



Nº 709

The Permanent Mission of Romania to the United Nations Office at Geneva and the International Organizations in Switzerland presents its compliments to the Special Procedures Branch and, referring to the joint communication AL ROU 2/2020 of 25 January 2021, has the honor to present herewith the official response of the Romanian authorities.

The Permanent Mission of Romania would appreciate a confirmation of receipt of the above mentioned document.

The Permanent Mission of Romania to the United Nations Office at Geneva and the International Organizations in Switzerland avails itself of this opportunity to renew to the Special Procedures Branch the assurances of its highest consideration.



**Geneva, 25 March 2021**

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## **Răspunsul României la comunicarea comună a celor patru raportori Speciali din cadrul procedurilor speciale ale Consiliului Drepturilor Omului al Organizației Națiunilor Unite**

Following receipt of the joint communication, letter no. AL ROU 2/2020, concerning an alleged network of Romanian social media accounts publishing child sexual abuse material depicting under-aged girls, the Ministry of Foreign Affairs of Romania presents its reply to the Special Procedures mandate holders, following a thorough consultation with relevant Romanian authorities.

The reply contains information from the Parliament - the Chamber of Deputies and the Senate - from governmental institutions - the Ministry of Justice, the Ministry of Internal Affairs, the National Authority for the Rights of Persons with Disabilities, Children and Adoptions (hereinafter "ANDPDCA"), the National Agency for Equal Opportunities between Women and Men (hereinafter, ANES), as well as from the competent autonomous institutions - the Public Ministry - Prosecutor's Office attached to the High Court of Cassation and Justice and the Directorate for the Investigation of Organized Crime and Terrorism (hereinafter, "DIICOT").

Romania reiterates its full commitment to promoting and protecting human rights and fundamental freedoms in all fields of life and seeks to fully apply in good faith its obligations and responsibilities under international law, international human rights law and international humanitarian law. We attach great importance to the work of the Special Procedures, an essential mechanism for the protection and promotion of human rights globally.

The fight against trafficking in human beings represents a priority for the Romanian authorities. National efforts seek not only eradicating the phenomenon, but also prevention, through campaigns targeting vulnerable groups.

Romania also pays special attention to the promotion of women's rights and makes efforts to prevent and eliminate any form of violence and discrimination of any kind against women and girls. At national level, the authorities have taken important steps in promoting equal opportunities, nondiscrimination and combating violence against women, both as human rights objectives and premises for social justice, development and peace.

The Romanian authorities have taken note of the concerns expressed by the distinguished Special Rapporteurs on the alleged facts and have conducted a comprehensive research in order to provide all necessary information and clarifications. All questions addressed in the Joint Letter have been carefully analyzed and claims made therewith discussed in detail in the following pages of this response.

The reply has been structured in eight sections, in line with the questions from the joint communication. There are cases in which one section covers two questions.

The first section provides information concerning the relevant legal framework in the field of trafficking in minors and protection of child rights, as well as some general comments of the Romanian authorities. Aspects related to the criminal investigations undertaken, measures of international cooperation, specialized assistance and child-friendly procedures facilitating the participation of children in investigations are referred to in sections II, III and IV. Section V presents the status of the draft laws PLX606/2019 and 655/2020, while section VI is dedicated to the specific measures taken with regard to Roma girls. Section VII presents the national regulations in place ensuring international social media platforms monitor, review and remove inappropriate contents by users. The last section covers the preventive measures taken by the Romanian authorities in the field of trafficking and child pornography.

In the annex, the mandate holders will find excerpts from the Criminal Code (main articles referred to in the response) and additional information regarding the legal provisions concerning the participation of a child in investigations and the preventive measures taken in the field of trafficking and child pornography.

### *I. Protective measures and policies; general comments*

The Romanian legislation (both in the field of child rights and the criminal law) was constantly amended or completed in order to adequately incriminate and sanction the various forms that trafficking in human beings and sexual abuse and violence may take, according to the gravity of the offence.

The victim of the trafficking in human beings is a natural person, passive subject of the offences established in accordance with Art. 210 – Trafficking in Human Beings, Art. 211 – Trafficking of Minors, Art. 264 – Facilitation of Illegal Stay in Romania and Art. 374 – Child Pornography of the Criminal Code, or of the attempt to perpetrate such an offence, participating or not in the criminal proceeding as a victim.

Law no. 272/2004 on the protection and promotion of the rights of the child, republished, with subsequent amendments and supplements, establishes the national legal framework for respecting, promoting and guaranteeing children's rights, in accordance with the provisions of the UN Convention on the Rights of the Child. Pursuant to its provisions, the child protection system functions on the basis of principles such as respecting and promoting with priority the „best interests of the child”, ensuring the protection of the child against abuse, neglect, exploitation or any type of violence, and respecting the dignity of the child (art. 6).

