



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

Distr.: General
16 March 2020

Original: English
English, French and Spanish only

Committee against Torture

**Third periodic report submitted by Romania
under article 19 of the Convention pursuant to the
simplified reporting procedure, due in 2019* ****

[Date received: 30 September 2019]

* The present document is being issued without formal editing.
** The annexes to the present report be accessed from the web page of the Committee.

GE.20-04020(E)



Please recycle The recycling symbol, consisting of three chasing arrows forming a triangle.



1. The Government of Romania received, through diplomatic channels, a List of questions of the United Nations Committee against Torture (CAT) in connection with the third regular report by Romania (CAT/C/ROU/QPR/3).
2. The Ministry of Justice (MoJ) distributed this list of questions to all institutions concerned—the Ministry of Internal Affairs, the National Prison Administration, the Prosecutor’s Office attached to the High Court of Cassation and Justice, the Directorate for Investigating Organized Crime and Terrorism, the Ombudsman, the Ministry of Labor and Social Justice, the Ministry of Health, the Ministry of Foreign Affairs, the National Probation Directorate – including to its own structures, for the purpose of replying and submitting remarks in connection with the comments and inquiries of information delivered by CAT.
3. The reply comprises a point-by-point detailing of the replies provided by Romanian authorities to the questions and inquiries of information delivered by CAT in its report and observes the order of the concerns addressed. At the same time, the responses provided in the present reply were intended to cover any relevant legislative, administrative or judicial measures taken in order to implement the provisions of the Convention, not only the Committee’s follow-up questions.
4. The Government of Romania hereby reiterates the entire availability of Romanian authorities to provide CAT with any additional information it might request.

Article 2

Reply to paragraph 2 (a) of the list of issues (CAT/C/ROU/QPR/3)

5. From a legislative perspective, for the purpose of guaranteeing the observance of fundamental rights of the detained persons, all such rights are laid down by Law No. 135/2010 on the Penal Procedure Code (herein after, PPC), as mentioned in annex No. 1, point 1.

In respect of arrest detention centers of the police

6. On 08 March 2018, the Regulation on the organization and operation of arrest detention centers, but also the measures necessary for ensuring their safety, approved by Order No. 14/2018 of the Minister of Internal Affairs relating to the concern of notifying the persons deprived of liberty held in arrest detention centers of the rights,¹ obligations and legal prohibitions relating to the deprivation of liberty, both in its normative part, and in the formality part, intended for beneficiaries, was published in Official Gazette of Romania.
7. Thus, the information relevant from that perspective is comprised in the Protocol for admission to the center, in particular in the Leaflet of information concerning rights, obligations and interdictions, but also in connection with rewards which may be granted, misconduct and disciplinary penalties which may be imposed in accordance with Law No. 254/2013, including the provisions of Article 228 (2)–(5) of the PPC (Annex No. 2Z to the Regulation), at the level of arrest detention centers there are available, for easy understanding, translations thereof into the following languages: Arabic, Bulgarian, Chinese, English, French, German, Greek, Dutch, Norwegian, Russian, Serbian, Ukrainian.
8. In order to ensure the rights of persons taken to the police station, subject to administrative means, by means of the Bill of law for amending and supplementing normative acts in the field of public order and safety (PLX No. 405/2018) the proposal was raised to supplement Law No. 218/2002,² by adding Article 32⁶, which in paragraph (1) stipulates that the person taken to the police station has the following rights:

- (a) To be informed of the reasons why they are being taken to the police station;

¹ The right to medical healthcare, the right to informing a family member or another person appointed by them, of the location where they are held in custody, of the rights, obligations and interdictions, the rewards which may be granted, misconduct and disciplinary penalties which may be imposed.

² On the organization and operation of Romanian Police, as subsequently amended and supplemented.

- (b) To be informed of the rights from which they benefit;
- (c) To submit a complaint against the measure being ordered, under Article 32⁷;
- (d) To be assisted by a counsel, under the law, to communicate directly with the latter, in conditions of confidentiality, but also not to make any statement without such counsel being present, except for providing his identification data, or information required for removing a situation of impending hazard jeopardizing the life, health or bodily integrity of themselves or of third persons;
- (e) To request a family member or another person appointed by them to be informed of the measure being taken;
- (f) To request the diplomatic representatives of their country of origin, in the case of foreign nationals, to be informed;
- (g) To be consulted by a doctor or, at their own cost, by a doctor of their choice;
- (h) To communicate through interpreter or by means of a person having communication skills, if they do not speak, do not understand Romanian, cannot express themselves or are hearing impaired or deaf.

