

Government bodies with a human rights mandate described in this section had little visibility and decisional power and were reformed following the economic crisis.

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<sup>630</sup> Romania, Government Emergency Ordinance no. 68/2010 concerning some measures to reorganise the Ministry for Labour, Family and Social Protection and the activity of the institutions under its subordination, coordination or under its authority (Ordonanță de Urgență nr. 68/2010 privind unele măsuri de reorganizare a Ministerului Muncii, Familiei și Protecției Sociale și a activității instituțiilor aflate în subordinea, în coordonarea sau sub autoritatea sa), 30 June 2010, Official Monitor no.446/2010, Part I.

### 8.5.9 Identification of future challenges

The Romanian Parliament seems still reluctant to allow for independent monitoring of human rights as showed by the report of the joint commissions on the draft law for the protection of human rights defenders.<sup>631</sup>

## 8.6 Bodies under international agreement

### 8.6.1 Policy and institutional developments

The Romanian Government has currently opened the procedure for selecting the Romanian member of the Committee for the Prevention of Torture.<sup>632</sup>

Even if OPCAT ratification should lead to implementation of a National Preventive Mechanism until mid 2012,<sup>633</sup> to date, the institution which will take over this mandate was not identified.

Romania seems still reluctant to establish an independent monitoring body under Article 33 (2) of the UN CRPD.<sup>634</sup> While the mandate of the national equality body, the NCCD, covers in part the requirements of the Convention, there are no concrete steps into capacitating the institution in this direction.

### 8.6.2 Legislative developments

Romania has ratified the United Nations Convention on the Rights of Persons with Disabilities.<sup>635</sup> However, no harmonizing legislation had been adopted and the latest amendments to the Mental Health Law<sup>636</sup> currently debated by the Romanian Parliament, fail to observe the requirement of an independent monitoring mechanism, as provided by the Convention. One of the amendments states that NGO representatives may visit patients committed to psychiatric institutions only if holding an authorisation issued by the director of the National Centre for Mental Health and only with the consent of the manager of the institution.<sup>637</sup>

### 8.6.3 National case law

Nothing to report.

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<sup>631</sup> See Romania, the Romanian Parliament (*Parlamentul României*), the Chamber of Deputies (*Camera Deputaţilor*), Comisia Juridică, de Disciplină şi Imunităţi/Comisia pentru Drepturile Omului, Culte şi Minorităţi Naţionale, 'Raport comun asupra propunerii legislative privind protejarea şi susţinerea apărătorilor drepturilor omului', as well as the debates on the Draft Bill to amend Law no. 487/2002 concerning mental health and the protection of persons with mental disabilities (*Lege pentru modificarea şi completarea Legii sănătăţii mintale şi a protecţiei persoanelor cu tulburări psihice* nr. 487/2002), [http://www.cdep.ro/pls/proiecte/upl\\_pck.proiect?cam=2&idp=11728](http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=11728).

<sup>632</sup> Romania, Ministry for Justice (*Ministerul de Justiţie*), 'Anunţ privind propunerile de candidaturi pentru reprezentatul României în cadrul Comitetului European pentru prevenirea torturii şi pedepselor sau tratamentelor inumane sau degradante', 15 July 2011, <http://www.just.ro/>.

<sup>633</sup> Letter of the Permanent Mission of Romania to the Office of the United Nations and the International Organisations in Switzerland No 1110/17 May 2010, [http://www2.ohchr.org/english/bodies/cat/opcat/docs/ReplyPM\\_Romania17.05.2010.pdf](http://www2.ohchr.org/english/bodies/cat/opcat/docs/ReplyPM_Romania17.05.2010.pdf).

<sup>634</sup> See also section 8.6.2. below.

<sup>635</sup> Romania/Law Ratifying the UN Convention on the Rights of Persons with Disabilities (*Legea nr. 221 din 11 noiembrie 2010 pentru ratificarea Convenţiei privind drepturile persoanelor cu dizabilităţi*) from 11 November 2010.

<sup>636</sup> Romania, Law no. 487/2002 concerning mental health and the protection of persons with mental disabilities, 8 August 2002.

<sup>637</sup> Draft Bill to amend Law no. 487/2002 concerning mental health and the protection of persons with mental disabilities (*Lege pentru modificarea şi completarea Legii sănătăţii mintale şi a protecţiei persoanelor cu tulburări psihice* nr. 487/2002), Article 28.

#### **8.6.4 Statistical data made available in the reference period**

Nothing to report.

#### **8.6.5 Research and studies**

Nothing to report.

#### **8.6.6 Promising ‘good’ practices**

Nothing to report.

#### **8.6.7 Key issues in public debate**

Nothing to report.

#### **8.6.8 Information on trends until 2011**

Romania has ratified most international human rights treaties.

In 2009, it has ratified the Optional Protocol to the Convention Against Torture<sup>638</sup> and is currently seeking to establish a National Prevention Mechanism (NPM) (*Mecanism Național de Prevenire a Torturii*) (MNP),<sup>639</sup> having made a declaration under Article 24 of the Optional Protocol allowing Romania to delay designation for up to an additional two years.

#### **8.6.9 Identification of future challenges**

Agreement on the possible solution for the establishment of a NPM in Romania is difficult to reach.<sup>640</sup>

### **8.7 Legal aid**

#### **8.7.1 Policy and institutional developments**

In a press document released in August 2011,<sup>641</sup> MoJ has stated the need to establish an inter-agency mechanism for the efficient management and control of legal aid funds, as well as a data collection system, which would gather information on legal aid, to allow for short, medium and long term policy planning.

#### **8.7.2 Legislative developments**

The National Union of Romanian Bars (NURB) (*Uniunea Națională a Barourilor din România*) (UNBR) has drafted a proposal for an internal regulation concerning the organising of legal aid services.<sup>642</sup> The regulation provides that only lawyers registered in the National

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<sup>638</sup> According to the web page of the Convention,  
<http://www2.ohchr.org/english/bodies/cat/opcat/mechanisms.htm>.

<sup>639</sup> See Letter of the Permanent Mission of Romania to the Office of the United Nations and the International Organisations in Switzerland No 1110/17 May 2010,  
[http://www2.ohchr.org/english/bodies/cat/opcat/docs/ReplyPM\\_Romania17.05.2010.pdf](http://www2.ohchr.org/english/bodies/cat/opcat/docs/ReplyPM_Romania17.05.2010.pdf).

<sup>640</sup> Deutsche Stiftung für Internationale Rechtliche Zusammenarbeit E.V. (2010), 'Final Report on the Possible Solutions for the Establishment of a National Preventive Mechanism in Romania', Berlin, Deutsche Stiftung für Internationale Rechtliche Zusammenarbeit E.V., available in English at <http://www.just.ro/Sections/Comunicate/Comunicate2010/Comunicateaugust2010/3septembrie2010/tabid/1505/Default.aspx>, Chapter 4.

<sup>641</sup> Romania, Ministry of Justice (*Ministerul Justiției*) (2011), 'Document referitor la poziția instituțională a Ministerului Justiției privind eficientizarea cheltuirii fondurilor alocate onorariilor pentru ajutorul public judiciar și asistență juridică din oficiu în cauzele penale', Press release, 17 August 2011.

<sup>642</sup> Romania/National Union of Romanian Bars/Framework Regulation concerning the organisation of legal aid services (*Regulamentul cadru pentru organizarea serviciilor de asistență judiciară*), 1 September 2011.

Legal Aid Register may provide legal aid services, that legal aid covers free representation and assistance during criminal proceedings, legal representation under GO 51/2008 on legal aid in civil matters and also extrajudicial legal services. The last two sections deal with payment procedures and the establishment of an online data base to manage legal aid services and payment status.

### **8.7.3 National case law**

Applications for legal aid are examined in chambers by the judge. Decisions rejecting legal aid applications may be re-examined in chambers by a different judge within the same court, but cannot be appealed separately.<sup>643</sup> Since the court rules on legal aid at a preliminary stage, the issue may not even be mentioned in the final decision. During the period under survey relevant case law concerning legal aid has not been made public by courts or legal professionals.<sup>644</sup> Some decisions mentioning that legal aid was granted in a particular case have been identified through the Court Content Document Management System, but were considered of little interest as, in the best of cases, they only mentioned that the applicant was granted or was refused legal aid. In this context, no further steps were taken to identify case law referring to legal aid.

During the period under survey, the European Human Rights Court has ruled on Romania's failure to ensure access to justice by setting high judicial taxes and lacking rules for granting exemptions from such taxes.<sup>645</sup> However, these cases concerned legislation prior to 2008, and thus were deemed not relevant for the study.

### **8.7.4 Statistical data made available in the reference period**

According to an annual SCM report,<sup>646</sup> most applications for legal aid received by courts concerned exemptions from judicial taxes and free legal representation. Most of the applications were granted.

Legal aid expenses have increased by 16% in 2010 compared to 2009.<sup>647</sup>

### **8.7.5 Research and studies**

Nothing to report.

### **8.7.6 Promising 'good' practices**

Nothing to report.

### **8.7.7 Key issues in public debate**

Bars, including the NURB, have repeatedly complained that MoJ delays payment of fees for legal aid services.<sup>648</sup>

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<sup>643</sup> Government Ordinance no. 51/2008 on legal aid in civil matters, 21 October 2008, Art. 15.

<sup>644</sup> See also, [www.juridice.ro/hotarari-judecatoresti](http://www.juridice.ro/hotarari-judecatoresti), the High Court of Cassation and Justice, *Buletinul Casatiei*, Bucharest, Editura Beck, nos.10-11/2010 and 1-10/2011.

