

To: European Commission

4 March 2023

World Day of Fight Against Sexual Exploitation

Call for action to improve the access to justice for children victims of sexual crimes in Romania

**Dear European Commission President Ursula von der Leyen,
Dear Vice-President for Democracy and Demography Dubravka Šuica
Dear Commissioner for Justice Didier Reynders,
Dear Commissioner for Equality Helena Dali,**

The situation in Romania of the children victims of sexual crimes did not improve significantly after the transposition of EU law, although there is a constant international pressure. The national legislation is formalistically mirroring the European directives but is largely inapplicable. The legislation is formulated in unclear terms that allow to perpetuate practices which lead to re-victimizing children.

On the occasion of World Day of Fight Against Sexual Exploitation on 4 March, we, national and European civil society organisations and networks, call on the EU Commission to further analyse the conformity of the Romanian legislation with the EU Victims Directive and the Anti-Trafficking Directive and engage in a dialogue with the Romanian authorities in order to improve their transposition.

Background

The 2021 Judicial Inspection Report on the practices of the Romanian courts and the prosecutor's offices in the investigation and conclusion of cases regarding sexual life crimes with minor victims, the Evaluation Report on Romania of the Group of Experts on Action against Trafficking in Human Beings (GRETA), and the 2022 Report of the Advocacy and Human Rights Centre (CADO¹) - reveal a series of situations that impede access to justice for children victims of sexual crimes in Romania and indicate an inadequate transposition of both the Victims Directive and the Anti-Trafficking Directive, particularly regarding the following situations:

- a) The child victim's interview is not video recorded
- b) The child victim has to attend repeated interviews
- c) The child victim is heard without having access to legal representation
- d) The child victim is heard in the presence of the defendant
- e) The child victim's identity is not adequately protected throughout the trial
- f) The length of criminal proceedings of cases involving child victim is not reasonable

¹ CADO report in Romanian and summary in English are available at: <https://cado.org.ro/react-reforma-si-actiune-pentru-apararea-drepturilor-copiiilor-victime-ale-traficului-uman-in-sistemul-de-justitie/cercetare-privind-dreptul-la-justitie-al-victimelor-traficului-de-minori/>

- g) Ex officio lawyers of child victims change during the criminal proceedings
- h) Forced early marriage is not investigated and sanctioned as a form of exploitation.

Romania has a long-term vulnerability in the area of human trafficking for sexual exploitation. The EU trafficking report in 2020² found that Romania is leading when it comes to the absolute number of victims of trafficking in the EU. A large part of these victims are children: *“the number of Romanian children registered as victims of trafficking in the EU-28 for 2017-2018 was nearly 10 times higher than for 2015-2016”*³. Romania scored second when it comes to registered EU child victims. This situation is the result of ineffective measures for combating trafficking taken by the Romanian authorities⁴.

In recent years, mass-media and civil society in Romania constantly reported several cases⁵ of inappropriate protection during the criminal proceedings of children victims of sexual crimes, although Romania transposed the Victims Directive and the Anti-Trafficking Directive. In 2021, the concerns were confirmed by an official Judicial Inspection report that found vulnerabilities in the legal and institutional framework. Also, in 2021, GRETA evaluation report emphasized the scale of child trafficking in Romania (nearly 50% of identified victims in the period 2016-2019), issuing a series of proposals for action, including the revision of the legislation. In 2021, the Ministry of Labour together with the Ministry of Justice issued a common order on the minimum quality standards of the victim support services⁶. The civil society organisations raised concerns over the relevance of the quality standards to the needs of the victims of crime; however, only one service provider was able to meet the minimum quality standards by the end of 2022⁷. In 2022, CADO’s report found that the Romanian legislation is not sufficiently clear to guide an effective enforcement of the child victim protection measures.

