Para 97 letter b), part I - "*Allocate sufficient funds to enable relevant institutions to implement preventative and protective measures on violence measures on violence against women (…)*"

- In 2022, a number of changes[1] were made to the legislation governing the functioning of the National Agency for the Administration of Seized Assets, an institution subordinated to the Ministry of Justice, which, in addition to extending the Agency's mandate, had positive implications for the protection of victims of crime. More specifically, in line with the measures set out in the National Strategy on Criminal Assets Recovery of for the period 2021 - 2025, a National Crime Prevention Support Mechanism has been established and the framework for the provision of financial compensation by the state to victims has been improved;
- in this respect, the Crime Prevention Support Mechanism has been designed as an institutional and financial instrument giving substance to the principle of social re-use of criminal assets. Confiscated and recovered funds are used to finance non-reimbursable projects focusing on legal education, crime prevention and victim assistance and protection;
- thus, Article 37[1] of Law No 230/2022[2] provides that:

  (1) *The national mechanism for supporting crime prevention, hereinafter referred to as the mechanism, shall be the institutional and financial framework through which:*
  (a) the allocation of resources for the implementation of activities and projects aimed at: legal education, crime prevention, assistance to and protection of victims of crime, as well as strengthening the administrative capacity, including logistical capacity, of institutions competent to identify, administer or recover seized assets;
  b) facilitating access to fair and adequate compensation for victims of crime under Law 211/2004 on measures to ensure information, support and protection of victims of crime, as subsequently amended and supplemented.
  (2) The mechanism shall be constituted by annually supplementing the budgets of the chief authorising officers of the public authorities referred to in Article 372 para. (1) (a) to (f) with the amounts representing 50% of the sums of money confiscated in criminal proceedings, 50% of the sums of money resulting from the recovery of property confiscated in criminal proceedings, and 50% of the sums of money obtained from the execution of equivalent confiscation orders in criminal proceedings, remaining after covering the costs of recovery, the deduction of sums subject to international distribution by the Agency, and other deductions, in accordance with the law.
  (3) The mechanism shall be operational as from January 2023 and shall be operational for 5 years, with the possibility of extension by law.
- Article 37[2] of Law 230/2022 states that:

  (1) The amounts in the mechanism shall be allocated as follows:
  a) 20% for the Ministry of Education;
  b) 20% for the Ministry of Health;
  c) 15% for the Ministry of Internal Affairs;
  d) 15% for the Ministry of Public Prosecutions;
  e) 15% for the Ministry of Justice;
  f) 15% for the Agency for the non-reimbursable financing of projects proposed by associations and foundations working in the field of assistance and protection of victims and social assistance.

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[1] By Law No 230 of 19 July 2022 amending and supplementing Law No 318/2015 on the establishment, organisation and functioning of the National Agency for the Administration of Seized Assets and amending and supplementing certain regulatory acts, as well as amending and supplementing Law No 135/2010 on the Code of Criminal Procedure, published in the Official Gazette No 734 of 21 July 2022.
2 The full text of the Act is available at https://legislatie.just.ro/Public/DetaliiDocument/257704.

- at the same time, the list of damages for which victims can receive compensation from the state has been extended, so that victims now have the possibility to receive state[3] compensation for moral damages as well;
- also, the legislative amendments established a new system for crime victims to access the advance payment of financial compensation granted by the State. Thus, in order to cover urgent needs, victims of crime may receive an advance on compensation in the form of a voucher up to an amount equivalent to 5 gross basic national minimum wages established for the year in which the victim applied for the advance. Vouchers may be used by victims exclusively to cover the costs of food, accommodation, transport, medicines and medical supplies, as well as hygiene and personal use materials;
- In June 2023, the Romanian Government approved, through Government Decision No 541/2023 [4] (GD No 541/2023), the methodological rules for the operationalization of this new system of access to the advance from compensation in the form of vouchers. The normative act describes the procedure that victims must follow in order to acquire the voucher, while establishing concrete steps and responsibilities for the actors involved in the mechanism of issuing, distributing and monitoring the use of vouchers;
- by GD no. 541/2023, the Unit for the Protection of Victims of Crime was established within the Ministry of Justice, which performs the necessary administrative tasks in the mechanism for granting vouchers to victims of crime;
- information on the new mechanism is available on the Ministry's website, under "Information of public interest", subsection "Victims' vouchers": (https://www.just.ro/informatii-de-interes-public/vouchere-victime/)[5].

Para. 97 letter (c) *Provide ongoing specialised training to all relevant authorities on gender-based violence (including the police, health services, social services the judiciary)[6];*

The issues of the protection of fundamental human rights, the fight against domestic violence and gender discrimination are constantly addressed by the National Institute of Magistracy (NIM) from the initial stage of the training of the auditors of justice (future judges and prosecutors) and continued in the continuous training sessions for judges and prosecutors.

Initial training programmes

In the area of ***initial professional training***, one of the strategic institutional objectives of the NIM is to provide complex, multidisciplinary and interdisciplinary training. To this end, the initial training programmes include both legal and non-legal subjects, grouped within a cluster of disciplines dedicated to the socio-human sciences.

1. Thus, during the first year of training at the NIM, the ECHR discipline is studied, organised in the form of courses and seminars, the activities carried out in these courses and seminars being aimed in particular at the formation of competences and skills and the acquisition of values. One of these seminars is dedicated to the study of the provisions of Article 14 of the Convention (prohibition of discrimination), together with other closely related provisions of the Convention. The seminar aims to identify the Convention standard on the prohibition of discrimination, as well as to identify the standard of application of Article 14 of the Convention. To this end, case studies and practical cases are discussed and judgments of the European Court of Human Rights are studied. In addition, the subject matter of the course includes other seminars in which thematic discussions and practical

[3] According to Law No 211 of 27 May 2004 on measures to ensure the protection of victims of crime

4 Government Decision no. 541 of 8 June 2023 approving the Methodology for issuing, distributing and settling vouchers for victims of crime, for determining their amount, as well as the criteria for selecting public and private entities enrolled in the granting mechanism and for completing Government Decision no. 652/2009 on the organization and functioning of the Ministry of Justice, published in the Official Gazette no. 515 of 12 June 2023.