9. According to the legislative bill referred to herein above, the summary of facts and, as the case may be, the legal measures being imposed against the individual taken to the police station will be reviewed within 8 hours after the time when the travel started, and may be extended³ up to maximum 12 hours.

10. As regards the right of foreign nationals to be informed, mention is to be made that any foreigners identified to illegally reside in the territory of Romania will be informed both verbally, and in writing, in English, on the return decision, by means of an administrative instrument stipulating the reasons underlying such measure, the period of interdiction to come into the country, but also other specific elements, as the case may be. Foreign nationals entered into accommodation facilities for foreigners taken in custody will be informed, verbally and in writing, through the provision of leaflets translated into various languages (Arabic, English, French and others), of their rights and obligations during their stay in such facilities. During the performance of specific activities by immigration structures, the foreigners are entitled to a legal representative. As regards the right of access to medical examination, foreigners will be examined by medical personnel, upon admission to the accommodation facilities and will benefit from medical care, throughout their placement under public custody.

Reply to paragraph 2 (b) of the list of issues

11. In connection with the single register of individuals deprived of liberty, Law No. 290/2004 on criminal records stipulates, in Article 2, as follows: “The criminal records shall keep track of private individuals and legal entities sentenced or against which measures of a criminal or administrative nature were imposed, in accordance with the Penal Code, but also those against which criminal procedural measures have been taken.”

12. Furthermore, Law No. 254/2013 on the enforcement of sentences and of measures involving deprivation of liberty ordered by the judicial bodies during criminal proceedings stipulates, in Article 106 that, at the level of every prison, the following registries of sentenced persons are in place: the registry of sentenced persons admission, recording the year, month, day and time when the sentenced person was admitted to the prison; the registry of sentenced persons release, recording the year, month, day and time when the sentenced person was released; the registry for the use of immobilization means, recording the year, month, day and time when the immobilization means started and ended to be enforced, including in respect of their stay in the protection room.

³ When the identity of the person could not be determined within 8 hours and an extension is required in order to determine the identity, to review the summary of facts and, as the case may be, impose the legal measures.

13. Moreover, also in respect of persons on remand or subject to provisional arrest, Article 114 of the above-mentioned Law stipulates the registries drawn up in connection with such persons by the administrations of arrest detention centers, in particular: a) the registry for the admission and release of persons on remand or subject to provisional arrest, recording the year, month, day and time when the remanded or arrested person was admitted to the center, but also the year, month, day and time when they were released; the registry concerning the use of immobilization means, recording the year, month, day and time when the immobilization means were used, the year, month, day and time when their use was authorized by the prison manager, the type of immobilization means used, the year, month, day and time when the use of immobilization means ceased; other registries detailing the activities performed with persons on remand or subject to provisional arrest, which have to be drawn up by the administration of the arrest detention center, as laid down in the regulation referred to in Article 107 (2).

14. The recommendation to set in place a single and full detention registry was taken into account upon preparing the normative act quoted above (Order No. 14/2018 of the Minister of Internal Affairs), aimed at decreasing the number of registries detailing the activities performed with persons held in custody in their own facilities, in particular by implementation and upgrading of the “Încarcerați”(“Imprisoned”) software, an integrated digital system meant to allow the fast fulfillment of professional duties, lower costs and bureaucracy, but also in order to tackle the current context. The data base will contain information concerning the offence which was committed, the term of the arrest warrant, the transfer, expiry date of the arrest warrant.

15. During the stay in centers for the accommodation of foreigners taken in public custody, the data of foreign nationals are operated in a registering system which may be accessed by the General Immigration Inspectorate (GII), in order to update and consult the information concerning the reason why they were taken in public custody, the accommodation facility, the measure implementation term, the transfer between centers.

Reply to paragraph 3 (a) and (b) of the list of issues

16. In observance of the applicable laws in force, remand may be ordered for a period of maximum 24 hours, with the possibility for extension, while the measure of provisional arrest may be ordered for a period of maximum 30 days, with the possibility for extension, during criminal prosecution, however, without exceeding a reasonable term and, at the same time, 180 days, and during court proceedings it may not exceed a reasonable term and may not be longer than half the special maximum limit laid down by law for the criminal offence forming the object of the proceedings initiated before the court of law (please see the provisions of Article 209, Article 223 *et seqq.* of the Penal Procedure Code).