<sup>645</sup> ECtHR, *Case of S.C. Apron Dynamics S.R.L. Baia Mare v Romania*, Application no 21199/03, 2 November 2010; *Case of Georgel and Georgeta Stoicescu vs. Romania*, Application no. 9718/03, 26 July 2011.

<sup>646</sup> Superior Council of Magistracy, *Report on the State of Justice in 2010*, Bucharest, Consiliul Superior al Magistraturii, available in Romanian on [www.csm1909.ro](http://www.csm1909.ro), p. 195.

<sup>647</sup> Romania, Ministry of Justice (*Ministerul Justiției*) (2011), *Document referitor la poziția instituțională a Ministerului Justiției privind eficientizarea cheltuirii fondurilor alocate onorariilor pentru ajutorul public judiciar și asistență juridică din oficiu în cauzele penale*, Press release, 17 August 2011.

<sup>648</sup> Information available on the web page of NURB, [www.unbr.ro](http://www.unbr.ro).

### 8.7.8 Information on trends until 2011

Until 2008, legal aid in civil, as well as criminal matters was regulated by separate and overlapping pieces of legislation.

In 2008, Romania has adopted a Government Ordinance<sup>649</sup> in line with Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes. The legal aid scheme set by the ordinance covers, on one hand, legal representation, translation and expert costs, and, on the other hand, exemptions from judicial taxes in civil matters.<sup>650</sup>

The ordinance was amended later the same year<sup>651</sup> to state that persons entitled to legal aid under special laws, by reason of age, certain status or disability, are exempted from the income requirements set by the ordinance when acting to defend rights or interests protected by the special law granting them legal aid.

Legal aid for criminal proceedings is regulated separately by the Criminal Procedure Code and refers to the appointment of a lawyer for the defendant, if certain conditions are met, as well as for the victim of a crime in a vulnerable position.

A protocol was signed in 2008 between MoJ and NURB agreeing on the fees for legal aid services in civil as well as criminal matters.<sup>652</sup>

Since 2008 there were no significant legal developments in the area.

The legal aid expenses have increased by 80% in 2009 compared to 2008, then, again, by 16% in 2010 compared to 2009.<sup>653</sup>

### 8.7.9 Identification of future challenges

While legal aid expenses have increased every year, the budget of MoJ, the only institution that apparently has a legal aid budget, has been cut and is under severe strain.<sup>654</sup> The number of legal aid applications is likely to increase in the following years and thus the request for funds.

All main stakeholders must still work together to improve the quality of legal aid services.<sup>655</sup>

## 8.8 ‘(Legal) standing’ (Locus standi)

### 8.8.1 Policy and institutional developments

Generally, the Romanian procedure rules allow for limited possibilities to stand trial or petition to the court on behalf of another person or to argue an issue of public interest.

Newly introduced provisions of the Civil Procedure Code may be used to legitimate actions filed by a wider range of applicants.<sup>656</sup>

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<sup>649</sup> Government Ordinance no. 51/2008 on legal aid in civil matters, 25 April 2008.

<sup>650</sup> *Ibid.* Article 6.

<sup>651</sup> Law no.193/2008 to approve Government Ordinance no. 51/2008 on legal aid in civil matters, 21 October 2008.

<sup>652</sup> Romania, Ministry of Justice (*Ministerul Justiției*) (2011), ‘Document referitor la poziția instituțională a Ministerului Justiției privind eficientizarea cheltuiirii fondurilor alocate onorariilor pentru ajutorul public judiciar și asistență juridică din oficiu în cauzele penale’, Press release, 17 August 2011.

<sup>653</sup> *Ibid.*

<sup>654</sup> *Ibid.*

<sup>655</sup> *Ibid.*; Romania, Ministry of Justice (*Ministerul Justiției*) (2011), ‘Comunicat de presă referitor la înțelegerea ministrului Justiției cu președinții UNBR și UNPIR’, Press release, 16 January 2011.

<sup>656</sup> Law 134/2010 of the Civil Procedure Code, 1 July 2010.

Meanwhile, courts have started receiving collective complaints filed by bank clients alleging abusive clauses, as well as public employees complaining against state and local authorities decisions to cut down wages or pensions.

## **8.8.2 Legislative developments**

Nothing to report.

## **8.8.3 National case law**

Nothing to report. Due to time constraints, only available online resources and law bulletins published in the period under survey could be consulted.<sup>657</sup>

Starting with 2010, a series of collective complaints have been lodged against commercial banks, alleging abusive clauses in loan and mortgage contracts. However, the cases have not yet been decided.

## **8.8.4 Statistical data made available in the reference period**

Nothing to report.

## **8.8.5 Research and studies**

Nothing to report.

## **8.8.6 Promising ‘good’ practices**

Nothing to report.

## **8.8.7 Key issues in public debate**

Nothing to report.

## **8.8.8 Information on trends until 2011**

Several special laws have so far provided for legal standing, in litigation concerning fundamental rights, for associations or groups of people. For instance, trade unions may act to defend the rights of their members in connection to employment; a group of persons claiming violation of individual rights or interests, an NGO or other social legal entity (*organismele sociale*) may apply to annul an act of a public authority deemed to violate either a public interest, either the individual rights of a specific person.<sup>658</sup>

The Ombudsman, the Public Ministry, the prefect and the National Agency for Public Servants may also apply to have an act of the public authorities annulled.<sup>659</sup>

Consumer protection associations may file a complaint against illegal commercial practices.<sup>660</sup>

The New Civil Procedure Code<sup>661</sup> seems to maintain the status quo, by providing that, if allowed by law, other persons, institutions, organisations or authorities may file a complaint or act in defence of rights or legitimate interests of a person in a special situation, or to protect a group or general interest.<sup>662</sup>

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<sup>657</sup> See also, [www.juridice.ro/hotarari-judecatoresti](http://www.juridice.ro/hotarari-judecatoresti), the High Court of Cassation and Justice, *Buletinul Casatiei*, Bucharest, Editura Beck, nos.10-11/2010 and 1-10/2011.

<sup>658</sup> Law no. 554/2004 concerning litigation in administrative matters 2 December 2004, Article 2 (1).

<sup>659</sup> *Ibid*, Article 1 (8).

<sup>660</sup> Government Ordinance no 21/1992 on consumer protection, 20 June 2002.

<sup>661</sup> Law of the Civil Procedure Code , 1 July 2010, to come into force on 1 January 2012.

<sup>662</sup> *Ibid*, Article 36.



Starting with 2010, a series of collective complaints have been lodged against commercial banks, alleging abusive clauses in loan and mortgage contracts.<sup>663</sup>

### **8.8.9 Identification of future challenges**

There is not enough data yet to estimate whether courts will adopt a narrow interpretation of article 36 of the New Civil Procedure Code, which states that, if allowed by law, other persons, institutions, organisations or authorities may file a complaint or act in defence of rights or legitimate interests of a person in a special situation, or to protect a group or general interest, or will use it to legitimate actions filed by a wider range of applicants.

## **8.9 Technical tools**

### **8.9.1 Policy and institutional developments**

In June 2011, SCM has adopted a public policy statement emphasising the need to ensure free access to legal information by publishing all judicial decisions and making legal databases available to the general public.<sup>664</sup> After reviewing the shortcomings of all previous initiatives, SCM has concluded that it will create a Romanian Institute for Legal Information mandated to gather and publish all judicial decisions. The statute of the Institute, the exact resources and steps to accomplish this goal are yet to be set.<sup>665</sup>

The new ECRIS IV, an improved version of the application ECRIS (Content Document Management System), which has been used by courts of justice to record, organise and process case files, has been installed in all the courts in November 2010 and is currently in use.<sup>666</sup>

All courts' web pages are now functional, regularly updated and offer information about daily proceedings as well as general information on judicial procedures.<sup>667</sup>

### **8.9.2 Legislative developments**

An emergency ordinance<sup>668</sup> has postponed the application of a legal provision stating that all court sessions will be recorded, and transcripts made available to the parties.<sup>669</sup> These provisions are now to come into force on January 1, 2012.<sup>670</sup>

### **8.9.3 National case law**

Nothing to report.

### **8.9.4 Statistical data made available in the reference period**

Although all courts have functional web pages, which contain a section dedicated to relevant case law of each court, only 0,17% of judicial decisions adopted during 2005-2010 by the Courts of Appeal and the Vrancea Tribunal are published in the section.<sup>671</sup> The High Court of

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<sup>663</sup> România Liberă (2010), 'Lawyers have submitted the documents for the first collective trial against a bank', 20 October 2010; Adevărul (2010), 'Banks are facing unprecedented collective trials', 6 September 2010.

<sup>664</sup> SCM, Public Policy Statement, adopted at the plenary session held on June 15, 2011.

[http://www.csm1909.ro/csm/linkuri/17\\_06\\_2011\\_41829\\_ro.pdf](http://www.csm1909.ro/csm/linkuri/17_06_2011_41829_ro.pdf).

<sup>665</sup> *Ibid.*

<sup>666</sup> Superior Council of Magistracy, *Report on the State of Justice in 2010*, Bucharest, Consiliul Superior al Magistraturii, available in Romanian on [www.csm1909.ro](http://www.csm1909.ro).

<sup>667</sup> *Ibid.*

<sup>668</sup> Romania/Government Ordinance no. 109/2010 concerning some financial measures (OUG r. 109/2010 privind unele masuri financiare bugetare), 6 December 2010.

<sup>669</sup> Law no. 304/2004 on the organisation of the justice system 29 June 2004, Article 13.

<sup>670</sup> Government Emergency Ordinance no. 109/2010, art. V.