5 At the same Internet address (subsection "Policy and regulatory framework") is available, among others, the above-mentioned Decision - in full.

[6] This information is also applicable for the recommendation in para 97 letter (l) *Undertake further efforts to address the practice of early marriage, including by reviewing the legislation on early marriage, providing training programmes to relevant officials and undertaking educational and other activities in collaboration with local leaders and NGOs;*

activities take place in key areas such as: Articles 2 and 3, i.e. the right to life and the right not to be subjected to torture, inhuman or degrading treatment (with a focus on the positive obligations of the State, with an emphasis on the positive obligations of the State, including the obligation to conduct an effective investigation); Article 10, i.e. the right to free expression and the limitations that may be placed on securing the rights and freedoms of others, such as the prohibition of hate speech; and Article 8, in particular with regard to the autonomous notion of privacy.

2. Within the subject "*Family Law*" the topic of domestic violence is being tackled. Thus, in the seminars/conferences dedicated exclusively to this subject, issues concerning the provisional protection order, the appeal against it and the protection order are discussed. Domestic violence is also dealt with in other seminars, the subject of which is closely related, such as the seminar on divorce by fault of the spouses or the seminar on parental authority - violence between spouses as a ground for ordering the exclusive exercise of judicial authority.

3. The initial training programme also includes a course entitled "*Combating discrimination*", given by the President of the National Council for Combating Discrimination, a trainer collaborating with the NIM, which aims mainly to create a conceptual basis, as well as a base of values, by consolidating a set of guiding principles for the future magistrate, called upon to resolve a concrete case. Thus, the course deals with issues such as: the notions of prejudice and stereotyping, the definition of discrimination and concepts of equal opportunities (equal rights, equal opportunities, equal treatment, equal results, equal protection of the law), sources of non-discrimination law (internal and external), forms of discrimination, etc. The course also discusses procedural issues such as ways of eliminating all forms of discrimination and procedures for dealing with cases of discrimination (administrative and judicial). Practical cases are also discussed, which concern situations of discrimination based on various criteria.

4. Within the disciplines dedicated to the socio-human sciences, the auditors of justice benefit from a course on "*The role of magistrates in the issue of cultural diversity*". It highlights the key role of the Judiciary in managing diversity, points to relevant judgments of the European Court of Human Rights and presents and discusses examples of practical cases, including the issue of early marriage.

5. Also within the framework of the socio-human sciences - discipline "*Psychology*", the auditors of justice benefit from a conference on "Domestic violence", which deals with issues related to its causes, types of domestic violence and their specificities from a psychological perspective.

Continuous training programmes

According to the powers conferred by law, the NIM provides ***continuous professional training for judges and prosecutors***. In order to achieve the strategic objectives of continuing professional training, the NIM has focused in recent years on training judges and prosecutors in the major legislative changes in the Romanian legal system brought about by the entry into force of the new codes. The training in the fundamental subjects is constantly complemented by continuous training activities in related specialized areas, such as combating human trafficking, drug trafficking, combating discrimination, fighting against domestic violence, protecting human rights, etc. These concerns are reflected in the collaborations and projects that the Institute has concluded and carried out in the period 2020-2023.

Combating discrimination

As regards the continuous professional training of magistrates, we mention that since 2016, the NIM has concluded a cooperation protocol with the National Council for Combating Discrimination (CNCD), within the framework of which numerous training activities in the field of combating discrimination/hate crimes have been organized annually in partnership with this institution. These include the following training activities organised in the field of anti-discrimination:

1. In 2020, 3 seminars on *Anti-discrimination. Hate crimes* were organised within the Project "10 years of Implementation of the EU Framework Decision on Racism and Xenophobia in Romania: challenges and new approaches to action on hate crimes" - NoIntoHate2018, funded by the Rights, Equality, Citizenship Programme 2014 - 2020 of the European Union (coordinated by the National Council for Combating Discrimination in partnership with the Institute for Public Policy and the NIM). 15 judges and 24 prosecutors participated in these activities.

2. In 2022, 2 training activities were organised in the field of *Combating discrimination - hate crimes*. These seminars covered general notions of non-discrimination (direct/indirect discrimination, notions of anti-discrimination legislation, harassment, order to discriminate, victimisation), particularities of hate crime (national and European legislation, CJEU and ECHR case law on hate crime, current situation of hate crime, etc.) including combating acts of violence or harassment of journalists. The seminars were attended by 4 judges, 19 Romanian prosecutors and 1 prosecutor from the Republic of Moldova, 6 assistant magistrates from the High Court of Cassation and Justice, 11 representatives of the category of legal staff assimilated to judges and prosecutors from the MIM and the Ministry of Justice, as well as a representative of the National Institute of Justice of the Republic of Moldova.

3. Also in 2022, 2 training sessions on *anti-discrimination* and, more specifically, on *combating the crime of incitement to hatred or discrimination* were held as part of the continuous training programmes at decentralised level. These seminars were attended by 15 judges and 19 prosecutors.

4. In 2023, 2 training activities in the field of Combating Discrimination - Hate Crimes were organised in cooperation with the German Foundation for International Legal Cooperation (IRZ). These seminars covered general notions of non-discrimination (direct/indirect discrimination, notions of anti-discrimination legislation, harassment, order to discriminate, victimisation), specifics of hate crime (national and European legislation, CJEU and ECHR case law on hate crime, current situation of hate crime etc.) including combating acts of violence or harassment of journalists. These seminars were attended by 19 judges, 9 prosecutors and 8 representatives of the category of legal staff assimilated to judges and prosecutors from the National Institute of Magistracy and the MoJ.