The 2022 National findings’ report of the Centre for Legal Resources found that the implementation of the Victims Directive in Romania is unsatisfactory⁸: *“the excessive formalism of procedures is combined with the lack of knowledge and/or expertise of the professionals”*. In July 2022, the legislation on the compensation of victims of crime was strengthened to cover moral damages and urgent needs⁹ but the implementation of the mechanism is pending. In February 2023, the Ministry of Justice published a draft Government Decision on the methodology for issuing and distributing the urgent needs vouchers for the victims of crime¹⁰. In June 2022, Advocacy and Human Rights Centre submitted to several Members of Parliament a series of amendments on the Criminal Procedure Code concerning the improvement of the access to justice of children victims of sexual crimes. The CADO amendments were promoted as part of a draft law¹¹. The draft law was adopted by the Senate, and it is pending in the Chamber of Deputies. On 15th

² European Commission, Directorate-General for Migration and Home Affairs, Data collection on trafficking in human beings in the EU, Publications Office, 2020, <https://data.europa.eu/doi/10.2837/45442>

³ Idem (p.33).

⁴ US 2022 Trafficking in Persons Report: <https://ro.usembassy.gov/2022-trafficking-in-persons-report/>

⁵ Diana Oncioiu (2019), Crooked justice: 3 out of 4 cases of sexual acts with child victims are considered by Romanian courts as consensual acts: <https://beta.dela0.ro/acte-sexuale-victime-copii-judecate-fapte-consimtit/>

⁶ Order no. 256/2.017/C/2021 for approval of minimum quality standards based on which are provided the functioning license of the service for rimes victims support <https://legislatie.just.ro/Public/DetaliuDocumentAfis/243188>

⁷ Ministry of Labour official register: <https://mmuncii.ro/j33/index.php/ro/2014-domenii/familie/politici-familiale-incluziune-si-asistenta-sociala/4848>

⁸ Victims of crimes with disabilities in Romania: <https://validity.ngo/wp-content/uploads/2022/04/National-finding-report-Romania-ro-220426-1.pdf>

⁹ Law no. 230 din 19 July 2022 concerning the amendment and completion of the Law no. 318/2015 on establishment. Organization, and functioning of the National Agency for the Management of Sized Assets and amendment and completion of normative acts, as well for amendment and completion of Law no 135/2010 concerning procedural penal code: <https://legislatie.just.ro/Public/DetaliuDocumentAfis/257704>

¹⁰ Ministry of Justice press release: <https://www.just.ro/ministerul-justitiei-va-oferi-un-ajutor-de-urgenta-victimelor-infractiunilor-in-limita-unei-sume-echivalente-cu-5-salarii-de-baza-minime-brute-pe-tara/>

¹¹ L423/2022 and PL-x nr. 457/2022 https://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=20214

of February 2023, the Legal Committee of the Chamber of Deputies adopted a favourable report with 54 amendments. As the concerns the initial proposals of the civil society, the Legal Committee of the Chamber of Deputies removed harassment from the list of crimes eligible for enhanced procedural protection. It also removed a provision requiring the judicial body to seek the consent of the lawyer or the opinion of the psychologist or other specialist in victim counseling if it is unable to provide safe hearing of the victim.

Concerning the availability of data, the situation of children victims of sexual crimes is documented mainly qualitatively as the official statistical data collection systems do not allow for case disaggregation to be able to assess the effect and the quality of the access to justice and protection measures.

Situations of inadequate transposition of the Victims Directive and the Anti-Trafficking Directive

1) The child victim's interview is not video recorded

According to art. 111, para. (8) of the Criminal procedure code: *"If the victim is a minor, the recording of his/her hearing through technical audio or audio-video means is mandatory in all cases. When the recording is not possible, a written statement of the victims is taken, with the concrete indication of the reason why the recording was not possible"*. In practice, the exception established by the legislator has become the rule. Thus, the Judicial Inspection report notes that *"from the content of the statements taken by the criminal investigation bodies of the minor victims, it follows that none of them were audio-video recorded, the reason given being the lack of technical means. In cases where the hearing of the minor victim was carried out by the prosecutor, as a rule, the hearing was recorded by audio or audio-video technical means. In the context of the audio-video recording of the hearing of the minor victim, the criminal investigation bodies must be aware of the fact that the child's memory, depending on his age, can fade with time; to take into account the pressure sometimes exerted even by family members for the minor victim to retract what was initially declared; to take into account that the audio-video recording reduces the number of hearings and, as a consequence, the re-victimization of the minor and, last but not least, that the said recordings can also be used by the courts"* (p. 288).