<sup>671</sup> SCM, Public Policy Statement, adopted at the session held on June 15, 2011.

Justice has reportedly published, on its website, around 20 % of judicial decisions adopted by this court during 2003-2010.<sup>672</sup>

### 8.9.5 Research and studies

Nothing to report.

### 8.9.6 Promising 'good' practices

SCM has started broadcasting, on its website, all its meetings/plenary sessions <sup>673</sup>(reference), while several public events can be followed on [www.privesc.eu](http://www.privesc.eu).

### 8.9.7 Key issues in public debate

Following complaints concerning the limitations and errors of the new ECRIS IV application, MoJ publicly stated that the application has been previously tested, that such errors are normal and will be addressed in time. MoJ invited representatives of court staff to working groups to discuss and find solutions to the alleged shortcomings of the application.<sup>674</sup>

### 8.9.8 Information on trends until 2011

In 2008, SCM has signed an agreement with Vrancea county court to create JURINDEX, a database containing all the judicial decisions issued by the Romanian courts.<sup>675</sup> The database was set to be completed by December 2010, and currently contains decisions adopted up to March 2010.

A web page <sup>676</sup> has been created to offer information about the Romanian justice system as well as courts' contact data to the general public.<sup>677</sup> Almost all courts' web sites are now functional, regularly updated and offer information about daily proceedings as well as general information on judicial procedures.

The ECRIS application (The Legal Library Documentation System/Content Document Management System), which allows courts to record case files, documents and manage relevant information, as well as making part of it available to the public, was funded through Phare 97 and later by the state budget. ECRIS 3.0.0.33 was installed and started functioning in all the courts in 2006, greatly simplifying the case management system.

### 8.9.9 Identification of future challenges

The limitations of ECRIS are still to be addressed.

If information concerning court files becomes public, it may raise issues connected to the protection of privacy and personal data.

## 8.10 Important information not covered above

Nothing to report.

Official title	Official title	Full reference
EN	RO	

<sup>672</sup> *Idem*.

<sup>673</sup> [www.csm1909.ro](http://www.csm1909.ro).

<sup>674</sup> Romania, Ministry of Justice (*Ministerul Justiției*), Press release, 23 November 2010. LINK

<sup>675</sup> Superior Council of Magistracy, *Report on the State of Justice in 2010*, Bucharest, Consiliul Superior al Magistraturii, available in Romanian on [www.csm1909.ro](http://www.csm1909.ro), p 191.

<sup>676</sup> [www.justitiaromana.org](http://www.justitiaromana.org) (24.09.2010)

<sup>677</sup> Superior Council of Magistracy, *Report on the State of Justice in 2010*, Bucharest, Consiliul Superior al Magistraturii, available in Romanian on [www.csm1909.ro](http://www.csm1909.ro), p. 191.

<b>The Centre for Analysis and Institutional Development (2011),</b> <i>'An analysis of the vulnerabilities of the Romanian justice system'</i> .	Centrul de Analiză și Dezvoltare Instituțională, 'Analiza vulnerabilităților sistemului judiciar'.	Centrul de Analiză și Dezvoltare Instituțională (2011) <i>'An analysis of the vulnerabilities of the Romanian justice system'</i> , Bucharest, Centrul de Analiză și Dezvoltare Instituțională.
<b>The Ombudsman Institution (2011),</b> <i>Annual Report 2010</i> .	Avocatul Poporului (2011), <i>'Raport Anual 2010'</i> .	Avocatul Poporului (2011), <i>Annual Report 2010</i> , Bucharest, Avocatul Poporului,
<b>Committee on Legal Affairs, Report to the European Parliament on the implementation of the directive on mediation in the Member States, its impact on mediation and its take-up by the courts.</b>		Committee on Legal Affairs (2011), <i>Report to the European Parliament on the implementation of the directive on mediation in the Member States, its impact on mediation and its take-up by the courts</i> (2011/2026 (INI)) (A7-0275/2011), Brussels, 13 July 2011.
<b>Government Emergency Ordinance no. 51/2008 on legal aid in civil matters.</b>	OUG nr. 51/2008 privind ajutorul public judiciar în materie civilă.	Romania, Government Emergency Ordinance no. 51/2008 on legal aid in civil matters (OUG nr. 51/2008 privind ajutorul public judiciar în materie civilă), 25 April 2008, Official Bulletin no.327/2008.
<b>Government Emergency Ordinance no. 109/2010 concerning some financial measures.</b>	OUG r. 109/2010 privind unele masuri financiar bugetare.	Romania, Government Emergency Ordinance no. 109/2010 concerning some financial measures (OUG r. 109/2010 privind unele masuri financiar bugetare), 6 December 2010, Official Bulletin no. 846/2010..
<b>Mediation Council Decision no. 5/2007 to approve the Internal regulation concerning the organisation and functioning of the Mediation Council.</b>	Hotărârea Consiliului de Mediere nr. 5/2007 pentru aprobarea Regulamentului de organizare și funcționare a Consiliului de Mediere.	Romania, Mediation Council Decision no. 5/2007 to approve the Internal regulation concerning the organisation and functioning of the Mediation Council (Hotărârea Consiliului de Mediere nr. 5/2007 pentru aprobarea Regulamentului de organizare și funcționare a Consiliului de Mediere), 15 July 2007.
<b>Mediation Council Decision no. 2247/2011 to amend the Internal regulation concerning the organisation and functioning of the Mediation Council.</b>	Hotărârea Consiliului de Mediere nr. 2247/2011 pentru modificarea și completarea Regulamentului de organizare și funcționare a Consiliului de Mediere	Romania, Mediation Council Decision no. 2247/2011 to amend the Internal regulation concerning the organisation and functioning of the Mediation Council (Hotărârea Consiliului de Mediere nr. 2247/2011 pentru modificarea și completarea Regulamentului de organizare și funcționare a Consiliului de Mediere), 17 August 2011.
<b>Decision no. 504/2011 to amend the internal regulation of courts</b>	Hotararea Plenului Consiliului Superior al Magistraturii nr. 504/2011 pentru modificarea si completarea	Romania, Superior Council of Magistracy, Decision no. 504/2011 to amend the internal regulation of courts approved by the Decision

<b>approved by the Decision of the Superior Council of Magistracy no.387/2005.</b>	Regulamentului de ordine interioara al instantelor judecatoresti, aprobat prin Hotararea Plenului Consiliului Superior al Magistraturii nr. 387/2005.	of the Superior Council of Magistracy no.387/2005 (Hotararea Plenului Consiliului Superior al Magistraturii nr. 504/2011 pentru modificarea si completarea Regulamentului de ordine interioara al instantelor judecatoresti, aprobat prin Hotararea Plenului Consiliului Superior al Magistraturii nr. 387/2005), 9 August 2011, Official Bulletin no.565/2011, Part I.
<b>European Commission, <i>Interim Report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism.</i></b>	Comisia Europeană, ‘Raport Interimar al Comisiei Europene către Parlamentul European și Consiliu privind progresele realizate de România în cadrul Mecanismului de Cooperare și verificare’.	European Commission (2010a), <i>Interim Report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism</i> , Brussels, 23 March 2010, available on <a href="http://ec.europa.eu/dgs/secretariat_general/cv/m/docs/com_2010_113_en.pdf">http://ec.europa.eu/dgs/secretariat_general/cv/m/docs/com_2010_113_en.pdf</a> .
<b>European Commission, <i>Report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism.</i></b>	Comisia Europeană, ‘Raport al Comisiei Europene către Parlamentul European și Consiliu privind progresele realizate de România în cadrul Mecanismului de Cooperare și verificare’.	European Commission (2010b), <i>Report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism</i> , Brussels, 20 July 2010, available on <a href="http://ec.europa.eu/dgs/secretariat_general/cv/m/docs/com_2010_401_en.pdf">http://ec.europa.eu/dgs/secretariat_general/cv/m/docs/com_2010_401_en.pdf</a> .
<b>European Commission (2011), <i>Report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism.</i></b>	Comisia Europeană (2011), ‘Raport al Comisiei Europene către Parlamentul European și Consiliu privind progresele realizate de România în cadrul Mecanismului de Cooperare și verificare’.	European Commission (2011), <i>Report from the Commission to the European Parliament and the Council on Progress in Romania under the Co-operation and Verification Mechanism</i> , Brussels, 20 July 2011, available on <a href="http://ec.europa.eu/dgs/secretariat_general/cv/m/docs/com_2011_460_en.pdf">http://ec.europa.eu/dgs/secretariat_general/cv/m/docs/com_2011_460_en.pdf</a>
<b>Law no. 35/1997 concerning the organization and functioning of the Ombudsman.</b>	Legea nr. 35/1997 privind organizarea si functionarea institutiei Avocatul Poporului.	Romania, Law no. 35/1997 concerning the organization and functioning of the Ombudsman (Legea nr. 35/1997 privind organizarea si functionarea institutiei Avocatul Poporului), 13 March 1997, Official Bulletin nr. No. 48/1997.
<b>Law no. 304/2004 on the organisation of the justice system.</b>	Legea nr. 304/2004 privind organizarea judiciară.	Romania, Law no. 304/2004 on the organisation of the justice system (Legea nr. 304/2004 privind organizarea judiciară), 29 June 2004. Official Bulletin no.576/2004, Part. I.
<b>Law no. 554/2004</b>	Legea nr. 554/2004 a contenciosului	Romania, Law no. 554/2004 concerning