5. In 2023 the NIM included in its Continuous Professional Training Programme, 8 training sessions attended by 129 judges. These seminars were organized on the ECHR Standards on non-discrimination of LGBTI persons, within the project "Partnership for equality of LGBTI persons: implementation of ECHR case law on sexual orientation and gender identity" (PN5017), implemented by ACCEPT Association in partnership with the Public Ministry - Prosecutor's Office of the High Court of Cassation and Justice.

ECHR and the enforcement of criminal judgments, with elements of anti-discrimination training

The NIM, in partnership with the Superior Council of Magistracy, as Project Promoter, the National School for Court Clerks and the Norwegian Courts Administration, is implementing in the period 2020-2024 the pre-defined project "Training and Capacity Building in the Judiciary", funded by the Justice Programme of the Norwegian Financial Mechanism 2014-2021.

1. Within the framework of this project, a series of 15 seminars on ECHR case law were organised in the period 2020-2023, attended by 235 judges, 111 prosecutors and 21 other representatives of various institutions within the judiciary. The seminars focus on the training needs identified in the Romanian judiciary and recent ECHR case law, with a specific focus on fundamental rights issues. The training includes aspects of ECHR case law on matters such as the right to a fair trial, the right to private and family life, the right to freedom of expression and information, the right to non-discrimination; the right to life, prohibition of torture, inhuman or degrading treatment or punishment; the right to liberty and security of person; no punishment without the rule of law.

2. Under the same project, a series of 10 seminars in the field of *Enforcement of Criminal Judgments will be organized in 2022-2024, focusing on specific issues related to the Roma population*, which will provide specialised training for judges supervising deprivation of liberty, judges dealing with medical security measures and judges delegated to the criminal enforcement office. The seminars focus on the training needs identified in the Romanian judicial system and the *recent case law of the ECHR*, with a specific focus on the following issues: deepening the legislative provisions (Art. 3 ECHR and Law no. 254/2013 on the execution of sentences and measures of deprivation of liberty ordered by judicial bodies in the course of criminal proceedings, with subsequent amendments and additions) and the recent case law in the field; analysis of the aspects of non-uniform judicial practice in the interpretation and application of the provisions of the normative acts in the field, with reference to the case law of the European Court of Human Rights on the prohibition of torture; awareness of the need to *prevent discrimination and facilitate access to equal treatment, with emphasis on the specificities related to the Roma population*. During the 6 training sessions organized in the period 2022-2023, 56 judges, 2 prosecutors and 88 other representatives of various institutions of the judicial system with attributions in the field (Ministry of Justice, National Administration of Penitentiaries, etc.) were trained.

Combating domestic violence

The NIM has developed and is currently implementing a large project financed by structural funds - POCA project "Justice 2020: *professionalism and integrity*", SIPOCA code 453, MySMIS2014+ code 118978 - which aims to improve the professional knowledge and skills of members of the judiciary (judges, prosecutors, assistant magistrates and staff of judicial institutions assimilated to judges and prosecutors), by organising 434 training actions.

Thus, during the period of this project (2018-2023), 10 seminars on *Combating Domestic Violence* were held, among others, for judges and prosecutors dealing with domestic violence cases. During these sessions, topics of interest were addressed such as awareness of the phenomenon of domestic violence; provisional protection order; protection order, procedural and substantive elements; domestic violence offences and other offences against family members; administration of evidence in criminal cases; preventive measures, individualization of penalties, additional penalties, compatibility with the obligations of the protection order; transnational protection orders. During these sessions 110 judges, 83 prosecutors and 2 staff similar to judges and prosecutors within NIM were trained.

***Para 97 letter f** - Eliminate gender bias in the police and the judiciary and ensure that a gender-sensitive perspective is applied in the investigation and prosecution of cases of violence against women*

In 2022, at the level of the Public Ministry, a *Theoretical and practical guide on the crime of rape* has been drafted and disseminated at the level of the prosecution units, which constitutes a benchmark for the prosecution of cases involving sexual offences.

This material has been drafted with the aim of improving the efficiency of the criminal investigations of sexual offenses, in order to meet the quality standards and requirements of the European Court of Human Rights, including eliminating the gender bias within the police and the Judiciary and ensuring that cases of violence against women are prosecuted in a gender-sensitive manner.

Under another aspect, with regard to addressing the issue of gender bias through professional training programmes, the Prosecutor's Office attached to the High Court of Cassation and Justice periodically verifies the way in which decentralised professional training is carried out at the level of prosecutors' offices and recommends the inclusion of recent ECHR/CJEU judgments in the training programme on topics of major interest.

In the context of the analysis of national strategic documents (national strategies) and reports of the European Union and Council of Europe structures concerning the respect of the rights of victims of crime, in particular victims of domestic violence and sexual abuse, the need to improve the institutional response and the efficient application of the legislation on integrated measures aimed at the protection of these categories of vulnerable persons has been highlighted.

Thus, it was concluded that a first measure meant to contribute to the elimination of the deficiencies in the respect of the rights of domestic and sexual violence victims', directed especially against children and women, is to intensify the professional training sessions at decentralized level. In this sense, the prosecutors' offices attached to the courts of appeal – responsible with prosecutors' decentralized training – were requested to introduce such topics in the training programme.

It has been argued that, in order to protect more effectively the rights of victims of domestic violence and sexual abuse, it is necessary to include in the continuous training programmes for prosecutors, at decentralised level, professional training sessions addressing central themes on combating domestic violence and gender-based violence, in particular sexual violence against women, as well as victims' rights and the prevention of their secondary victimisation. These training sessions should be longer in duration and involve as many prosecutors as possible who handle such cases.