According to the CADO 2022 report, in the cases regarding the trafficking of minors, the interviewed judges did not use the audio-video recording of the victim's testimony, which had to be carried out by the criminal investigation bodies, because all the files included the written statement of the minor victims. The situation has been also reported previously by EU Agency for Fundamental Rights, which stated that "pre-trial recording is rarely used to reduce the number of hearings"¹² (p. 35).

The state can no longer invoke the lack of technical means as most citizens have access to intelligent communication devices, and communication technology has evolved a great deal in recent years, and the legislative reality has changed against the background of the COVID19 pandemic.

Thus, the original purpose of the provision cannot be achieved if the provided exception leads to the impossibility of applying the legal rule, the protection of children victims of sexual crimes being undermined by the provision itself. This situation represents an infringement of the Victims Directive, namely that the child's best interests shall be a primary consideration and shall be assessed on an individual basis (a child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns, shall prevail). According to art. 15, para. 4 of the Anti-Trafficking Directive: " Member States shall take the necessary measures to ensure that in criminal investigations [...] all interviews with a child victim or, where

¹² EU Agency for Fundamental Rights, Child-friendly justice - Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member State, 22 February 2017: <https://fra.europa.eu/en/publication/2017/child-friendly-justice-perspectives-and-experiences-children-involved-judicial>

appropriate, with a child witness, may be video recorded and that such video recorded interviews may be used as evidence in criminal court proceedings, in accordance with the rules under their national law".

Another important issue related to child victim's interview is the lack of child-friendly hearing rooms. 2017 FRA report mentions that "children complained about testifying in shared working environments that lack privacy"¹³.

2) The child victim has to attend repeated interviews

Another situation refers to repeated interviews of the child victim. This practice was described in the 2017 FRA report¹⁴: "*children criticised the multiple hearings conducted by different professionals, which they faced at both the pre-trial and trial phases of proceedings*". The GRETA 2021 report found that "too much emphasis is put on the victim's testimony during criminal investigations. If proceedings are built solely upon the victim's testimony, this puts an exorbitant amount of pressure upon the victim, who is often vulnerable and possibly traumatised" (para. 106). The Judicial Inspection report mentions the negative effects of repeated interviews: "the practice of repeated hearings of the victim has sometimes generated her fluctuating statements" (p. 95), "repeated hearings have a harmful effect on the incompletely developed psyche of a child and on his/her development subsequently, repeated hearing may mean for a minor that his/her statements are called into question" (p.126). The Judicial Inspection identified a good practice at the Cluj Court of Appeal: "in one file it was considered appropriate to listen to the audio-video recording of the victim hearing during the criminal prosecution phase, in order to avoid repeated traumatization of the child victim" (p. 131). Such approach should be the legal rule, not only a good practice let to judges' discretion. Thus, the judge must rely on the audio-video recording of the hearing of the child victim during the criminal investigation phase, and the hearing before the court should take place only in thoroughly justified cases.