Art. 27 of Law no. 272/2004 grants the child the right to have his public image and intimate, private and family life protected and forbids "any action that may affect the child's public image or his/her right to an intimate, private and family life". Chapter VI is dedicated to the protection of the child against abuse, neglect, exploitation and any other form of violence - Art. 89 para. 1 clearly enshrines the right of the child to be protected "against abuse, neglect, exploitation, **traffic**, illegal migration, kidnap, violence, **online pornography**, as well as against any other kind of violence, regardless of the environment where the child lives (...)".

Law no. 272/2004 also establishes a compulsory obligation of reporting for all persons who become aware of such situations, as well as specific reporting obligations for the employees of any public or private institutions who, "by the nature of their profession, enter into contact with a child or have suspicions about a possible case of abuse, neglect or ill treatments"<sup>1</sup>.

Regarding trafficking in human beings, Law no. 678/2001 regulates the prevention and countering of trafficking in human beings, as well as the protection and assistance provided to the victims of this type of trafficking. Furthermore, Romania's current *National Strategy against trafficking in human beings for 2018-2022* aims to strengthen the investigative capacity concerning trafficking in human beings and trafficking of minors-related offences. A National Action Plan for its implementation for the period 2018-2020 accompanied the above-mentioned Strategy. The subsequent Action Plan, for 2021-2022, is in the phase of promotion for adoption<sup>2</sup>.

The Government Decision (G.D.) no. 49/2011<sup>3</sup> established a unified mechanism of intervention and cooperation between specialists from various fields of activity working on cases related to child violence, abuse or trafficking. G.D. no. 49/2011 reunites the main aspects of the methodologies and of the working procedures, in accordance with the legislation in force and with the specifics of each institution involved in prevention and intervention in such cases. It provides common definitions and detailed descriptions of various forms of abuses for enabling professionals to develop a common approach. For example, regarding sexual abuse, besides a vast definition of the various activities considered forms of sexual abuse (sexual molestation, language with sexual connotations, attracting or making a child to assist to obscene activities against his/her will, early marriages, sexual harassments, etc.), the Decision dedicates an entire section to online violence (computer based or through the mobile phone). G.D. no. 49/2011 also provides clear guidelines of how professionals should investigate and evaluate a child who is a victim of violence or abuse, according to their field of activity and competences and sets up a multidisciplinary intervention team in child violence and domestic violence situations.

Concerning the allegation that Romania's national legal framework, including anti-trafficking legislation, is not fully in line with the latest Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography/OPSC (CRC/C/156), we highlight the following:

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<sup>1</sup> <http://legislatie.just.ro/Public/DetaliuDocument/52909>.

<sup>2</sup> <http://e-consultare.gov.ro/w/proiectul-hotararii-guvernului-pentru-modificarea-si-completarea-hotararii-guvernului-nr-861-2018-pentru-aprobarea-strategiei-nationale-impotriva-traficului-de-persoane-pentru-perioada-2018-2022-si-a/>

<sup>3</sup> For the approval of the Framework Methodology on the Prevention and Intervention through Multidisciplinary Teams and Networking in Child Violence and Domestic Violence situations, and for the approval of the Multidisciplinary and Interinstitutional Intervention Methodology on Exploited Children or in a risk situation of being trafficked for forced labor, children victims of trafficking in human beings, as well as Romanian migrant children, victims of other forms of violence on the territory of other states; <http://legislatie.just.ro/Public/DetaliuDocument/126229>.

In subsection “A. Legislation” of section “III. General measures of implementation”, the Committee on the Rights of the Child details the requirements that the domestic legislation of states must fulfill in order to be in line with the provisions of the OPSC. The main recommendations of the Committee are:

- *Legislative measures should explicitly cover all acts mentioned in article 3 of the OPSC, including attempts to commit such acts. Attention should be given to the prohibition of the sale of children not only for the purpose of sexual exploitation, but also for the purposes of transfer of organs, engagement in forced labor, and situations in which adoption constitutes the sale of children (para. 14).*

The Romanian criminal law (both the general and the special law) contains covert incriminations for the crimes covered by art. 3 of the OPSC. Thus:

- **Art. 3 para. 1, let. a (i):** Art. 211 of the Criminal Code incriminates the trafficking of minors with the purpose of exploiting the victim. According to the same Code, exploitation is understood as: subjecting someone to labor or to performing services, forcibly; detaining someone in a state of slavery or any other similar practices of privation of liberty or servitude; forcing someone to practice prostitution, to pornographic manifestations with the aim of creating and disseminating pornographic materials, or to any other types of sexual exploitation; forced begging; harvesting human organs, tissues or cells.