<b>concerning litigation in administrative.</b>	administrativ.	litigation in administrative matters (Legea nr. 554/2004 a contenciosului administrativ), 2 December 2004., Official Bulletin no. 1154/2004.
<b>Law no. 192/2006 on mediation and organising the mediation profession.</b>	Legea nr. 192/2006 privind medierea și organizarea profesiei de mediator.	Romania, Law no. 192/2006 on mediation and organising the mediation profession (Legea nr. 192/2006 privind medierea și organizarea profesiei de mediator), 22 May 2006, Official Bulletin no. 482/2006, Part I..
<b>Law no.193/2008 to approve Government Ordinance no. 51/2008 on legal aid in civil matters.</b>	Legea nr. 193/2008 pentru aprobarea OUG nr. 51/2008 privind ajutorul public judiciar □n materie civilă.	Romania, Law no.193/2008 to approve Government Ordinance no. 51/2008 on legal aid in civil matters (Legea nr. 193/2008 pentru aprobarea OUG nr. 51/2008 privind ajutorul public judiciar □n materie civilă), 21 October 2008, Official Bulletin no. 723/2008.
<b>Law no. 177/2010 to amend Law 47/1992 for the organisation and functioning of the Constitutional Court, the Civil Procedure Code and the Criminal Procedure Code of Romania.</b>	Legea nr. 177/2010 pentru modificarea Legii nr. 47/1992 privind organizarea și funcționarea Curții Constituționale, a Codului de procedură civilă și a Codului de Procedură Penală a României.	Romania, Law no. 177/2010 to amend Law 47/1992 for the organisation and functioning of the Constitutional Court, the Civil Procedure Code and the Criminal Procedure Code of Romania (Legea nr. 177/2010 pentru modificarea Legii nr. 47/1992 privind organizarea și funcționarea Curții Constituționale, a Codului de procedură civilă și a Codului de Procedură Penală a României), 4 October 2010, Official Bulletin no. 672/2010, Part I.
<b>Law 134/2010 of the Civil Procedure Code.</b>	Legea nr. 134/2010 privind Codul de procedură civilă.	Romania, Law 134/2010 of the Civil Procedure Code (Legea nr. 134/2010 privind Codul de procedură civilă), 1 July 2010, Official Bulletin no. 485/2010, Part I.
<b>Law 135/2010 on the Criminal Procedure Code</b>	Legea nr. 135/2010 Codul de Procedură Penală a României	Romania, Law 135/2010 on the Criminal Procedure Code (Legea nr. 135/2010 Codul de Procedură Penală a României), 1 July 2010
<b>Law 202/2010 concerning some measures for accelerating judicial proceedings</b>	Legea nr. 202/2010 privind unele măsuri pentru accelerarea soluționării proceselor	Romania, Law 202/2010 concerning some measures for accelerating judicial proceedings (Legea nr. 202/2010 privind unele măsuri pentru accelerarea soluționării proceselor), 25 October 2010, Official Bulletin no. 714/2010, Part. I.
<b>Superior Council of Magistracy (2011), Report on the State of Justice in 2010.</b>	Consiliul Superior al Magistraturii, 'Raport privind starea justiției □n 2010'.	Consiliul Superior al (2011), <i>Report on the State of Justice in 2010</i> , Bucharest, Consiliul Superior al Magistraturii, available in Romanian on <a href="http://www.csm1909.ro">www.csm1909.ro</a>
<b>Superior Council of Magistracy, 2011 Report – The First Semester.</b>	Consiliul Superior al Magistraturii, <i>Raport pentru anul 2011 – primul semestru.</i>	Consiliul Superior al Magistraturii (2011b), <i>2011 Report – The First Semester</i> , available on-line at <a href="http://www.csm1909.ro/csm/index.php?cmd=2301">http://www.csm1909.ro/csm/index.php?cmd=2301</a>
<b>Superior Council of Magistracy – Judiciary Inspection (2011) ,Report on the assessment by the</b>	Consiliul Superior al Magistraturii – Inspekția Judiciară (2011), 'Raportul privind monitorizarea la nivelul Inspekției Judiciare de pe lângă Plenul CSM a dosarelor mai vechi de 1 an în	Consiliul Superior al Magistraturii – Inspekția Judiciară (2011), 'Report on the assessment by the Judiciary Inspection of court files older than 1 year within the judicial system', <i>Consiliul Superior al Magistraturii</i> ,

<b>Judiciary Inspection of court files older than 1 year within the judicial system.</b>	<i>sistemul judiciar</i> '.	<i>Bucharest, 2011, available in Romanian at: <a href="http://www.csm1909.ro/csm/linkuri/20_10_2011_44620_ro.pdf">http://www.csm1909.ro/csm/linkuri/20_10_2011_44620_ro.pdf</a>.</i>
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## **9 PROTECTION OF VICTIMS**

### **9.1 Length of proceedings**

#### **9.1.1 Policy and institutional developments**

Romania is taking active measures to reduce the length of judicial proceedings (see section 8.1. above). However, these are general measures. No specific provisions have been adopted during the period under survey to tailor the duration of judicial proceedings to the needs of crime victims.<sup>678</sup>

#### **9.1.2 Legislative developments**

Nothing to report.

#### **9.1.3 National case law**

Nothing to report.

#### **9.1.4 Statistical data made available in the reference period**

Nothing to report.

#### **9.1.5 Research and studies**

Nothing to report.

#### **9.1.6 Promising ‘good’ practices**

Nothing to report.

#### **9.1.7 Key issues in public debate**

Nothing to report.

#### **9.1.8 Information on trends until 2011**

Procedural provisions adopted until 2011 have gradually incorporated the rights of crime victims.<sup>679</sup> However, none of the measures aiming to shorten the duration of judicial proceedings refer specifically to the situation of crime victims.

#### **9.1.9 Identification of future challenges**

Further adapting judicial proceedings to the needs of crime victims is not currently part of any public strategy.<sup>680</sup>

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<sup>678</sup> Romania, Legea nr. 135/2010, 15 July 2010; Legea nr. 134/2010, 15 July 2010; Legea nr. 202/2010, 25 October 2010.

<sup>679</sup> Romania, Legea nr. 135/2010, 15 July 2010; Legea nr. 134/2010, 15 July 2010; Legea nr. 202/2010, 25 October 2010.

<sup>680</sup> Romania, Ministry of Justice Romania, Ministry of Justice (*Ministerul de Justiție*) (2010) ‘*The Strategy for the development of justice as a public service*’, available in English at <http://www.just.ro/LinkClick.aspx?fileticket=UbPdRtMTlf0%3d&tabid=1332>, Superior Council of Magistracy (2011), *Report on the State of Justice in 2010*, Bucharest, Superior Council of Magistracy, available in Romanian at [www.csm1909.ro](http://www.csm1909.ro).



## **9.2 Developments in regard to EU legal and/or policy initiatives**

### **9.2.1 Policy and institutional developments**

Romania has taken an active part in the negotiation of the newly proposed Victims Directive and is committed to promoting the application of minimal standards for the protection of crime victims.<sup>681</sup> However, enquiries to the relevant public authorities (MoJ) and study of available online resources have failed to reveal any related developments under sections 9.2.3-9.2.7. below for the period under survey.

### **9.2.2 Legislative developments**

The new Criminal Procedure Code<sup>682</sup> contains provisions in line with the Framework decision on the standing of victims in criminal proceedings. For instance, the victim of a crime has a right to take part in the proceedings, receive information about his/her rights and the stage of proceedings, may indicate evidence and question witnesses, has the right to be heard and the right to be assisted by counsel.<sup>683</sup> The Code also provides for protection measures for vulnerable witnesses and crime victims.<sup>684</sup>

### **9.2.3 National case law**

Nothing to report. Due to time constraints, only available on-line resources and law bulletins published in the period under survey could be consulted.<sup>685</sup>

### **9.2.4 Statistical data made available in the reference period**

Nothing to report. Enquiries to the relevant public authorities (MoJ) and study of available online resources have failed to reveal any related developments under this section.<sup>686</sup> Some information relevant to this section has been presented in section 4.5.5. above.

### **9.2.5 Research and studies**

Nothing to report. As discussed below, some of the initiatives covered by this chapter have only been recently implemented, or are yet to be effectively implemented by Romania. Some information relevant to this section has also been presented in section 4.5.5. above

### **9.2.6 Promising 'good' practices**

Nothing to report- some of the initiatives covered by this chapter have only been recently implemented, or are yet to be effectively implemented by Romania

### **9.2.7 Key issues in public debate**

Limited information relevant to this section has been covered in section 4.5.7. above. Examination of available on-line resources has failed to reveal any relevant additional data.

### **9.2.8 Information on trends until 2011**

Council Directive on compensation to crime victims has been implemented into the Romanian legislation in 2007 by means of a Government Emergency Ordinance.<sup>687</sup>

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<sup>681</sup> Letter no.71496/20.09.2011 of the Ministry of Justice, on file with the FRANET national expert.

<sup>682</sup> Romania/Law 135/2010 on the Criminal Procedure Code (*Legea nr. 135/2010 Codul de Procedură Penală a României*), 1 July 2010.

<sup>683</sup> *Ibid*, Article. 81.

<sup>684</sup> *Ibid*, Articles 125 and 130.

<sup>685</sup> See also, [www.juridice.ro/hotarari-judecatoresti](http://www.juridice.ro/hotarari-judecatoresti), the High Court of Cassation and Justice, *Buletinul Casatiei*, Bucharest, Editura Beck, nos.10-11/2010 and 1-10/2011.

<sup>686</sup> Letter no.71496/20.09.2011 of the Ministry of Justice, on file with the FRANET national expert.