With regard to these characteristics of the professional training programs (participation of more prosecutors in training with a longer duration), it should be noted that during 2023, according to the activities established to be carried out within the "Viogen – RoJust" project implemented by ANES, as project promoter, the Public Ministry was the beneficiary of certain professional training activities together with other categories of professionals who have specific attributions in the field of domestic violence and gender violence.

The aim of the project is improving the protection measures against domestic violence, strengthening the authorities' capacity to ensure a proper implementation of the legislative framework regarding the protection and the non-discrimination of victims, generating new replicable measures and fundamental amendments for an effective implementation of ECHR recommendations and CoE standards in human rights.

The prosecutors included in the target group of the project who participated in the training programme (around 180) came mostly from the prosecutors' offices attached to the courts of first instance and from the prosecutors' offices attached to the tribunals, the topics chosen for the training programme being as follows:

1. Confirmation of the protection order, the role of the prosecutor in formulating and deciding on the application for a protection order, the application of electronic surveillance devices in the enforcement of the provisional protection order and the protection order and the obligation for the offender to participate in specialised counselling programmes to reduce aggressive behaviour.

2. Communication with the victim - trauma and post-traumatic behaviour, the role of the psychologist in the proceedings before judicial bodies in cases of domestic violence and sexual violence.

3. Consent to sexual act with a minor versus rape, reaction of a child subjected to sexual abuse by an adult and post-abuse behaviour, disclosure of sexual abuse and the child's statement:

4. Domestic violence and sexual abuse offences, protective measures for the victim, specific evidence;

5. European Court of Human Rights judgments and CoE Council of Ministers country recommendations on domestic violence and sexual violence.

On another aspect, in 2021, in the context of the analysis of national strategic documents (national strategies) and reports of European Union institutions and Council of Europe structures on the respect of the rights of victims of crime, in particular victims of domestic violence and sexual abuse, it was pointed out to the subordinate prosecutors' offices the need to pay more attention by prosecutors in terms of compliance with the information obligation provided for in Article 4 of *Law no. 211/2004 on certain measures to ensure information, support and protection of victims of crimes*, as further amended and supplemented.

When supervising the conduct of criminal proceedings, prosecutors must check how criminal investigation bodies fulfil their obligation to inform victims of their rights (including the right to claim compensation for physical and psychological harm) and of the support and protection measures available to them, so as to avoid the risk of formal compliance and to ensure that the victim's right to receive this information does not become illusory and theoretical.

The Public Ministry's concern for effective investigations in a gender-sensitive approach also results from the thematic checks (*as part of the campaign to promote Romania's candidacy to the Human Rights Council*) on the cases solved during 2020 regarding domestic violence, as provided for by art. 199 of the Criminal Code, with a view to verifying compliance with the requirements of art. 2, 3 and 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, failure to adapt the investigation to the specific features of domestic violence - from the point of view of carrying out an effective investigation (*the case of Buturugă v. Romania*, in which it was found that the State had breached its positive obligations under Articles 3 and 8) and a thematic review of the legality and merits of the solutions in cases involving the offence of sexual harassment under Article 223 of the Criminal Code.

During the two checks, the aim was to identify vulnerabilities in the prosecution activity that would call into question the failure to comply with international commitments to respect and guarantee women's rights and protect them against violence, in particular the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), with emphasis on Art. 2 para. (2) on the qualification of violence against women as "gender-based violence", this concept being understood as the socially constructed roles, behaviours, activities and duties that a society considers appropriate for women (Art. 3 lit. (c) of the Convention), "violence which is directed against a woman because she is a woman or which disproportionately affects women.

The conclusions and findings of the thematic checks on the verification of the legality and merits of the solutions ordered in 2020 in cases involving the offence of sexual harassment under Article 223 of the Criminal Code were disseminated to the subordinate prosecutors' offices.

The checks aimed to monitor the way in which sexual harassment cases are prosecuted in order to ensure the judicial finality of this criminalisation. Difficulties were found in defining the concept of "sexual favours" and the consequences of the repeated demand for sexual favours - intimidation or putting the victim in a humiliating situation - which are typical of the offence of sexual harassment under Article 223 of the Criminal Code.

In the absence of a legal definition of the notion of sexual favours, it was recommended to use the definition of sexual harassment in the European and European Union legal instruments which refer to any unwanted behaviour

with sexual connotation, which can be defined as unacceptable, unwanted, inappropriate and offensive physical, verbal or non-verbal behaviour [Art. 2 para. (2) of Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002].
Guidance on the importance of fulfilling the obligation to inform victims has also been provided by the Public Prosecutor's Office of the High Court of Cassation and Justice in the context of controls on crimes whose victims are predominantly women or violence against certain groups of vulnerable persons, as well as in the context of measures taken in the execution of the ECHR judgments in the MGC and EB group of cases against Romania.

Para 97 letter (g) *– Ensure effective implementation of the law on preventing and combating domestic violence, including adequate implementation and monitoring of protection orders*

With regard to the recommendation contained in ***paragraph 97 (g),*** i.e. *adequate monitoring of protection orders,* we would like to point out that, from a statistical point of view, the Order of the Prosecutor General of the Prosecutor's Office of the High Court of Cassation and Justice no. 20 of 29 January 2020 amended Order no. 213/2014 on the organisation and functioning of the information system of the Public Prosecutor's Office. By this order, a new annex (no. 21) entitled "*Statistical situation of provisional protection orders, submitted by police bodies for confirmation, pursuant to Art. 227 para. (1) of Law No 217/2003 on preventing and combating domestic violence*".
Thus, starting in 2020, statistical data on provisional protection orders (PPOs) will be collected on a half-yearly and annual basis, covering the main indicators: *no. PPOs submitted by the police for confirmation to the prosecutor's office of the competent court in whose territorial area they were issued; the prosecutor's decision confirming or rejecting the PPO received from the police; the decision of the courts on the PPO confirmed by the prosecutor and immediately sent for the issuance of the final protection order (admission and issuance of the protection order, rejection or acknowledgement of the withdrawal of the victim's request for the issuance of the protection order).*
For all these statistical indicators, the number of perpetrators and the number of victims, broken down by sex (male/female) as well as the minority status of the victims, if applicable, are highlighted.