3) The child victim is heard without having access to legal representation

The Judicial Inspection report notes that: "there were situations of minor victims being heard in the absence of a chosen or ex officio lawyer. As a rule, minor victims are heard immediately after the criminal investigation body has received the complaint, sometimes only in the presence of the parent who filed the complaint or who accompanied the minor when he/she filed the criminal complaint" (p. 287). The right of victims to legal representation is established through European directives. According to art. 13 of the Victims Directive " Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings". According to art. 15, para. (2) of Anti-Trafficking Directive: "Member States shall, in accordance with the role of victims in the relevant justice system, ensure that child victims have access without delay to free legal counselling and to free legal representation, including for the purpose of claiming compensation, unless they have sufficient financial resources". Child victims should be included among the participants in criminal proceedings for whom legal assistance is mandatory, non-compliance with the obligation being sanctioned with nullity of the acts concerned.

4) The child victim is heard in the presence of the defendant

The Judicial Inspection report notes that: "in most cases, at the trial stage, the hearing of the child victim takes place in the presence of the defendant and his/her lawyer" (p. 296) and "the data communicated by the courts reveal frequent situations in which the conditions in the courts are not likely to ensure the mental and physical comfort of the children" (p. 298). FRA 2017 report mentions similar situations where "numerous children reported unwanted encounters with defendants while waiting in court buildings, waiting areas and courtrooms" and also cases of abuses against victims in court: "In Romania, some children

¹³ FRA 2017, p. 29

¹⁴ Idem, p. 33

who had been involved in human trafficking described being threatened by defendants and their relatives in the hearing rooms, with judges failing to take steps to respond to or prevent such situations”¹⁵.

European directives establish the victim's right to avoid contact with the perpetrator and his/her family members (art. 19 of Directive 2012/29/EU and art. 12, paragraph 4, letter b of Directive 2011/36/EU). Article 111 para. (6) of the Romanian Criminal Procedure Code provides several rules of an optional nature, which the judicial body can order when it is possible and when it assesses that the due process or the rights and interests of the parties are not affected. 2017 FRA report mentioned that no children in Romania reported being heard through live video-links¹⁶. Hearing by videoconference or other technical means of communication is a method that ensures the protection of the child victim against re-victimisation. Hearing by video conference does not affect the defendant's right to a fair trial, because the defendant and his/her lawyer participate in court, and the defendant's lawyer through the judge may address questions to the victim. The expression "when possible" provides for an exception that infringes upon the rights of the child victim. This exception can no longer be supported in the existing technical, material and institutional conditions, on the one hand, and on the other hand the state has a positive obligation to protect its vulnerable citizens.

5) The child victim's identity is not adequately protected throughout the trial

The publicity of the trial involving child victims of sexual crimes leads to trauma for both child victims and their families as a result of the access of the general public, including the media, to information related to privacy and the dignity of the victim, thus affecting their protection. The GRETA 2021 report points out that identification data of victims of human trafficking, including names, are published in connection with court files (paragraph 123). The Judicial Inspection report notes that: "as a rule, the hearing of the child victim takes place in a non-public session, being ordered by the court, following the request of the parties, under the conditions of article 352 of the Criminal Procedure Code. In certain cases, the non-public session was ordered only for the moment of the hearing of the minor" (p. 297) and "court procedure involves oral debates in the presence of an unlimited number of people which may produce additional traumas to the child victim, but also to the child witness", and "according to the current legal provisions (article 352 Criminal Procedure Code), the holding of the non-public session is a measure left to the discretion of the court" (p. 301). EU Agency for Fundamental Rights 2017 report noted, in the case of Romania, that "children complained about being heard at public court sessions with many unknown people present. Some children were also critical of being heard together with their siblings".

The right to the protection of the private life of children victims and their families is recognized by article 21 of Directive 2012/29/EU: "Member States shall ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy, including personal characteristics of the victim taken into account in the individual assessment provided for under Article 22, and images of victims and of their family members. Furthermore, Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim". The GRETA 2021 report underlines the importance of protecting the private life of the children victims and recommends the adaptation of appropriate judicial procedures (point 117).