The most relevant piece of legislation in the field of trafficking in human beings is Law no.678/2001,<sup>688</sup> whose provisions have been subsequently amended, allegedly in line with the current *acquis* concerning human trafficking as well.<sup>689</sup>

The Framework Decision on the standing of victims in criminal proceedings is reflected by the provisions of the New Criminal Procedure Code.<sup>690</sup>

### 9.2.9 Identification of future challenges

The effective enforcement of the new Criminal Procedure Code, including provisions on the rights of crime victims, is yet to be assessed.

Promoting and enforcing the rights of victims is not included in any public strategy.<sup>691</sup>

## 9.3 Developments in regard to CoE, OSCE or UN obligations

### 9.3.1 Policy and institutional developments

The UN Special Rapporteur on the independence of judges and lawyers has visited Romania in May 2011.<sup>692</sup>

### 9.3.2 Legislative developments

Romania has not yet signed the Council of Europe Convention on preventing and combating violence against women and domestic violence.<sup>693</sup>

The Romanian Parliament is currently debating amendments to the Mental Health Law<sup>694</sup> which are contrary to the United Nations Convention on the Rights of Persons with Disabilities even if Romania has ratified it.<sup>695</sup> One of the amendments states that NGO representatives may visit patients committed to psychiatric institutions only if holding an authorisation issued by the director of the National Centre for Mental Health and only with the consent of the manager of the institution.<sup>696</sup> The bill has been adopted by the Senate and is currently analysed by the Chamber of Deputies.<sup>697</sup>

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<sup>687</sup> Romania/Government Emergency Ordinance no. 113/2007, 17 October 2007.

<sup>688</sup> Romania/Law no. 678/2001 21 November 2001.

<sup>689</sup> Letter no. 71454/15.09.2011 of the Ministry for Justice, on file with the FRANET national expert.

<sup>690</sup> *Ibid.*

<sup>691</sup> Romania, Ministry of Justice (*Ministerul de Justiție*) (2010) ‘*The Strategy for the development of justice as a public service*’, available in English at

<http://www.just.ro/LinkClick.aspx?fileticket=UbPdRtMTIf0%3d&tabid=1332>, Superior Council of Magistracy (2011); Romania, Ministry of Administration and Interior (*Ministerul Administrației și Internelor*), ‘*Planul strategic pentru perioada 2010.2013*’, available in Romanian on <http://www.mai.gov.ro/Documente/Strategii/Plan%20strategic%20MAI%202010-2013%20-13122010.pdf>.

<sup>692</sup> Romania, Ministry of Foreign Affairs (*Ministerul Afacerilor Externe*), ‘*Vizita în România a Raportorului Special al ONU privind independența judecătorilor și avocaților*’, Press release, 19 May 2011, <http://www.mae.ro/node/8862>.

<sup>693</sup> Information available on the web page of the convention at <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=210&CM=1&DF=&CL=ENG>.

<sup>694</sup> Law no. 487/2002 concerning mental health and the protection of persons with mental disabilities, 8 August 2002.

<sup>695</sup> Romania/Law Ratifying the UN Convention on the Rights of Persons with Disabilities (*Legea nr. 221 din 11 noiembrie 2010 pentru ratificarea Convenției privind drepturile persoanelor cu dizabilități*) from 11 November 2010.

<sup>696</sup> Draft Bill to amend Law no. 487/2002 concerning mental health and the protection of persons with mental disabilities, Article 28.

<sup>697</sup> [http://www.cdep.ro/pls/proiecte/upl\\_pck.proiect?cam=2&idp=11728](http://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=11728).

### 9.3.3 National case law

Nothing to report. Due to time constraints, only available on-line resources and law bulletins published in the period under survey could be consulted.<sup>698</sup>

### 9.3.4 Statistical data made available in the reference period

Nothing to report. Some information relevant to this section has been presented in section 4.5.4. above.

### 9.3.5 Research and studies

Nothing to report. Some information relevant to this section has been presented in section 4.5.5. above.

### 9.3.6 Promising 'good' practices

### 9.3.7 Nothing to report. Key issues in public debate

Romania has ratified the United Nations Convention on the Rights of Persons with Disabilities.<sup>699</sup> However, no harmonizing legislation had been adopted and the latest amendments to the Mental Health Law<sup>700</sup> currently analysed by the Romanian Parliament, have sparked debate on the issue of an independent monitoring mechanism, as provided by the Convention. Despite NGO arguments, the Romanian Senate has maintained the provision that states that NGO representatives may visit patients committed to psychiatric institutions only if holding an authorisation issued by the director of the National Centre for Mental Health and only with the consent of the manager of the institution.<sup>701</sup>

### 9.3.8 Information on trends until 2011

The Law on Trafficking in Human Beings,<sup>702</sup> subsequently amended, has incorporated the recommendations of the Council of Europe Convention on Action against Trafficking in Human Beings.

As for criminal proceedings, few provisions of the new Criminal Procedure Code<sup>703</sup> mention the child victim of a crime. For instance, provisions detailing how a child witness will be heard and stating that, if prosecutor or court deems it necessary, a psychologist must attend the hearing, while, in all cases, the hearing must avoid having a negative impact on the child.<sup>704</sup> The child who appears as a witness in criminal proceedings may be declared a "vulnerable witness" and may be offered protection.<sup>705</sup> Most procedural safeguards, echoing the CE guidelines on child-friendly justice, are provided for the child offender.<sup>706</sup>

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<sup>698</sup> See also, [www.juridice.ro/hotarari-judecatoresti](http://www.juridice.ro/hotarari-judecatoresti), the High Court of Cassation and Justice, *Buletinul Casatiei*, Bucharest, Editura Beck, nos.10-11/2010 and 1-10/2011.

<sup>699</sup> Romania/Law Ratifying the UN Convention on the Rights of Persons with Disabilities (*Legea nr. 221 din 11 noiembrie 2010 pentru ratificarea Convenției privind drepturile persoanelor cu dizabilități*) from 11 November 2010.

<sup>700</sup> Romania, Law no. 487/2002 concerning mental health and the protection of persons with mental disabilities, 8 August 2002.

<sup>701</sup> Draft Bill to amend Law no. 487/2002 concerning mental health and the protection of persons with mental disabilities (*Lege pentru modificarea și completarea Legii sănătății mintale și a protecției persoanelor cu tulburări psihice nr. 487/2002*), Article 28.

<sup>702</sup> Romania, Law 678/2001 21 November 2001.

<sup>703</sup> Romania, Law 135/2010 on the Criminal Procedure Code, 1 July 2010.

<sup>704</sup> *Ibid*, Article 124.

<sup>705</sup> *Ibid*, Article 130 (1)(b).

<sup>706</sup> *Ibid*, Articles 505 to 509.

### 9.3.9 Identification of future challenges

The enforcement of some of the provisions that provide procedural safeguards for child victims is left to the discretion of prosecution or court, who apply them if ‘deemed necessary’ – such as the attendance of a psychologist, appointment of a legal aid lawyer or granting the statute of vulnerable witness.<sup>707</sup>

## 9.4 National initiatives

### 9.4.1 Policy and institutional developments

The Romanian MLFSP has been implementing the National Interest Program (*Programul de Interes Național*) “Intervention in domestic violence situations.”<sup>708</sup> The program has a budget of RON1,860,000 (approx. €432,550), is entirely financed from the state budget and aims to improve services offered in situations of domestic violence.<sup>709</sup>

### 9.4.2 Legislative developments

A Government Decision<sup>710</sup> adopted in November 2010 completes the list of responsibilities delegated to local General Direction for Social Welfare and Child Protection (GDSWCP) (*Direcția Generală de Asistență Socială și Protecția Copilului*) (DGASPC). The local authority will monitor cases of domestic violence, take active steps to prevent domestic violence and provide services to children and adults victims of domestic violence or at risk of domestic violence.<sup>711</sup>

SCM and MoJ have refused to give their approval for the draft bill containing amendments to the Criminal Procedure Code and Law on Domestic Violence,<sup>712</sup> namely seeking to introduce the restraining order, as well as other protection measures, currently in parliamentary procedure. SCM has criticised the proposal for overlapping with other procedural provisions and generating additional caseload for courts.<sup>713</sup>

A draft bill submitted for public debate in June 2011 aims to regulate the organisation and functioning of the Probation Services (*Direcțiile de Probațiune*), formerly known as the Service for the Protection of Victims and Social Reintegration of Offenders (SPVSRO) (*Serviciul pentru Protecția Victimelor și Reintegrarea Socială a Infractorilor*) (SPVRSI). According to the proposal, the probation services will only have responsibilities in connection with offenders, as crime victims are not mentioned.<sup>714</sup>

### 9.4.3 National case law

Nothing to report.

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<sup>707</sup> *Ibid*, Articles 124, 130, 366.

<sup>708</sup> Letter no.DGPC/SML/amc/7402/14.09.2011 of the MLFSP, on file with the FRANET national expert.

<sup>709</sup> *Ibid*.

<sup>710</sup> Romania, Government Decision no.1084/2010 to amend and complete Annex 1 to Government Decision no.1434/2004 concerning the attributions and framework regulation for the organisation and functioning of GDSWCP (*Hotărârea de Guvern nr. 1084/2010 pentru modificarea și completarea anexei nr. 1 la la HG nr. 1434/2004 privind atribuțiile și regulamentul-cadru de funcționare ale Direcției Generale de asistență socială și protecția copilului*), 28 October 2011.

<sup>711</sup> *Ibid*, Article 1 (6).

<sup>712</sup> Romania/Law 217/2003 on the prevention and combating of domestic violence (*Legea nr. 217/2003 privind prevenirea și combaterea violenței în familie*), 22 May 2003.