Para 97 letter (k) *– Take gender- based violence against women into account in child custody proceedings, as well as in cases concerning implementation of the Hague Convention on the* Civil Aspects of International Child Abduction

For legal proceedings initiated as from 01.08.2022, both in matters of parental responsibility and in matters relating to the application of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, the provisions of Regulation (EU) 2019/1111 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction, shall apply within the European Union (with the exception of Denmark).
The violence against a woman, as a parent who has unlawfully removed or retained a minor, does not fall under the hypothesis provided for in Article 13 para (1) letter (b) of the 1980 Hague Convention, which refers to the exceptional case where the return of the wrongfully removed or retained child is refused because the court finds that there is a serious risk that the return of the child would expose him or her to a physical or mental danger or otherwise place him or her in an intolerable situation.
However, in application of Article 27 para. (3) and Recital 45 of the aforementioned Regulation, the court should not refuse the return the child if the party requesting the return of the child proves to the court that appropriate measures have been taken to ensure the protection of the child after his or her return or if the court is otherwise satisfied that this is the case. Examples of such measures could include a court order in the Member State concerned prohibiting the applicant from going near the child, a provisional, including protective, measure in the Member State concerned allowing the child to stay with the abducting parent who is providing effective care for the child pending a judgment on the merits of the question of the child's custody in that Member State following return.
Also, in application of Article 27 para. (5) and Recital 46 of Regulation 2019/1111, when ordering the return of the child, the court should be able to order any interim measure, including protective measures, that the court considers necessary to protect the child from the serious risk of physical or psychological harm caused by the

return, which would otherwise lead to refusal of return. Such provisional, including protective, measures could provide, for example, that the minor should continue to live with the person who is effectively caring for him or her.

Para *97 letter (l)* *- Undertake further efforts to address the practice of early marriage, including by reviewing legislation on early marriage, providing training to relevant officials, and undertaking educational and other activities, in collaboration with local leaders and NGO's*

First of all, it should be pointed out that - according to the Romanian Civil Code - marriage can be concluded if the future spouses have reached the age of 18. By exception, for justified reasons, a minor who has reached the age of 16 may marry on the basis of a medical opinion, with the consent of the parents or, where applicable, of the guardian and with the authorisation of the guardianship court in whose district the minor is domiciled [Article 272 para (1) and (2) of the Civil Code]. Therefore, any marriage concluded with a minor under the age of 16 is not possible (legally concluded), and a marriage with a minor between 16 and 18 is only possible under the above-mentioned conditions.As regards the establishment of relationships similar to those between spouses other than in accordance with the law, i.e. marriages in fact between minors of a very young age, in our opinion such practices are covered by the law in the form of various offences, even if not under a very suggestive name. The analysis of the legislation, of the case law and of specialised doctrine leads us to the unreserved opinion that the act of determining the conclusion of a forced marriage forms the material element of the offence of ill-treatment of a minor (Article 197 of the Criminal Code). This offence consists of "*seriously endangering the physical, intellectual or moral development of a minor by any measure or treatment of any kind, by the parents or by any person in whose care the minor is placed*". Given the wording of the incriminating text, the measures or the treatments can be of any kind, so it can include forced marriages. From the perspective of the immediate follow-up required by law, it has been shown that such marriages brutally violate not only the minor's freedom of decision, but also the right to a normal sexual life, the physical, mental and intellectual development of the victim[7].

Para 97 letter (m) *– Review legislation on sexual violence to ensure that all non-consensual sexual relations are adequately prosecuted, and that girls, and women with disabilities, are adequately protected*

The Criminal Code has recently undergone substantial changes in relation to offences against sexual freedom and integrity. Thus, *Law no 217/2020 of 29 October 2020 amending and supplementing Law no 286/2009 on the Criminal Code and amending Article 223 para. (2) of Law no. 135/2010 on the Criminal Procedure Code*[8] has produced a real paradigm shift in this matter, one of the most significant changes being that any sexual intercourse/ oral or anal sex/ other acts of penetration with a minor under 16 years of age will constitute the crime of rape[9] (the lack of consent of the minor being absolutely presumed), with significantly increased punishment limits compared to the previous incrimination of sexual intercourse with a minor (art. 200 of the Criminal Code). The same applies to other sexual acts, not involving penetration, committed against a minor[10]. Also, committing these offences by taking advantage of the victim's obviously vulnerable situation caused by illness, mental or physical disability, dependency or a state of physical or mental incapacity entails an aggravated offence, attracting an additional and significant increase in the penalty.

Para 97 letter (p) *Provide gender-sensitive training for all relevant personnel to support access by survivors of trafficking to justice, and to challenge the negative perceptions that such personnel may hold, particularly of survivors of sexual exploitation;*

[7] In this sense, see M.O. Constantin, The cultural clause in the criminal case-law from Romania, New Journal of Human Rights no. 3/2021, p. 32.

[8] Published in the Official Gazette of Romania no. 1012/30.10.2020.

[9] In this sense, see the new offence in article 218[1] of the Criminal Code – Rape of a minor.

[10] In this sense, see the new offence in article 219[1] of the Criminal Code – Sexual aggression against a minor.