Pursuant the above-mentioned provisions of the Criminal Code, all the hypotheses of art. 3 are enclosed under the offense of trafficking of minors, while the exploitation is not limited to the one in sexual nature.

- **Art. 3 para. 1, let. a (ii):** Art. 107 para. 2 of Law no. 273/2004 on the adoption procedure with subsequent amendments and supplements states that “the deed of a person which, without right, intermediates the adoption of a child with the aim of gaining material benefits is punishable by imprisonment from 1 to 5 years”.
- **Art. 3 para.1, let b:** Art. 213 of the Criminal Code incriminates the crime of „pandering” consisting of “the causing or facilitation of the practice of prostitution or the obtaining of financial benefits from the practice of prostitution by one or more individuals”; harsher sanctions are in place if the victim is a minor.
- **Art. 3 para 1, let. c:** Art. 374 of the Criminal Code incriminates child pornography, providing for an extensive number of alternative definitional components for the manifestation of the constituent element.

At the same time, as it appears from the contents of the legal provisions, as well as from Art. 217 (sanctioning the attempt) of the Criminal Code, the attempt to commit the crimes covered by Articles 211 and 213 para. 2 is also punishable by law.

- *Distinguishing between the “sale of children” and “trafficking in children”, as their legal definition is not identical (the sale of children always involves some form of commercial*

*transaction, which trafficking in children does not; at the same time, trafficking always has the intended purpose of exploiting the child, while this purpose is not a required constitutive element for the sale of children).*

The domestic criminal law does not incriminate, *expressis verbis*, the "sale of children". However, the Romanian law strictly prohibits the sale of a person, as the person cannot be assimilated to an object that can be transferred (including free). Specifically, the Criminal Code covers the acts through which children are treated as objects in a transactional framework; it defines the trafficking in minors in an extensive manner, with alternative content, as the indictment norm provided by Art. 211, correlated to Art. 210, covers various possible methods of enacting the crime. Art. 210 para. 2 let. c) aims precisely at the pecuniary component of the offence.

Thus, depending on the actual manner in which such an offence was perpetrated, the qualification of the facts may be determined in accordance with art. 210, art. 211 or even art. 209 of the Criminal Code. In practice, according to DIICOT, in all investigated cases in which a "child selling" was identified, the legal characterization of the facts was that of trafficking of minors, as provided by art. 211 of the Criminal Code.

Moreover, if the crime was committed with the aim of obtaining financial benefits, the Criminal Code allows the aggravation of the sanctioning treatment by applying a fine, in addition to imprisonment (art. 62).

- *Legislative measures should include the liability of both natural and legal persons and establish precise conditions and rules for extradition and for the seizure and confiscation of goods (para. 16).*

The Romanian legislation:

- Explicitly enshrined the criminal liability of the legal person by dedicating Title VI of the Criminal Code to the rules according to which sanctioning may take place. Liability is individual. The legal person, except for the state and the public authorities, is responsible for the crimes committed in the accomplishment of the object of activity, in the interest of, or in its name;
  - Regulated extradition through Law nor. 302/2004 regarding international judicial cooperation in criminal matters;
  - Title IV of the Criminal Code includes regulations related to the safety measures on special confiscation and extended confiscation.
- *Ensuring access to redress and counselling in formulating complaints in confidential and safe conditions by minors, to refer the acts of sexual abuse and sexual exploitation to the judicial bodies (para. 17)*

The Romanian law regulates a system of redress against criminal investigation acts and measures (Chapter VII of the Code of Criminal Procedure), measures and acts ordered by

a court and decisions of the courts<sup>4</sup>. Furthermore, several provisions of Law no. 211/2004 on certain measures to ensure the information, support and protection of victims of offences and of Law no. 678/2001 aim at facilitating the interaction between the victim and the authorities. These laws provide for special measures of information and counseling, including in what concerns the criminal proceedings involving the victim.

- *Guaranteeing that children exploited in acts that would constitute an offence under the Optional Protocol are not sanctioned, but recognizing them as victims (para. 18).*

There is no provision in the Romanian legislation (Criminal Code or the special legislation) incriminating children for acts they have been subjected to. Incriminations in Art. 214 – exploitation of **mendicancy** , Art. 215 – use of underage persons for **mendicancy**, Art. 216 - use of an exploited person's services and Art. 216<sup>1</sup> – use of child prostitution of the Criminal Code describe offenses under which those who benefit from the exploitation of a person can be sanctioned.

Moreover, the only basis for a criminal prosecution is the existence of a crime, whereas the crime is the act provided by the criminal law, committed with guilt, unjustifiable and attributable to the perpetrator. Consequently, in order for a crime to be attributed to a person, the following conditions must be fulfilled: (1) the perpetrator must have had the clear representation of his actions or inactions; (2) must have not been constrained in any manner and (3) must have been aware of the illicit nature of the deed at the time of the act of perpetrating.