<sup>713</sup> SCM Plenary session, 7 October 2010,

[http://www.csm1909.ro/csm/linkuri/08\\_10\\_2010\\_35195\\_ro.htm](http://www.csm1909.ro/csm/linkuri/08_10_2010_35195_ro.htm).

<sup>714</sup> Romania/Ministry of Justice, ‘Law concerning the organisation and functioning of probation’ (*Legea privind organizarea și funcționarea sistemului de probațiune*), <http://www.just.ro/MeniuStanga/Normativepapers/Proiectedeactenormativeaflateindezbatere/tabid/93/Default.aspx>.

#### 9.4.4 Statistical data made available in the reference period

Nothing to report.

#### 9.4.5 Research and studies

The US State Department Human Rights Report for 2010<sup>715</sup> showed that in Romania violence against women, including spousal abuse, has continued to be a serious problem, which the government has failed to address.<sup>716</sup> While the Criminal Code imposes stronger sanctions for violent offences committed against family members than for similar offences committed against others, the courts prosecuted very few cases of domestic abuse. According to the document, many cases were resolved before or during trial when alleged victims dropped their charges or reconciled with the accused abuser.<sup>717</sup>

The same report has criticised the protection offered to victims of trafficking and alleged they are subjected to degrading treatment during the judicial proceedings.

#### 9.4.6 Promising 'good' practices

Nothing to report.

#### 9.4.7 Key issues in public debate

Protection offered to crime victims, especially victims of domestic violence, is still criticised as weak and unsatisfactory by NGOs.

#### 9.4.8 Information on trends until 2011

Romania has taken measures to implement some of the *acquis* related to the protection of the victims. For instance, Council Directive on compensation to crime victims has been transposed into the Romanian legislation by Government Emergency Ordinance 113/2007,<sup>718</sup> while the Framework Decision on the standing of victims in criminal proceedings is reflected by the provisions of the New Criminal Procedure Code.<sup>719</sup> Judicial authorities are under a duty to inform crime victims of their rights. A system of financial compensation is available, within the limit of 10 minimum gross wages.<sup>720</sup> The SPVSRO was mandated to offer free psychological counselling, as well as "other types of services."<sup>721</sup> Legislation concerning trafficking in human beings is largely consistent with EU regulations on the issue.<sup>722</sup>

A range of services was provided for children victims of violence, victims of domestic violence, as well as victims of trafficking.

In 2010, however, government agencies which had a relevant mandate were either dissolved or turned into mere departments of a ministry, thus losing independence and decisional power, as well as funds.

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<sup>715</sup> US Department of State, *2010 Country Report on Human Rights Practices*, US Department of State, April 2011, available on <http://www.state.gov/documents/organization/160210.pdf>.

<sup>716</sup> *Ibid*, p.23.

<sup>717</sup> *Ibid*, p.24.

<sup>718</sup> Romania/Government Emergency Ordinance no. 113/2007 to amend and complete Law no. 211/2004 on measures to ensure the protection of crime victims (*OG nr. 113/2007 pentru modificarea și completarea Legii nr. 211/2004 privind unele măsuri pentru asigurarea protecției victimelor infracțiunilor*), 17 October 2007.

<sup>719</sup> *Ibid*.

<sup>720</sup> Romania/Law no. 211/2004 on measures to ensure the protection of crime victims (*Legea nr. 211/2004 privind unele măsuri pentru asigurarea protecției victimelor infracțiunilor*), 1 June 2004.

<sup>721</sup> *Ibid*, Article 11.

<sup>722</sup> Romania, Law 678/2001, 21 November 2001.

#### **9.4.9 Identification of future challenges**

Currently, victims of crimes are not included in any public policy document and no further initiative related to victim protection could be identified.<sup>723</sup>

Due to budget constraints, victim services may be under financial strain.

### **9.5 Compensation**

#### **9.5.1 Policy and institutional developments**

Funds allocated through victim compensation schemes have increased in 2011. On the other hand, provisions regulating financial compensations for victims of the communist regime have been declared unconstitutional. No other relevant developments have been recorded during the period under survey

#### **9.5.2 Legislative developments**

Nothing to report.

#### **9.5.3 National case law**

See Annex 4 for relevant decisions of the Constitutional Court.

#### **9.5.4 Statistical data made available in the reference period**

In 2011, MoJ has allocated RON1,740,000 (approx. €404,651) for legal aid offered to crime victims and a total of RON 27,262,000 (approx. €6,340,000) for financial compensation to crime victims, as compared to RON4,570,000 (approx. €1,062,790) in 2010.<sup>724</sup>

#### **9.5.5 Research and studies**

Nothing to report.

#### **9.5.6 Promising 'good' practices**

Nothing to report.

#### **9.5.7 Key issues in public debate**

Nothing to report.

#### **9.5.8 Information on trends until 2011**

Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims was transposed in Romania's national legislation.<sup>725</sup> Victims of crimes (or their relatives in case of homicide) may obtain financial compensation in case of personal injury, attempted murder, rape or other forms of sexual abuse, trafficking of persons or any other crime committed with intent.<sup>726</sup> The applications procedure is detailed by the legislation and

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<sup>723</sup> Letter no.71496/20.09.2011 of the Ministry of Justice and Letter no DGPC/SML/amc/7402/14.09.2011 of MLFSP, on file with the FRANET national expert.

<sup>724</sup> Letter no.71496/20.09.2011 of MoJ, on file with the FRANET national expert.

<sup>725</sup> Romania/Government Emergency Ordinance no. 113/2007 to amend and complete Law no. 211/2004 on measures to ensure the protection of crime victims (*OUG nr. 113/2007 pentru modificarea și completarea Legii nr. 211/2004 privind unele măsuri pentru asigurarea protecției victimelor infracțiunilor*), 17 October 2007.

<sup>726</sup> Romania/Law no. 211/2004 on measures to ensure the protection of crime victims (*Legea nr. 211/2004 privind unele măsuri pentru asigurarea protecției victimelor infracțiunilor*), 1 June 2004.



information about the scheme is offered on MoJ's web page.<sup>727</sup> Judicial authorities are under a duty to inform crime victims of their right to compensation.<sup>728</sup>

Law 221/2009<sup>729</sup> offered victims of the Communist regime financial compensations for the moral and material damages incurred under the Communist regime.

Since 2008 there were no developments in relation to victim's compensation schemes.

### 9.5.9 Identification of future challenges

Compensation to crime victims is not underlined as an issue of concern in any public policy document.

## 9.6 Informing victims

### 9.6.1 Policy and institutional developments

The Ministry of Foreign Affairs (MFA)(*Ministerul Afacerilor Externe*)(MAE) has published, in cooperation with NAATP, an information guide on trafficking in human beings, targeting Romanian citizens travelling or working abroad.<sup>730</sup> The purpose of the guide is to increase awareness on situations of risk, as well as provide information on assistance available form victims of trafficking.

The Help line for victims of trafficking may currently be used from abroad as well.<sup>731</sup> The number is advertised on NAATP's web page and in the information brochures distributed by the MFA (see above).

### 9.6.2 Legislative developments

Children victims of violence or human trafficking are to be informed of their rights and options by case workers.<sup>732</sup> Local authorities are to collaborate with civil society organisations in order to implement awareness raising campaigns and must develop or support the development of an information system for victims of domestic violence.<sup>733</sup>

The Law on preventing and combating trafficking in human beings<sup>734</sup> has been amended to clearly stipulate the attributions of NAATP.<sup>735</sup> The Agency is mandated to organise

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<sup>727</sup> Annex 3 to Response 86954/16.09.2010 of the Romanian Ministry for Justice, on file with the FRANET expert.

<sup>728</sup> Romania, Law no.211/2004, 1 June 2004, Article 4.

<sup>729</sup> Romania/Law 221/2009 concerning political convictions and assimilated administrative measures taken during 6 March 1945 – 22 December 1989 (*Legea nr. 221/2009 privind condamnările cu caracter politic și măsurile administrative asimilate acestora pronunțate în perioada 6 martie 1945 – 22 decembrie 1989*), 2 June 2009.

<sup>730</sup> Romania, Ministry of Foreign Affairs (2011), 'Information guide concerning trafficking in human beings', Bucharest, Ministry of Foreign Affairs, available in Romanian at [http://www.mae.ro/sites/default/files/file/userfiles/file/pdf/servicii-consulare/2011.08\\_ghid\\_trafic\\_pers.pdf](http://www.mae.ro/sites/default/files/file/userfiles/file/pdf/servicii-consulare/2011.08_ghid_trafic_pers.pdf).

<sup>731</sup> According to NAATP's web page, <http://anitp.mai.gov.ro/>.

<sup>732</sup> Government Decision no. 49/2011 to approve the framework methodology for the prevention and multidisciplinary team and network intervention in cases of violence against the child and domestic violence and of the methodology for the inter-agency, multidisciplinary intervention concerning children that are exploited or at risk of exploitation, children victims of trafficking and Romanian migrant children victims of other forms of violence on the territory of other states, 19 January 2011.

<sup>733</sup> Romania/Government Decision no.1084/2010 to amend and complete Annex 1 to Government Decision no.1434/2004 concerning the attributions and framework regulation for the organisation and functioning of GDSWCP (*Hotărârea de Guvern nr. 1084/2010 pentru modificarea și completarea anexei nr. 1 la la HG nr. 1434/2004 privind atribuțiile și regulamentul-cadru de funcționare ale Direcției Generale de asistență socială și protecția copilului*), 28 October 2011.

<sup>734</sup> Law 678/2001, 21 November 2001.