6) The length of criminal proceedings of cases involving child victim is not reasonable

Frequent delays and postponements of court hearings, as well as inadequate conditions for court hearings, repeated interviews lead to re-victimization and frustration of children victims, who sometimes withdraw

¹⁵ EU Agency for Fundamental Rights, Child-friendly justice - Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member State, 22 February 2017, p. 34

¹⁶ EU Agency for Fundamental Rights, Child-friendly justice - Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member State, 22 February 2017, p. 33

their complaint or no longer appear in court. The GRETA 2021 report (paragraphs 102 and 106) points out that: "Continuing issues of concern are the duration of criminal proceedings, both in the pre-trial and the trial phase. According to the Romanian authorities, in 2018, the average duration of court proceedings in THB cases was 689 days and in 2019, 585 days. However, individual cases have lasted much longer. According to NGOs, victims of THB are reluctant to come back to court to testify again, in cases which have lasted several years, as the testimony would remind them of their trafficking experience. In some cases, crimes linked to THB have reached the statute of limitations, namely 10 years, as happened in the Țanderei case [...].¹⁷"

7) Ex officio lawyers of child victims change during the criminal proceedings

The lack of specialisation, insufficient financial incentives to ex-officio legal representation, and the lack of speed of criminal proceedings determine frequent change during the criminal process of ex-officio lawyers of children victims (GRETA 2021, point 49). This situation affects the quality of the legal representation of children victims. The law should require ex-officio lawyers to be specialised and to ensure legal representation throughout the proceedings.

8) Forced child marriage is not addressed at policy level and it is not investigated and sanctioned as a form of exploitation

GRETA report (2021, paragraph 94) found that "Article 182 of the Criminal Code does not refer to forced marriage as a form of exploitation. GRETA notes that according to the UN OHCHR, Romania has one of the highest numbers of early/child marriages in Europe, affecting primarily (but not exclusively) Roma communities". GRETA findings are confirmed by the Judicial Inspection Report (p. 81-82). The Romanian Judicial Inspection found that early marriage is seen by the judicial authorities as mitigating circumstances for child sexual abuse perpetrators. Recalling "cultural traditions", victims' family members which are supposed to protect the child consent and encourage the sexual abuse and forced early marriage. The family's complicity behaviour is put as argument against the child victim rights and in favour of the perpetrator: "It is thus found that the tradition of an ethnic group can evade the provisions of the law, with consequences on the child's best interest, which must prevail in any situation, including in the case of such customs or cultural norms". In fact, cultural relativism is used against human rights. In the judicial files reviewed by the Inspection, the parents that encouraged sexual abuse were not even heard, let alone investigated. Contrary to this practice, Judicial Inspection noted that the law enforcement agencies should investigate and sanction the victims' family members for instigation and complicity to sexual abuse.

A 2021 UNICEF report¹⁸ analysed the effects of adolescent pregnancies on individuals and communities: "They have a bearing on health, social benefits and even crime. Early school leaving as a result of pregnancy and childbirth prevents girls from completing their education, they need to acquire a profession, making it more difficult to later find a job. Unemployment, and hence poverty, will consequently affect this group of people and their children. Research has highlighted the worrying cyclicity of the phenomenon, which is perpetuated in a family generation after generation, dragging along lots of economic, social and health-related vulnerabilities".

¹⁷ Access to justice and effective remedies for victims of trafficking in human beings (third evaluation round): <https://rm.coe.int/evaluation-report-on-the-implementation-of-the-council-of-europe-conve/1680a2b0f8>

¹⁸ Dr. Michaela Iuliana Nanu – Research Scientist (Grade 1), Dr. Ecaterina Stativa – Research Scientist (Grade 1), Dr. Daniela Vălceanu, Dr. Marina Ruxandra Oțelea - Report Adolescent pregnancy in Romania, 2021: <https://www.unicef.org/romania/media/4081/file/Adolescent%20Pregnancy%20in%20Romania%20Report.pdf>

Also, early marriage practices are associated with child trafficking or child exploitation. A report prepared for the Council of Europe in 2015¹⁹ identified that “early marriage situations that could be associated with child trafficking or child exploitation have been reported to authorities”. The same report concluded that “there is lack of conceptual clarity on early / forced / child marriages in the legal and policy frameworks”. GRETA (2021, paragraph 94) found that “The National Strategy for the Protection and Promotion of Child Rights 2014-2020 refers to early marriages only in the section dedicated to Roma children, where it mentions that approximately 28% of children/youth aged 15-19 are married; however, besides mentioning the problem and citing its dimensions, the Strategy does not include any specific measures or strategic action targeting early marriages”.