Thus, a criminal offence committed by a victim of exploitation shall not be sanctioned under the following non-imputability clauses of the Criminal Code:

- Art. 24 - Physical constraint - "An act stipulated by criminal law does not carry imputability when committed as a result of a physical constraint which the perpetrator was unable to withstand".
- Art. 25 - Moral constraint - "An act stipulated by criminal law does not carry imputability when committed as a result of a moral constraint, exercised by threatening the perpetrator or another person with grave danger, and which could not be removed in any other way."

At the same time, Art. 211 para. 3 of the Criminal Code states that „the consent expressed by an individual who is a victim of trafficking does not represent an acceptable defense”. Furthermore, according to Art. 20 of Law no. 678/2001 on preventing and combating trafficking in human beings, as subsequently amended „a trafficked victim, who, as a result of his/her exploitation, has committed the crime of illegally crossing the border of a state or donation of organs, tissues or cells of human origin shall not be punished for these crimes.”

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<sup>4</sup> The dispositions in the Criminal Procedure Code on asset freezing, respectively the ones related to the ways for challenging the decisions of the courts can be found at: <http://legislatie.just.ro/Public/DetaliiDocument/120611>.



- *Adapting the legal framework to the technological developments and ever-changing realities in order to avoid loopholes in sanctioning new types of sale and online exploitation (para. 19).*

Concerning this recommendation, we would like to underline that the Romanian legislator is connected to the evolving social and technological reality, thus intervening for amending the existing legislation in the field of combatting online sexual abuse. Bill n°606/2019 for amending and supplementing Art. 226 of Law no. 286/2009 on the Criminal Code has also been drafted in this regard, as it aims to sanction more efficiently violations of the private life, including the sexual component (revenge porn).

Furthermore, we would like to mention Decision no. 4/2021<sup>5</sup> of the High Court of Cassation and Justice, which can also contribute to fighting against forms of sexual abuse more effectively. In its January 25, 2021 session, the High Court ruled that "The action of opening and using an account on a public social network, setting one's user name as the name of another individual and inputting real personal data that allow the identification of that other individual meets two of the essential requirements of the crime of electronic counterfeiting stipulated at Art. 325 in the Criminal Code, namely (1) the action of inputting electronic data to have been performed **without authorization** and (2) the action of inputting electronic data to result in **information that is untrue.**"

Regarding the mandate holders' concerns related to the recently adopted law on cyber violence, we would like to mention that Law no. 106/2020<sup>6</sup> for modifying and amending Law no. 217/2003 on preventing and combatting domestic violence, is a normative act amending the special law on domestic violence. Law no. 217/2003 has a limited scope of application. It represents the basis for sanctioning acts of domestic violence only under the following conditions: if the act represents an „intentional action or inaction (...) that takes place in the familial or domestic environment between spouses or ex-spouses, as well as between current or ex-partners, regardless if the perpetrator lives with the victim”<sup>7</sup>. Law no. 106/2020 extends the scope of Law no. 217/2003, by introducing cyber violence<sup>8</sup> in the sphere of domestic violence (covering physical, sexual, psychological, economic, social and spiritual violence). Therefore, this addition to the types of violence covered by Law no. 217/2003 does not equal to a general regulation of the phenomenon.

Furthermore, if the cyber violence occurs in another environment and between other persons than the ones described by Law no. 217/2003, the victims would still benefit from judicial protection based on the general criminal or contraventional law, namely under the general provisions of criminal law (relative to various offences such as harassment, blackmail, child

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<sup>5</sup> Session from January 25, 2021. The press release can be accessed at: <http://www.scj.ro/en/1540/5492/Press-release-Panel-for-the-Clarification-of-Certain-Points-of-Law-in-Criminal-Matters-2021/Press-release-Panel-for-the-Clarification-of-Certain-Points-of-Law-in-Criminal-Matters-in-its-sessio>.

<sup>6</sup> In force since July 9, 2020.

<sup>7</sup> Art. 3.

<sup>8</sup> <http://legislatie.just.ro/Public/DetaliiDocument/227611>.



pornography) or contraventional law (by the National Supervisory Authority for the Processing of Personal Data, for aspects falling within its powers).

As shown above, the scope of the Law no. 217/2003 and its recent amending law - no. 106/2020 - **is not limited to sexual violence**. Moreover, according to the supplement brought to Art. 4, let. h), cyber violence means "online harassment, online gender-based hate speech, cyberstalking, online threats, the non-consensual publication of intimate information and graphic content, illegal access to interception of communications and private data and any other form of misuse of electronic information and communications via computers, smartphones or other similar devices that use telecommunications or can connect to the internet and can transmit and use social or e-mail platforms for embarrassing, humiliating, frightening, threatening or silencing the victim". The list is not a restrictive one, the manner in which cyber violence was defined is offering flexibility and adaptability in relation to the accelerated pace of technological developments. Thus, the sphere of protection includes but is not limited to sexual violence, the Law clearly sanctioning a broad number of harmful acts to the rights of the person, regardless of its sex.