<sup>735</sup> Emergency Ordinance no. 41/2001, 3 May 2011.



awareness raising campaigns and provide assistance to victims of trafficking, including support during judicial proceedings.<sup>736</sup> Romanian embassies and consulates are under a duty to post information concerning Romanian legislation, as well as contact information for NAATP and regional centres.<sup>737</sup>

### **9.6.3 National case law**

Nothing to report.

### **9.6.4 Statistical data made available in the reference period**

Nothing to report.

### **9.6.5 Research and studies**

Nothing to report.

### **9.6.6 Promising 'good' practices**

Nothing to report.

### **9.6.7 Key issues in public debate**

Nothing to report.

### **9.6.8 Information on trends until 2011**

Measures to inform crime victims of their rights have been gradually taken between 2004 and 2010.

The 'Useful Information' section on the Ministry for Justice website displays, among others, sub-section 19: 'How to obtain financial compensation in a EU Member State pursuant to Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims' (in Romanian only). The application form for financial compensation, in Romanian only, is included in the sub-section.<sup>738</sup>

All criminal investigation and judicial authorities are under an obligation to notify crime victims of their rights to assistance, including financial compensation.<sup>739</sup> This information is also to be displayed on the websites of judicial authorities.<sup>740</sup>

In 2009, a green line has been opened to assist victims of crime in obtaining information on their rights and compensations.<sup>741</sup> The green line has been opened by the Ministry for Justice in collaboration with the Ministry of Administration and Internal Affairs and information was displayed on the Ministry for Justice website.<sup>742</sup> Local authorities are also mandated to open one such green line at local level<sup>743</sup> but, so far, no such initiative has been identified.

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<sup>736</sup> *Ibid.*, Article 7.

<sup>737</sup> *Ibid.*, Article 9.

<sup>738</sup> Information available on

<http://www.just.ro/MeniuStanga/PublicInformation/Informațiiutile/tabid/782/Default.aspx>.

<sup>739</sup> Romania/Law no. 211/2004 on measures to ensure the protection of crime victims (*Legea nr. 211/2004 privind unele măsuri pentru asigurarea protecției victimelor infracțiunilor*), 1 June 2004, Article 4.

<sup>740</sup> Romania/OUN 113/2007 (17.10.2007).

<sup>741</sup> Information available on

<http://www.just.ro/MeniuStanga/PublicInformation/Informațiiutile/tabid/782/Default.aspx>.

<sup>742</sup> Romania/Law no. 211/2004 on measures to ensure the protection of crime victims (*Legea nr. 211/2004 privind unele măsuri pentru asigurarea protecției victimelor infracțiunilor*), 1 June 2004.

<sup>743</sup> *Idem*, Article 16.

Victims of trafficking in human beings must be informed of their rights under the Law on preventing and combating trafficking in human beings.<sup>744</sup> The National Agency Against Trafficking in Persons (NAATP) (*Agenția Națională împotriva Traficului de Persoane*) (ANTP) has coordinated several public awareness campaigns. The web page of NAATP<sup>745</sup> contains “Useful information” for persons who seek to avoid being trafficked, as well as contact data for reporting a situation of trafficking.

### 9.6.9 Identification of future challenges

Making sure that information about their rights and available assistance becomes more accessible to crime victims, other than victims of trafficking, is not currently a public policy priority.<sup>746</sup>

## 9.7 Data collection

### 9.7.1 Policy and institutional developments

Starting with January 2011, data referring to crimes, offenders and crime victims is collected by the MoJ, with the assistance of SCM.<sup>747</sup> Data so collected is disaggregated by types of crimes, as sanctioned by final judicial decisions adopted since 2010.

### 9.7.2 Legislative developments

A Government decision<sup>748</sup> adopted in January 2011 officially establishes a data collection mechanism meant to identify victims of domestic violence as well as children in need of special protection. Relevant information is collected by local welfare services, which send the data further up to the GDSWCP, which, in its turn, is also mandated to request, collect and process data from other local authorities. Data collected at national level is centralised by the Ministry for Labour, Family and Social Protection, which is mandated to request, collect and process data from other state authorities as well.

According to the latest amendments<sup>749</sup> to the Law on preventing and combating trafficking in human beings,<sup>750</sup> the Romanian MAIA, through NAATP and the General Inspectorate of the Romanian Police (GIRP)(*Inspectoratul General al Poliției Române*) (IGPR) is responsible for gathering and analysing all data about trafficking in persons, including victims and perpetrators.

### 9.7.3 National case law

Nothing to report.

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<sup>744</sup> Romania/Law no. 678/2001 concerning the prevention and combating of trafficking in human beings (*Legea nr. 678/2001 privind prevenirea și combaterea traficului de persoane*), 21 November 2001

<sup>745</sup> <http://anitp.mai.gov.ro/ro/>

<sup>746</sup> Romania, Ministry of Justice (*Ministerul de Justiție*) (2010) ‘*The Strategy for the development of justice as a public service*’, available in English at <http://www.just.ro/LinkClick.aspx?fileticket=UbPdRtMTIf0%3d&tabid=1332>, Superior Council of Magistracy (2011), *Report on the State of Justice in 2010*, Bucharest, Superior Council of Magistracy, available in Romanian at [www.csm1909.ro](http://www.csm1909.ro).

<sup>747</sup> Government Decision no.935/2010, 1 September 2010, Article 14.

<sup>748</sup> Government Decision no.1084/2010, 28 October 2010.

<sup>749</sup> Government Emergency Ordinance no.41/2001, 27 April 2011.

<sup>750</sup> Law no. 678/2011, 21 November 2001.

#### 9.7.4 Statistical data made available in the reference period

The General Prosecutor's Office has reported a total of 1,983 victims of domestic violence recorded in 2010, as compared to 1,804 in 2009. A total of 466 offenders have been indicted for offences qualifying as domestic violence.<sup>751</sup>

MLFSP has reported 12,461 situations of domestic violence for 2009 and 1,718 situations of domestic violence during the first half of 2010.<sup>752</sup> In 2009, 6,804 victims were reportedly female and 2,827 were male, while the gender of 2,830 of the victims has not been recorded. In 2010, 1,115 of the victims were women.

NAATP reports a total of 488 victims of trafficking identified during the first half of 2011, as compared to 379 victims identified during the first half of 2010, of which 341 were women and 147 were men.<sup>753</sup>

#### 9.7.5 Research and studies

Nothing to report.

#### 9.7.6 Promising 'good' practices

Nothing to report.

#### 9.7.7 Key issues in public debate

Nothing to report.

#### 9.7.8 Information on trends until 2011

Data referring to crime victims (including victims of domestic violence) is collected by several agencies.

The General Inspectorate of the Romanian Police (GIPR) (*Inspectoratul General al Poliției Române*) (IGPR) collects data on offences reported and investigated by the police.<sup>754</sup>

The General Prosecutor's Office (GPO) collects data on victims of crime and the number of offenders indicted (not convicted) for each type of offence. The data is first structured according to the type of offence (e.g. murder, manslaughter, rape, etc). Victims belonging to each category are segregated according to age (adults and minors), gender (male or female), place of residence (urban or rural) and protection measures they were subjected to (without any details as to which protection measures were, in fact, taken).<sup>755</sup>

MLFSP collects data on situations of domestic violence and violence against children recorded by local social workers, regardless whether a complaint has been filed or not with the police.<sup>756</sup>

NAATP collects data on victims of trafficking. Data collected by one institution is not correlated with data collected by other institutions. Statistical indicators are different, which makes data merging and comparing difficult.

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<sup>751</sup> Letter no. 1540/C/12.09.2011 of the General Prosecutor's Office, on file with the FRANET national expert.

<sup>752</sup> Letter no DGPC/SML/amc/7402/14.09.2011 of MLFSP, on file with the FRANET national expert.

<sup>753</sup> National Agency Against Trafficking in Human Beings, Agența Națională împotriva Traficului de Persoane (2011), 'Analiză privind situația victimelor identificate în primul semestru 2011' Bucharest, p.3.

<sup>754</sup> Letter no.708959/S4/ID/14.09.2011 of GIPR, on file with the FRANET national expert.

<sup>755</sup> Letter no. 1540/C/12.09.2011 of the General Prosecutor's Office, on file with FRANET national expert.

<sup>756</sup> Letter no DGPC/SML/amc/7402/14.09.2011 of MLFSP, on file with the FRANET national expert.

### **9.7.9 Identification of future challenges**

Each institution that collects data on crime has its own area of interest, which influences the data it collects and the indicators it uses. This leads to a difficulty in establishing the exact number of victims for each type of crime, as well as other particulars that would help understand the situation and devise a prevention or intervention policy. There are no indications that institutions that collect data concerning crime victims plan a joint methodology which would allow harmonisation of collected data.

## **9.8 Restorative justice**

### **9.8.1 Policy and institutional developments**

The issue of restorative justice has not been reflected by any official public policy document or institutional practice during the reference period.

### **9.8.2 Legislative developments**

Nothing to report.

### **9.8.3 National case law**

Nothing to report.

### **9.8.4 Statistical data made available in the reference period**

Nothing to report.

### **9.8.5 Research and studies**

Nothing to report.

### **9.8.6 Promising ‘good’ practices**

Nothing to report.

### **9.8.7 Key issues in public debate**

Nothing to report.

### **9.8.8 Information on trends until 2011**

During 2003-2006, a few projects aimed at promoting restorative justice have been implemented by NGOs in partnership with local and state authorities, with external funding.<sup>757</sup> At the end of the projects, the former SPVSRO has drafted and adopted a methodology for using restorative justice methods in their activity.<sup>758</sup> The projects targeted smaller offences, where conciliation of the parties could put an end to judicial proceedings.