Combating trafficking in human beings

1. Within the framework of the same project, the NIM organised 10 training activities for practitioners within the judiciary in the field of *trafficking in human beings*, to which 38 judges and 57 prosecutors attended. The following topics were covered: overview of the phenomenon of trafficking in human beings at national and international level; criminal typologies of trafficking in human beings and trafficking in minors; forced labour or forced service; slavery or other similar practices of deprivation of liberty or servitude; criminal typologies of trafficking in human beings and trafficking in minors; forced prostitution; techniques for investigating trafficking in human beings; rights of victims of trafficking in human beings in national and international law; international judicial cooperation in the field of trafficking in human beings.

2. Special mention should also be made of the institutional collaboration with the International Justice Mission and the training activities organized with this institution within the framework of the project "Strengthening the Proactive Response of the Justice System to Trafficking in Persons in Romania", carried out with the support of the Office to Monitor and Combat Trafficking in Persons of the US Department of State. In the framework of this project, in 2023, 3 training activities were organized for practitioners within the judiciary in the field of trafficking in persons (38 judges and 57 prosecutors). As for the topics of these training activities, they addressed the issues resulting from the international recommendations addressed to Romania, the topics that constituted the agenda of these activities being, among others: the evolution of the phenomenon of trafficking in persons in Romania from a victimological perspective; the hearing of victims of trafficking in persons; victim-centred approaches in criminal proceedings; the coordination of victims of trafficking in persons in criminal proceedings (national identification and referral mechanism); trauma and its impact on the victim's ability to make a detailed, full statement in criminal proceedings; the rights of victims of trafficking in persons in national and international legislation; general issues on the right of victims of trafficking in human beings to assistance and protection with a view to recovery and social (re)integration; national mechanisms for prevention of trafficking in human beings, identification, referral and assistance to victims; challenges in the management of trafficking cases, minor vs. adult victims; special protection measures for victims/witnesses involved in trafficking cases in criminal proceedings; vicarious trauma and its management; challenges in the identification of victims of trafficking in human beings - international cooperation.

3. It should be noted in this context that the NIM is a partner institution in the implementation of the measures undertaken and the achievement of the specific objectives of action related to the National Strategy against Trafficking in Human Beings 2018-2022.

Also, in the context of the elaboration of the draft National Strategy against Trafficking in Human Beings 2024-2028 and the National Action Plan for its implementation for the period 2024-2026, the NIM has continued to assume the role of partner institution and has submitted, to this end, to the ANITP its proposals for continuous training activities leading to the achievement of the proposed objectives, according to its institutional competences, namely strengthening the capacity to investigate crimes of trafficking in persons for the purpose of various forms of exploitation (sexual, forced labour, forced criminal activities, forced begging, child trafficking). Thus, in order to develop and strengthen the knowledge and skills of anti-trafficking forensic professionals, the Institute has proposed that continuing professional development activities should address topics such as:

- techniques for investigating human trafficking offences;
- techniques for interviewing victims of crime, with a focus on sexual offences (interviewing vulnerable persons in general, including minors - victims of human trafficking);
- complex trauma and addressing the phenomenon of trafficking in human beings from a victimological perspective.
- Therefore, NIM intends to prioritise in its future training programmes continuous professional training activities in the areas of fundamental human rights protection, combating domestic violence and gender discrimination, and preventing and combating trafficking in human beings, with a particular focus on the prevention of revictimisation/victim-oriented, in order to ensure systematic training of judges and prosecutors to meet the objectives of national strategies and the recommendations of international organisations in this field.

Para 97 letter (q) *- Address the problem of impunity and corruption and ensure adequate application of the criminal law in trafficking cases*

- During 2021, the Ministry of Justice, acting in its capacity as the institution responsible for the development of the Romanian state's criminal policy, has developed a package of strategic tools to ensure synergy and coherence in the activities of preventing and combating criminal phenomena;
- through the three criminal policy instruments adopted in 2021, the interconnections and interdependencies generated by offences committed in the specific conditions of organised crime, including trafficking in human beings, have been recognised;
- the three strategies are:

→ the National Strategy on Recovery of Criminal Assets for the period 2021 – 2025[11], which contributes to strengthening the national capacity to respond to crime by making the recovery of criminal assets more efficient according to the principle "*Crime is not profitable*!";

→ the National Strategy against Organised Crime 2021-2024 (SNiCO)[12], which strengthens the state's response to organised crime through rigorous institutional coordination and the identification of priority lines of action (subsequently stepping up efforts to prevent and combat trafficking in human beings);

→ the National Anti-Corruption Strategy 2021-2025 (SNA 2021-2025)[13], which focuses on refining cooperation mechanisms to achieve tangible results in promoting integrity and fighting corruption;

- the National Strategy on the Recovery of Criminal Assets for the period 2021 - 2025 provided the framework for the public and social re-use of confiscated amounts, as well as those resulting from the recovery of assets seized in criminal proceedings, so that the recovery of proceeds of crime from perpetrators is returned to society;
- the strategy included among the measures the regulation of a National Mechanism for Supporting Crime Prevention whereby the allocated amounts could be used for projects in the field of crime prevention, legal education and protection of victims of crime - including for emergency situations[14];
- as regards the objectives and lines of action in the SNiCO, they are directed towards guaranteeing individual safety and supporting a developed social and economic environment through respect for the rule of law. In addition, the strategy includes prevention-oriented measures focused on educating the population on issues related to organised crime in order to increase intolerance towards organised crime groups and their activities and to encourage the community to become part of the solution;
- the National Anticorruption Strategy 2021-2025, developed following an extensive consultation process with the public sector as well as with civil society and the business community in Romania, while using a variety of sources of substantiation, provides an x-ray of the manifestation of the phenomenon at national level and, correlatively, of the national response capacity;
- The Strategy also sets out an integrated, inter-institutionally harmonised vision to strengthen the national system for preventing and combating corruption;
- In line with international and European guidelines, the National Anticorruption Strategy 2021-2025 considers the role of corruption as an enabler of organised crime groups. In this regard, a specific objective is dedicated to the integrated approach to corruption and organised crime, the borderline between the two phenomena being rather formal - conceptual, for reasons of systemic and coherent approach from a legal and institutional point of view;
- The concrete measures foreseen to achieve specific objective 5.3 - *Preventing and combating corruption as a facilitator of the activity of organised crime groups* include:

→ Analysis of judicial practice on corruption related to organised crime in order to identify relevant typologies;

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[11] Adopted by Decision No 917/2021 approving the National Strategy on the Recovery of Criminal Assets for the period 2021-2025 "Crime is not profitable!" and the Action Plan for the implementation of the National Strategy on the Recovery of Crime-related Debts for the period 2021-2025 "Crime is not profitable!"