In addition, concerning the issue of sexual violence, the Romanian authorities, under the coordination of ANES, elaborated the National Strategy for preventing and combating sexual violence "SYNERGY" 2020-2030<sup>9</sup>. The "SYNERGY" includes measures that target sexual violence, including in online.

## ***II. Criminal investigations undertaken and their outcome, in particular regarding the Telegram anonymous group chats***

The allegations presented by the Rapporteurs concern a criminal file registered by the Romanian authorities on May 18, 2020, pursuant to a complaint submitted by a non-governmental organization. The complaint was filed following an article published on Scena9, asking for an investigation on the perpetration of a child pornography offence, with no information regarding the victims' identity. The criminal prosecution is still ongoing.

However, we would like to emphasize that the large number of child pornography cases registered and finalized throughout 2020 point out the continuous efforts of the Romanian authorities for fighting against this offence.

According to DIICOT, in 2020 were 742 criminal cases on child pornography under Art. 374 of the Criminal Code, 159 indictments issued and 45 agreements on guilt recognition concluded in cases having Art. 374 of the Criminal Code as legal qualification. Four other investigations related to child pornography, on Tumblr.com, Instagram, Telegram and Google Photos, were also opened in 2020. In the case concerning Telegram, the indictment was issued on February 18, 2021. An investigation related to the Discord platform started

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<sup>9</sup> Currently, the Government Decision for approving the Strategy is in the phase of resuming the internal and inter-institutional approval.

recently, based on a notification submitted by another Romanian NGO. Currently, the investigation is ongoing.

Furthermore, for the period 2019-2021, the Public Ministry - Prosecutor's Office attached to the High Court of Cassation and Justice<sup>10</sup> identified 46 cases on the publication or the threat with publication (on Instagram, Facebook or other electronic platforms) of images with sexual connotations depicting minors, mainly girls, which do not fall under the definition of Art. 374 of the Criminal Code, but concern other legal categories such as *blackmail - Art.207; rape- Art.218; sexual aggression- Art.219; sexual intercourse with a minor- Art.220; sexual corruption of minors- Art.221; illegal access to a computer system- Art. 360; violation of the secrecy of correspondence- Art.302; violation of privacy- Art.226; threat- Art. 206 and computer forgery- Art. 325 of the Criminal Code*. Of these, 16 cases were closed as follows: three indictments (*for committing the offense of blackmail and violation of privacy*); two plea bargain agreements (*for blackmail*), ten closings and one waiver of criminal prosecution.

### ***III. Measures of international cooperation in investigating the alleged crimes, and information on any special investigative techniques used by law enforcement bodies***

In the criminal file registered in May 2020, it was determined that the **materials depicting child pornography have not been produced in Romania and no Romanian child took part in them**. According to the enquiries made in the Interpol database, the materials are the object of investigations carried out by the other two states. Regarding some nude pictures identified, at the date of the inter-institutional consultation, the efforts for identifying the victims were still ongoing.

The Romanian authorities pay a special attention to the international cooperation efforts. For example, in 2020, the International Legal Cooperation, Representation and Assistance Service (DIICOT) registered 7 active international legal cooperation cases, submitted by the Prosecutors to different states, and 12 passive cases, received from the Judicial Authorities of other states, on child pornography. In these cases, various complex investigative activities were carried out.

The coordination meetings held at Eurojust represent another intensively used instrument. The benefits of the coordination meetings are related to: real-time data exchange and evidence exchange, setting up of joint strategies on the evolution of the criminal investigations carried out in the member states of the European Union (EU MS), coordination/facilitation of execution of the international legal assistance requests, removing of possible obstacles in terms of evidence admissibility in the EU MS, conclusion of agreements regarding the division of the procedural activities to be used in the investigations carried out in the MS for avoiding effort duplications etc.

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<sup>10</sup> Data provided by the non-specialized prosecutor's office units, respectively prosecutor's offices attached to the courts of appeal, prosecutor's offices attached to tribunals and prosecutor's offices attached to first instance courts.

As regards bilateral cooperation, throughout 2008-2019, DIICOT concluded seven cooperation agreements with similar institutions from Belgium (9.09.2008), Turkey (18.05.2011), Republic of Moldova (11.04.2012), Italy (5.12.2012), the Netherlands (5.02.2013), Ukraine (26.10.2017) and Bulgaria (12.06.2019). These agreements enabled common approaches at the level of international cooperation, exchanges of experience and direct mutual consultation in urgent cases.