Currently, it is unknown to what extent restorative justice methods are still applied by the probation services.

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<sup>757</sup> Institutul Național de Criminologie (2005), p.3. See also Centrul de Mediere și Securitate Comunitară (2006), 'Centrul de Mediere și Securitate Comunitară Iași, derulează în perioada iunie 2005 – iulie 2006

proiectul "Model participativ de Justiție Restaurativă aplicat în cazurile de infracționalitate juvenilă", Press release, June 2005, available in Romanian on

<http://www.cmssc.ro/comunicate/Model%20participativ%20de%20Justitie%20Restaurativa.pdf>.

<sup>758</sup> S.M. Rădulescu, D. Banciu, E. Balica, C.D. mboeanu (2004), 'Evaluarea proiectului experimental de justiție restaurativă derulat în București și Craiova', Bucharest, Centrul de Resurse Juridice.

NGO's that have previously implemented projects promoting restorative justice have currently focused exclusively on mediation.<sup>759</sup>

### 9.8.9 Identification of future challenges

All relevant legislation mentions only mediation as an alternative method for dispute resolution, including in criminal cases.<sup>760</sup>

Restorative justice is not acknowledged by any public policy document or legal text.

## 9.9 Important information not covered above

Nothing to report.

Official exact title EN	Official title RO	Full reference
<b>S.M. Rădulescu, D. Banciu, E. Balica, C.D. mboeanu (2004), ,Evaluating the pilot project on restorative justice carried out in Bucharest and Craiova'</b>	S.M. Rădulescu, D. Banciu, E. Balica, C.D. mboeanu (2004), , <i>Evaluarea proiectului experimental de justiție restaurativă derulat în București și Craiova'</i> .	S.M. Rădulescu, D. Banciu, E. Balica, C.D. mboeanu (2004), , <i>Evaluarea proiectului experimental de justiție restaurativă derulat în București și Craiova'</i> , Bucharest, Centrul de Resurse Juridice
<b>US Department of State (2011), 2010 Country Report on Human Rights Practices.</b>		US Department of State (2011), <i>2010 Country Report on Human Rights Practices</i> , US Department of State, April 2011, available on <a href="http://www.state.gov/documents/organization/160210.pdf">http://www.state.gov/documents/organization/160210.pdf</a> .
<b>Government Decision no. 49/2011 to approve the framework methodology for the prevention and multidisciplinary team and network intervention in cases of violence against the child and domestic violence and of the methodology for the inter-agency, multidisciplinary intervention concerning children that are exploited or at risk</b>	Hotararea Guvernului nr. 49/2011 pentru aprobarea Metodologiei-cadru privind prevenirea și intervenția în echipă multidisciplinară și în rețea în situațiile de violență asupra copilului și de violență în familie și a Metodologiei de intervenție multidisciplinară și interinstituțională privind copiii exploatați și aflați în situații de risc de exploatare prin muncă, copiii victime ale traficului de persoane, precum și copiii români migranți victime ale altor forme de violență pe teritoriul altor state	Romania, Government Decision no. 49/2011 to approve the framework methodology for the prevention and multidisciplinary team and network intervention in cases of violence against the child and domestic violence and of the methodology for the inter-agency, multidisciplinary intervention concerning children that are exploited or at risk of exploitation, children victims of trafficking and Romanian migrant children victims of other forms of violence on the territory of other states ( <i>Hotararea Guvernului nr. 49/2011 pentru aprobarea Metodologiei-cadru privind prevenirea și intervenția în echipă multidisciplinară și în rețea în situațiile de violență asupra copilului și de violență în familie și a Metodologiei de intervenție multidisciplinară și interinstituțională privind copiii exploatați și aflați în situații de risc de exploatare prin muncă, copiii victime ale traficului de persoane, precum și copiii români migranți victime ale altor forme de violență pe teritoriul altor state</i> ), 19 January 2011, Official Monitor no.117/2011, Part. I.

<sup>759</sup> See the web page of the Centre for Mediation and Community Security, [www.cmsc.ro](http://www.cmsc.ro).

<sup>760</sup> Law 134/2010 on the Civil Procedure Code, 1 July 2010; Law 135/2010 on the Criminal Procedure Code, 1 July 2010; Law 202/2010 concerning measures to accelerate judicial proceedings, 25 October 2010.

of exploitation, children victims of trafficking and Romanian migrant children victims of other forms of violence on the territory of other states.		
Ministry of Justice (2010) 'The Strategy for the development of justice as a public service'	Ministerul justiției (2010), 'Strategia de dezvoltare a justiției ca serviciu public'.	Romania, Ministry of Justice ( <i>Ministerul de Justiție</i> ) (2010) 'The Strategy for the development of justice as a public service', available in English at <a href="http://www.just.ro/LinkClick.aspx?fileticket=UbPdRtMT1f0%3d&amp;tabid=1332">http://www.just.ro/LinkClick.aspx?fileticket=UbPdRtMT1f0%3d&amp;tabid=1332</a>
Ministry of Administration and Interior, (2010) 'The strategic plan for 2010-2013'.	<i>Ministerul Administrației și Internelor</i> , 'Planul strategic pentru perioada 2010.2013'	Romania, Ministry of Administration and Interior ( <i>Ministerul Administrației și Internelor</i> ), 'Planul strategic pentru perioada 2010.2013', available in Romanian on <a href="http://www.mai.gov.ro/Documente/Strategii/Plan%20strategic%20MAI%202010-2013%20-13122010.pdf">http://www.mai.gov.ro/Documente/Strategii/Plan%20strategic%20MAI%202010-2013%20-13122010.pdf</a>
Ministry of Foreign Affairs (2011), 'Information Guide concerning Trafficking in Human Beings'	Ministerul Afacerilor Externe (2011), 'Ghid de informare privind traficul de persoane'	Romania, Ministry of Foreign Affairs (2011), 'Information guide concerning trafficking in human beings', Bucharest, Ministry of Foreign Affairs, available in Romanian at <a href="http://www.mae.ro/sites/default/files/file/userfiles/file/pdf/servicii-consulare/2011.08_ghid_trafic_pers.pdf">http://www.mae.ro/sites/default/files/file/userfiles/file/pdf/servicii-consulare/2011.08_ghid_trafic_pers.pdf</a> .
Law no. 211/2004 on measures to ensure the protection of crime victims.	Legea nr. 211/2004 privind unele măsuri pentru asigurarea protecției victimelor infracțiunilor	Romania, Law no. 211/2004 on measures to ensure the protection of crime victims ( <i>Legea nr. 211/2004 privind unele măsuri pentru asigurarea protecției victimelor infracțiunilor</i> ), 1 June 2004, Official Monitor no.505/2004, part. I
Romania, Law no. 678/2001 concerning the prevention and combating of trafficking in human beings.	<i>Legea nr. 678/2001 privind prevenirea și combaterea traficului de persoane.</i>	Romania/Law no. 678/2001 concerning the prevention and combating of trafficking in human beings ( <i>Legea nr. 678/2001 privind prevenirea și combaterea traficului de persoane</i> ), 21 November 2001, Official Monitor no.783/2001, part. I.
Law no. 487/2002 concerning mental health and the protection of persons with mental disabilities	Legea nr. 487/2002 privind sănătatea mintală și protecția persoanelor cu tulburări psihice	Romania, Law no. 487/2002 concerning mental health and the protection of persons with mental disabilities ( <i>Legea nr. 487/2002 privind sănătatea mintală și protecția persoanelor cu tulburări psihice</i> ), 8 August 2002, Official Bulletin no.589/2002, Part I

<b>Government Emergency Ordinance no. 113/2007 to amend and complete Law no. 211/2004 on measures to ensure the protection of crime victims.</b>	<i>OUG nr. 113/2007 pentru modificarea și completarea Legii nr. 211/2004 privind unele măsuri pentru asigurarea protecției victimelor infracțiunilor</i>	Romania, Government Emergency Ordinance no. 113/2007 to amend and complete Law no. 211/2004 on measures to ensure the protection of crime victims ( <i>OUG nr. 113/2007 pentru modificarea și completarea Legii nr. 211/2004 privind unele măsuri pentru asigurarea protecției victimelor infracțiunilor</i> ), 17 October 2007, Official Monitor no. 729/2007, part I.
<b>Superior Council of Magistracy (2011), <i>Report on the State of Justice in 2010.</i></b>	Consiliul Superior al Magistraturii (2011), <i>Raport privind starea justiției în 2010.</i>	Superior Council of Magistracy (2011), <i>Report on the State of Justice in 2010</i> , Bucharest, Superior Council of Magistracy, available in Romanian at <a href="http://www.csm1909.ro">www.csm1909.ro</a> .
<b>National Agency Against Trafficking in Human Beings, (2011) ‘<i>Analysys concerning the situation of victims during the first half of 2011.</i>’</b>	Agenta Națională împotriva Traficului de Persoane, (2011), <i>Analiză privind situația victimelor identificate în primul semestru 2011.</i>	Agenta Națională împotriva Traficului de Persoane (2011), ‘ <i>Analiză privind situația victimelor identificate în primul semestru 2011</i> ’ Bucharest, Agența Națională împotriva Traficului de Persoane.



## **10 ANNEXES**

### **10.1 ANNEX 1**

Tables updated and included as separate document.

### **10.2 ANNEX 2**

Tables updated and included as separate document.

### **10.3 ANNEX 3**

Tables included as distinct document.

### **10.4 ANNEX 4**

Tables included as distinct document.

### **10.5 ANNEX 5**

Additional statistical data available included in Annex 5.