[12] Adopted by Decision No 930/2021 approving the National Strategy against Organised Crime 2021-2024

[13] Adopted by Decision No 1.269/2021 approving the National Anti-Corruption Strategy 2021-2025 and related documents

[14] More details on the Crime Prevention Support Mechanism can be found in the section dedicated to the recommendation from par. par. 97 (b) - page. 3.

→ Streamlining the protection regime for staff involved in preventing and combating corruption, with a focus on officials working in relation to organised crime groups;

→ Strengthen the capacity of the criminal investigation bodies to identify situations where organised crime groups receive support from officials.

With regard to the recommendation contained in paragraph 97 (q), i.e. *to address the issue of impunity in cases of trafficking in persons*, we note that Law No 217/2020 amending and supplementing Law No 286/2009 on the Criminal Code and amending Article 223 para. (2) of Law no. 135/2010 on the Code of Criminal Procedure, amendments were made to the offence of "child trafficking" (Article 211 of the Criminal Code), in the sense that the minimum penalty limits were increased, an aspect that highlights the legislator's concern to effectively combat this phenomenon.

Also, Law No 186/2021 provided that the offences of trafficking in human beings and trafficking in minors are not subject to a statute of limitations, so that the statute of limitations on criminal liability no longer constitutes a cause that removes criminal liability for these offences. At the same time, in the case of the offence of trafficking in minors, the time of limitation of criminal liability has been regulated, so that the period during which the victim was a minor is not taken into account when calculating the limitation period.

This amendment was intended to reduce the number of cases where the offender would be exonerated from liability because the limitation period for criminal liability has expired, as the minor victim was unaware or unable to report or provide the investigating authorities with essential information necessary to identify and punish the offender.

All these legislative changes have contributed to the effective fight against trafficking in human beings, significantly reducing the risk of impunity for the perpetrators.

With regard to the concrete activity of the Directorate for the Investigation of Organised Crime and Terrorism - the specialised prosecution structure responsible for combating trafficking in human beings, according to the information provided by this prosecution unit on the issue under analysis, the courts ordered, in 2022, 137 final sentences for natural persons and one for a legal person, summing up to sentences of 707 years, 6 months, 29 days - imprisonment with execution and 38 years, 2 months - imprisonment suspended under supervision.

In addition, the courts ordered, in 2023, 135 final sentences for natural persons, summing up to a total of 771 years and 7 months of imprisonment with execution and 53 years and 7 months of imprisonment suspended under supervision.

With regard to the quality of the persons indicted by DIICOT, although public officials were indicted for the commission of the offence of trafficking in human beings at the time of the offence, no cases of corruption related to this type of offence were identified.

Art. 97 letter (t) - *Take measures, including legislative and educational, to prevent and address sexual harassment in the education system and public institutions, revenge pornography and inline sexual abuse against girls, in cooperation with NGOs and girls' networks*

This recommendation considers legislative or other measures to prevent and address sexual harassment in the education system and in public institutions, sexual abuse online, such as the phenomenon known generically as "*revenge porn*".

(i) With regard to sexual harassment in schools and public institutions, we recall that Romania already provides an adequate legislative framework to address such practices. For example, Article 223 of the Criminal Code (sexual harassment)[15] already regulated the so-called "horizontal" harassment regardless of whether it was committed in a public or private entity, while Article 299 of the Criminal Code regulated the offence of misuse of office for sexual purposes[16], i.e. "vertical" harassment through abuse of authority.

[15] Article 223 Sexual harassment

(1) Repeatedly demanding favours of a sexual nature in an employment or similar relationship, if the victim has thereby been intimidated or placed in a humiliating situation, shall be punishable by imprisonment for a term of three months to one year or a fine.

(2) Criminal proceedings shall be instituted upon prior complaint by the injured party.

[16] Art. 299 - Misuse of office for sexual purposes

In order to counter such criminal conduct more effectively, the Romanian legislator recently adopted *Law no. 430/2023 supplementing Article 299 of Law no. 286/2009 on the Criminal Code*[17], which instituted as an aggravated variant of the offence of misuse of office for sexual purposes the commission of the offence *by teaching staff in university or pre-university education against a pupil or student*, in which case the special limits of the penalty are increased by one third.

(ii) With regard to the phenomenon generically referred to as "*revenge porn*", in 2023, *Law no. 171/2023 amending and supplementing Article 226 of Law no. 286/2009 on the Criminal Code*[18] was adopted, so that - according to Article 226 para. (2^1) of the Criminal Code - *the disclosure, dissemination, presentation or transmission, in any way, of an intimate image of a person identified or identifiable from the information provided, without the consent of the person depicted, likely to cause him mental suffering or damage his image, is punishable by imprisonment from 6 months to 3 years or a fine.*

An intimate image means, according to para. (2^2) of the same article, any reproduction, on whatever medium, of the image of a nude person, which exposes all or part of his or her genitals, anus or pubic area or, in the case of women, also the breasts, or which is involved in sexual intercourse or a sexual act.