***IV. Measures of specialized assistance and support for the children affected, and child-friendly procedures in place, in order to facilitate their participation in any investigations undertaken; compensation provided in respect of the alleged crimes committed.***

For child-victims of violence (abuse, neglect, exploitation and trafficking in minors), the measures of protection and assistance are granted according to the provisions of Law no. 272/2004 and Government Decision 49/2011. Victims of trafficking in human beings are entitled to free and compulsory legal assistance; they may become a civil party in the criminal proceedings and may request compensation from the trafficker. Victims of trafficking in human beings have the right to request compensation under the conditions of Law no. 211/2004 on measures to ensure the protection of victims of crime. The objective of improving the conditions for granting state compensation for the victims of trafficking in human beings is high on the agenda of the relevant Romanian authorities.

Regarding the alleged situation presented by the Special Procedures mandate holders, we would like to mention that the issue of the compensation is decided upon after the completion of the case in court.

Law no. 272/2004<sup>11</sup> and Government Decision 49/2011 as well as Law no. 678/2001<sup>12</sup> on victim protection also include child-friendly procedures. For example, according to DIICOT, during the hearings, the underage aggrieved parties, victims of children pornography, benefit from legal assistance provided by a lawyer, from psychological counselling provided by a psychologist from the General Directorate of Social Assistance and Child Protection (DGASPC)<sup>13</sup> and from specialized assistance provided by the National Agency Against Trafficking in Persons (ANITP)<sup>14</sup>.

The defender and the representative of ANITP are informed about the offences under investigation, while the psychologist is provided with the necessary information for assessing a child's mental state. Subsequently, they are consulted regarding the opportunity of conducting a hearing; the time of the hearing must be chosen so that it ensures the child's good emotional and physical state; no unnecessary waiting times must intervene. During the hearing carried out by the prosecutor or the police officer, the psychologist may intervene whenever necessary, in order to protect the emotional wellbeing of the child, with the

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<sup>11</sup> See the annex for details.

<sup>12</sup> Art. 26 and seq.

<sup>13</sup> Public institutions with competencies in the field of protecting and promoting children's rights at county level. These are subordinated to the County Councils and, respectively, to the Local Councils of Bucharest.

<sup>14</sup> Subordinated to the Ministry of Internal Affairs.

consent or at the request of the person coordinating the interview. As there is no special friendly room at the DIICOT headquarters, it is advisable for the hearing to be conducted in the specially furnished rooms of the DGASPC. Interviewing the victim when identifying an offence takes place only if it is necessary for pursuing an operative action or for identifying/seizing the perpetrator.

DIICOT has also been developing projects (with its own funds or with EU financial support) aimed at training public servants involved in the legal proceedings related to cases of trafficking in human beings (police officers, the prosecutors or judges prosecuting/solving trafficking in human beings/minors-related cases).<sup>15</sup>

As well, ANDPDCA, in partnership with Association eLiberare and the Embassy of the United Kingdom in Romania implemented the Training Program on trafficking in human beings and the impact of trauma in victim assistance. Over 300 specialists from the DGASPC were trained during eleven training sessions organized in various regions during October-December 2020<sup>16</sup>.

Furthermore, public-private initiatives led to the establishment of hearing rooms for minors in various counties. Such rooms were established, for example, in Cluj and Dolj during the "Multidisciplinary and inter-sectoral model of intervention for a coordinated and effective response to the needs of children, victims of domestic violence"<sup>17</sup> project. Another result of the project was *the Methodological Guide on the hearing of child-victims of violence*<sup>18</sup>, for all professionals (prosecutors, police, social workers, psychologists) who intervene in the hearing procedure either in the criminal investigation phase or at the court. The methodology proposed by this Guide is an interview protocol (a standard work procedure for all professionals who use the technique of interviewing/ hearing the minor in order to obtain information), based on the "NICHD International Evidence-Based Investigative Interviewing of Children".

#### ***V. The status of Bill n°606/2019 aiming at extending the scope of the existing laws on cyber violence, in order to include a wider range of relationships between the victim and***

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<sup>15</sup> The activities (developed or envisaged) concern: training- victim hearing techniques for each phase of the criminal proceedings for subcategories (children, underage, disabled persons, etc. – psychological aspect of statement, interpretation of nonverbal communication), issue approach, complex case management, coordination, investigation plan, creation of the complex team, role assignment, analysis of efficiency/effectiveness of ordered measures, risk management, result analysis, lessons learned, time management, theoretical and practical elements, exercises, tests, work with human information sources specific for trafficking in human beings, evidence gathering within the Joint Investigation Teams (advantages/limitations), evidence gathering techniques and methods of transfer among the involved states, within the cross-border human being trafficking cases.