Recommendations

In order to push forward the reform process in the benefit of children victims of crime, we, the signatories, are making the following recommendations to the European Commission:

- Activate the infringement procedure regarding the transposition in Romania of the Victims Directive.
- Initiate an infringement procedure regarding the transposition in Romania of the Anti-Trafficking Directive.
- Request the Romanian authorities to fully implement the crime victim compensation mechanism provided by the Law no. 230/2022.
- Ask the Romanian authorities to address at policy level, investigate and sanction cases of child sexual abuse in the form of forced early marriage.
- Ask the Romanian authorities to issue a detailed report focused on the compliance of the situation of children victims of crime with the standards set in the Victims Directive and the Anti-Trafficking Directive.
- Publish the Commission’s reasoned opinions submitted to Romania regarding the transposition of the Victims Directive and Anti-Trafficking Directive and Romanian’s replies.

We look forward to your feedback, including the opportunity to discuss these proposals with you further, as needed.

Your sincerely,

SIGNATORY:

CADO-Centrul de Advocacy si Drepturile Omului /Advocacy and Human Rights Centre, Romania

¹⁹ Eugen Crai, Early and Forced Marriages in Roma Communities. Country Report: Romania, 2015: <https://cs.coe.int/team20/cahrom/9th%20CAHROM%20Plenary%20meeting/Item%2009%20-%20Early%20and%20Forced%20Marriages%20in%20Roma%20communities%20in%20Romania.docx>

CO-SIGNATORIES:

1. Fundația Institutul Bucovina pentru Parteneriat Social, Romania
2. Federația Organizațiilor de Servicii Sociale (FONSS), Romania
3. Federația Organizațiilor Neguvernamentale pentru Copil (FOPNC), Romania
4. Freedom of House Romania
5. Asociația Four Change
6. Fundația Enable Romania
7. Fundația Ancora Salvării, Romania
8. Fundația World Vision Romania
9. Reaching Out Romania
10. Fundația Corona, Romania
11. Salvați copiii Iași , Romania
12. Fundația Emmaus, Romania
13. Asociația Necuvinte, Romania
14. Fundația Centrul de Mediere și Securitate Comunitară , Romania
15. Fundația Solidaritate si Speranță , Romania
16. Bună Ziua Copii din România
17. Fundația Star of Hope România
18. Fundația Inimă de Copil Galați, Romania
19. Asociația Centrul Diecezan Caritas Iași, Romania
20. Asociația Bunul Samaritean Galați, Romania
21. Asociația Pro ACT Suport, Romania
22. Asociația Umanitară IL Chicco, Romania
23. ASPNS- Luceafarul Neamț, Romania
24. Asociația Centrul Daniel Bacău, Romania
25. Fundația Estuar, Romania
26. Fundația COTE, Romania
27. Fundația Alături de Voi , Romania
28. Fundația de Sprijin Comunitar, Romania
29. Asociația pentru Cooperare si Dezvoltare Durabilă, Romania
30. Child Friendly Justice European Network (CFJ-EN), Belgium
31. Network for Children's Rights ("NCR"), Athens, Greece
32. European Roma Grassroots Network – Rețeaua ERGO, Bruxelles, Belgium
33. ENORB — European Network On Religion and Belief, Brussels, Belgium
34. Migrant Tales blog community, Finland
35. #DiasporaVote!, Belgium