(iii) We would also like to point out that the proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence is at an advanced stage of negotiation at European Union level, the transposition of which into national law will cover offences such as non-consensual sharing of intimate or manipulated material, cyber stalking, cyber harassment and cyber incitement to violence or hatred.

In this context, we would like to point out that most of this conduct is already incriminated in the Romanian criminal law.

***Para 97 letter (u)** - address violence against women engaged in sex work/prostitution, including by decriminalising sex work/prostitution*

In Romania, prostitution was incriminated under Article 328 of the Penal Code of 1968 (Old Penal Code). With the entry into force of the 2009 Penal Code (New Penal Code), this offence was decriminalised, but the offence of pandering was retained in order to ensure the protection of vulnerable persons from exploitation through prostitution.

The intention of the Romanian legislator, in line with the trend expressed in other EU Member States, was that, under the new rules, the criminal penalty should be aimed at persons who aid or abet the commission of acts of prostitution, and not at persons who actually engage in such activities. The rationale behind such an approach is that such persons are often in a vulnerable position vis-à-vis the instigator or accomplice (usually the exploiter). However, criminalising such persons would not only have no effect in terms of the punitive and preventive nature of the punishment, but would even lead to an increase in the degree of dependence of these victims on the traffickers, making them even more vulnerable.

In conclusion, with the entry into force (on 1 February 2014) of the 2009 Criminal Code, prostitution is no longer a criminal offence. Such conduct is now covered by Article 2(6) of Law 61/1991[19] as a contravention.

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(1) The act of a public servant who, in order to perform, fail to perform, rush or delay the performance of an act relating to his official duties or in order to perform an act contrary to those duties, demands or obtains favours of a sexual nature from a person directly or indirectly interested in the effects of that official act shall be punishable by imprisonment for a term of six months to three years and an interdiction to exercise the right to hold public office or to exercise the profession or activity in the performance of which the act was committed.

(2) The demand for or obtaining of favours of a sexual nature by a public servant who takes advantage of or takes advantage of a position of authority or superiority over the victim arising from the position held shall be punishable by imprisonment for a term of three months to two years or a fine and interdiction of holding the public office or from exercising the profession or activity in the performance of which the offence was committed.

[17] Published in the Official Gazette of Romania no. 1/03.01.2024.

[18] Published in the Official Gazette of Romania no. 125/18.02.2020.

[19] republished in the Official Journal of Romania, Part I, No 125 of 18 February 2020

***Para 97 letter (v)** - address the barriers to women and girls accessing justice, particularly Roma girls and women and other women and girls in situations of vulnerability*

In Romania, free access to justice is a constitutional principle enshrined in Article 21 of the Fundamental Law and consists in the fact that "any person may apply to the courts to defend his or her rights, freedoms and legitimate interests".

Moreover, free access to justice is enshrined in law, including at infra-constitutional level.

For example, the Code of Civil Procedure states that "any person may apply to the competent court to defend his or her rights and legitimate interests by filing an application for a writ of summons" (Article 192(1)), and in civil proceedings the parties are guaranteed equal and non-discriminatory exercise of their procedural rights (Article 8 of the Civil Procedure Code).

Although - as the Constitutional Court of Romania has repeatedly ruled - access to the procedural means by which justice is administered is not an absolute right and may be subject to certain conditions, no legal provision can establish such a condition based on gender criteria. Much less can such limitations arise from considerations of vulnerability or membership of a particular national minority.

On the contrary, in the development of the constitutional principle of equality in rights, the case law of the Constitutional Court has repeatedly made it clear that "*the principle of equality before the law implies the establishment of equal treatment for situations which, according to the aim pursued, are not different. It therefore does not exclude but, on the contrary, presupposes different solutions for different situations. Accordingly, different treatment cannot be merely the expression of the legislature's exclusive discretion, but must be rationally justified, in accordance with the principle of equality of citizens before the law and the public authorities*".

In other words, it is indisputable that the shaping of legislation (criminal and criminal procedure, civil and civil procedure, etc.) taking into account the specific needs of certain categories of persons, such as - for example - the vulnerable or those belonging to certain national minorities, is sometimes not only a concern of the legislator, but even an obligation of the legislator arising from the constitutional principles of equality before the law (so-called "positive discrimination") and free access to justice.

As a result, the Romanian legislator payed attention to the situation of such persons, establishing special rules to facilitate their access to justice.

As a general rule, in civil procedural matters, Art. 18 para. (2) of the Civil Procedure Code provides that "*Romanian citizens belonging to national minorities have the right to express themselves in their mother tongue before the courts*". Similarly, Article 105 of the Code of Criminal Procedure regulates that whenever the person heard does not understand, does not speak or does not express himself well in Romanian, the hearing shall be conducted by an interpreter and if the person heard is deaf, mute or deaf-mute, the hearing shall be conducted with the participation of a person who has the ability to communicate through special language.

There are also special procedural rules in the event of vulnerability resulting from a precarious level of education (for example, by enshrining free and compulsory legal aid if the judicial body considers that the person would not be able to defend[20] himself or herself) or economic situation[21].

Specifically, in relation to the points made in Chap. VII lit. E, measures to ensure victims' confidence in the justice system are already provided for in Romanian legislation. For example, the injured person or vulnerable witness may benefit from protection measures in the criminal trial under Articles 113 and 125-130 of the Code of Criminal Procedure, or by the possibility for the injured person to opt out of the trial in this capacity. At the same time, *Law 211/2004 on measures to ensure the protection of victims of crime* provides for counselling and other forms of assistance to victims of crime, legal assistance and financial compensation. Similar facilities are also found in Law No 217/2003 on preventing and combating domestic violence.

[20] See in this respect Articles 90 and 93 of the Code of Criminal Procedure.

[21] See, in this respect, Emergency Ordinance No 51/2008 on legal aid in civil matters.