<sup>16</sup><http://andpdca.gov.ro/w/programde-formare-in-domeniul-traficului-de-persoane-si-al-impactului-traumei-in-asistenta-victimelor/>.

<sup>17</sup> Co-financed through a grant offered by Switzerland, as part of Switzerland's contribution to the enlarged EU, in partnership with National Authority for Protection of Child's Rights and Adoption, General Directorate of Social Assistance and Child Protection Cluj, General Directorate of Social Assistance and Child Protection Dolj, Terre des hommes Foundation, International Foundation for Child and Family "Dr. Alexandra Zugravescu", Women Against Violence Association – Artemis. The project was later supported by the Prosecutor's Office attached to the Bucharest Court, the General Directorate of the Police of Bucharest and, financially, by the Embassy of France in Romania and the Embassy of Canada in Romania.

<sup>18</sup>[http://www.fonpc.ro/downloads/programe/model-interventie-multidisciplinara/Ghid\\_audierea\\_minorilor\\_victime\\_violen%C8%9Bei.pdf](http://www.fonpc.ro/downloads/programe/model-interventie-multidisciplinara/Ghid_audierea_minorilor_victime_violen%C8%9Bei.pdf)

***the perpetrator; the status of Bill n°655/2020, namely in relation to the scope of the intent of the aggressor to prosecute the crime of child trafficking.***

The concerned bills are two draft laws, namely the draft law PLX606/2019 for amending Art. 226 of Law no.286/2009 on the Criminal Code and the draft law no. 655/2020<sup>19</sup> for amending and supplementing articles 154,182, 210, 211 and 213 of the Law no.286/2009 on the Criminal Code.

The draft law PLX606/2019 was adopted by the Romanian Senate on October 21, 2019 and submitted for debate and adoption to the Chamber of Deputies in the same day<sup>20</sup>, while the draft law no. 655/2020 was adopted by the Romanian Senate, and sent to the Chamber of Deputies for final decision on December 3, 2020.

During the legislative process, the draft laws may suffer changes, supplements or improvements. At the time of the present consultation, the procedures for none of the draft laws were finalized (they need to be adopted through a final report by the Committees and subsequently to be included on the agenda of the plenary of the Chamber of Deputies). Consequently, they do not produce legal effects. The Committee for Legal Matters, Discipline, and Immunities of the Chamber of Deputies took note of the aspects presented by the mandate holders and will consider them when debating the two draft laws.

Furthermore, there are several mechanisms in place, ensuring that no legislation contrary to Romania's international obligations in the field of human rights enters into force (a draft law may be referred to the Constitutional Court and it must be promulgated by the President).

***VI. Specific measures taken by the Government with regard to the Roma girls who are victims of the alleged practices considering that they belong to a particularly vulnerable and disadvantaged group***

In addition to the factual clarifications provided above, it should be taken into consideration that most of the strategic documents guiding various fields of activity related to the rights of the child include additional affirmative measures for Roma children. The National Strategy regarding the protection and the promotion of child rights for 2014-2020, whose implementation has recently ended<sup>21</sup>, is an example in this regard, as it dedicates a special section to Roma children.

The Romanian authorities have also engaged in taking preventive measures targeting Roma women and girls. For example, during 2019-2020, ANITP cooperated with E-Romnja Association (Association for promoting Roma women's rights) on the issue of sexual exploitation and sexual abuse. Two seminars were organized in Bucharest (December 2019) and Giurgiu (March 2020) on issues such as violence (violence against Roma women and

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<sup>19</sup> Initiated by a number of senators and deputies, the Bill was registered at the Chamber of Deputies with no. 655/2020 and, at the Senate, with no. pl-x-77/2021. The legislative process at: <https://www.senat.ro/Legis/Lista.aspx?cod=23239>.

<sup>20</sup> The legislative process at: [https://www.senat.ro/Legis/lista.aspx?nr\\_cls=L512&an\\_cls=2019](https://www.senat.ro/Legis/lista.aspx?nr_cls=L512&an_cls=2019).

<sup>21</sup> The conclusions and the recommendations of the assessment process (carried out with technical support of UNICEF Romania) on the implementation of the 2014-2020 Strategy will represent a starting point for drafting the new Strategy, in cooperation with all the relevant ministries and interested NGOs and children associations.

girls, domestic violence), culture, traditions, early or forced marriage, discrimination and ECtHR jurisprudence.

### ***VII. National regulations in place providing for the international social media platforms to monitor, review and remove inappropriate contents by users and share digital forensic evidence with law enforcement authorities***

The provisions of Article 16 paras. 1-3 of the Law no. 365/2002<sup>22</sup> republished with further amendments, **regulate the obligations of the internet service providers in this regard:**

”(1) Service providers are obliged to notify the competent public authorities right away on activities that seem illegally carried out by the recipients of their services or about information supplied by these ones that seem illegal.

(2) Service providers are obliged to speedily communicate to the authorities mentioned at para. (1), at their request, information that may allow the identification of the recipients of their services with whom these providers have concluded contracts regarding the permanent information storage.

(3) Service providers are obliged to interrupt, temporarily or permanently, the transmission into a communication network or the storage of the information supplied by a recipient of the respective service, especially by eliminating the information or by blocking the access to it, the access to a communication network or the provision of any another service of the information society, if these measures were ordered by the public authority defined in Article 17 (2); this authority may act ex officio or following the receipt of a complaint or a notification of an interested person.”

### ***VIII. Measures adopted to ensure prevention of trafficking and child pornography***

During the last few years, preventing revictimization of minors has been a priority of the crime prevention policies. For 2021, another priority was added, concerning the prevention of sexual exploitation and sexual abuse of minors.

Since minors and youngsters are active user of social media, a constant communication about the risks they are exposing themselves is needed, especially by providing them with relevant information regarding the trafficking of minors, child pornography and online exploitation of children. Thus, the relevant Romanian authorities deploy significant efforts in raising awareness about these phenomena, including in cooperation with the non-governmental sector.

In 2020, the Romanian Police undertook over 8.000 preventive-educational activities targeting the prevention of child revictimization, in partnership with ANITP. Furthermore, as preventive activities are one of the key components of the fight against crime, a *Joint Action Plan for preventing and combating offences of prostitution/pandering, identifying possible victims of trafficking in human beings/minors and maintaining an optimal*

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<sup>22</sup> <https://www.dataprotection.ro/admin/servlet/ViewDocument?id=453>.



*environment of order and public security* was drafted together with ANDPDCA. Also, in 2020, ANITP and DIICOT signed a *Joint Measures Plan*<sup>23</sup> in the field of fighting trafficking in human beings/minors, while a ANDPDCA and ANITP signed a *Protocol of cooperation for carrying out joint preventive actions in the field of trafficking of minors*. Nevertheless, DIICOT and ANITP effectively cooperate also within the National Strategy against Trafficking in Persons 2018-2022.

For ANITP, employing information campaigns targeting minors and youngsters is essential for reducing the vulnerability to trafficking in persons. Thus, ANITP constantly carries out information, sensitization and awareness activities addressing both the demand and the risk of becoming a victim. The preventive activities, implemented at both local and national level, are focusing on the main types of exploitation and are targeting the public opinion, both online (social media users – Facebook, Instagram, Twitter and YouTube) and offline.

Most of the prevention activities are implemented in educational units, targeting children and youngsters from primary and secondary levels, as well as high school level. Sixty-three such projects were organized in cooperation with various educational units; during the projects, the beneficiaries met with specialists from ANITP, which presented them information regarding the trafficking in persons and issued advices and recommendations on avoiding and managing dangerous situations, in an age-adapted manner.

The particular situation generated by the spread of the SARS-CoV-2 pandemic determined the implementation of an extensive Plan of measures within ANITP, aimed at enabling the institution to continue implementing consistent preventive actions. Intensifying communication in online represented an important component of this Plan. ANITP posted on Facebook, on a daily basis, anti-trafficking messages<sup>24</sup>.

In addition, an Automated National Registry of persons who have committed sexual offenses, exploited persons or minors was adopted (through Law no. 118/2019) and will become operational in the second half of 2021. Its aim is to support furthermore the fight for preventing and combatting the sexual and exploitation offences sanctioned by the criminal law, as well as for avoiding the risk of recurrence.

In its turn, on the 16<sup>th</sup> of October 2020, DIICOT signed a Protocol of cooperation with the International Justice Mission – Directorate for Central and Eastern Europe for setting up a general framework of cooperation for implementing and developing projects, programs, events and common actions regarding the protection of human rights and fundamental freedoms and for preventing and identifying trafficking in human beings-related cases.

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<sup>23</sup> Due to the measures adopted by the Romanian authorities for containing and preventing the spreading of the SARS-CoV-2 (states of emergency and subsequent states of alert, some of the activities have been postponed for when the state of alert is lifted).

<sup>24</sup> Example: <https://www.facebook.com/ANITPCentral/photos/pb.303152213409.-2207520000../10159293777493410/?type=3&theater>



In conclusion, given Romania's commitments and concrete activities towards fighting trafficking in human beings, including in minors and all forms of violence, including online, the Ministry of Foreign Affairs express its hope that the above-mentioned information will contribute to an objective evaluation of the aspects raised by the Special Procedures mandate holders.