17. Consequently, in respect of the preventive measures for deprivation of liberty, strict rules are set up, at the legislative level, in connection with the conditions in which they may be ordered, but also the limited term thereof.

18. The regulation of preventive measures for deprivation of liberty sets out the exceptional nature thereof, the specific enforcement of such provisions falling under the jurisdiction of authorities holding powers relating to the construction and enforcement of the law.

19. From a legislative perspective, there are no regulations expressly restricting the term of preventive measures, other than as stipulated in the Penal Procedure Code, and the latter allow the judicial authorities to decide on the term for which they are to be ordered.

20. Furthermore, there are constitutional restrictions and in PPC – this term is a limitation in itself. Evidence may be found in practice that the maximum duration is rarely used.

21. Therefore, the practical cases encountered exclusively depend on the interpretation and enforcement of the applicable laws in effect, and this does not relate to the law-making method.

22. The current configuration of the prison system, which does not allow, from a locative perspective, the existence of a detention facility in each county, is a presumptive

factor encumbering the activities of surrendering persons deprived of liberty at the time when the preventive arrest warrant was ordered. On the other hand, having regard to the fact that the person deprived of liberty may use means of appeal to challenge the provisional arrest measure, a measure that is subject, in accordance with relevant criminal procedural provisions, to regular review by the court of law, they shall be presented before the court of law as a matter of emergency. Consequently, from this perspective, ensuring the criminal procedural rights and obligations incumbent both upon the defendant, and upon judicial bodies, may only be achieved insofar as the custody location is near the address of the courts of law, a requirement that is only fulfilled by arrest detention centers subordinated to the Ministry of Internal Affairs.

23. Another factor impacting the celerity of the activities conducted by criminal prosecution authorities, for the fulfillment of which the presence of the person deprived of liberty is required, consists of the lack of operability/the fact that there is no provisional arrest center subordinated to the National Prison Administration at the level of each administrative-territorial unit. This is equally susceptible of generating additional financial and human costs deriving from the performance of all emergency judicial activities involved by criminal prosecution (repeated trips to prison facilities, in order to take over the person deprived of liberty, accompanying them in the territory or to the offices of the judicial body, if necessary to another county, taking them before various courts of law, and afterwards surrendering the same to the prison, at the end of the activities described above).

24. In that respect, it should be emphasized that a potential operability of provisional arrest centers subordinated to the National Prison Administration does not result in the termination of their own arrest detention centers, considering that the preventive measure of deprivation of liberty of detention (which, according to the Romanian law, has a maximum term of 24 hours) will continue to be enforced in such premises, while correspondingly providing the required financial, human and cost conditions.

25. In that context, mention is to be made that the transfer of persons deprived of liberty inside the prison is ordered after arraignment and verifying the legality and merits of the preventive measure, in accordance with the provisions of Article 348 (2) in conjunction with the provisions of Article 207 (2)–(4) of the PPC.

26. An analysis into the average custody period in arrest detention centers subordinated to the Ministry of Internal Affairs (strictly relating to the subjects falling under the scope of the provisional arrest measure) reveals that it is usually maximum 60 days (at the national level, between 01 January and 01 December 2018, out of the 16,464 persons deprived of liberty, 934 were held in custody for longer than 60 days, accounting for a percentage of 5.67%).

27. By comparison, statistical data corresponding to previous years reveals that, in 2016, out of the 18,565 persons deprived of liberty, only 1,311 were held in custody for a period longer than 60 days, which accounts for a percentage of 7%, and in 2017, out of 18,489, only 1,182 persons, accounting for a percentage of 6.3%).

28. At the same time, in the context of a potential lack of impartiality upon enforcing preventive measures involving deprivation of liberty, it is hereby emphasized that the personnel employed in the arrest detention centers of the Ministry of Internal Affairs is different from the personnel holding the capacity of criminal investigation officer of the judiciary police (who are in charge of the criminal case in which that measure was ordered), among them there is no subordination relationships.

Reply to paragraph 3 (c) of the list of issues

29. Law No. 254/2013 on the enforcement of sentences and of measures involving deprivation of liberty ordered by the judicial bodies during criminal proceedings stipulates that, during criminal prosecution, the measure of detention and provisional arrest shall only be enforced in arrest detention centers which are organized and operate subordinated to the Ministry of Internal Affairs and, during court proceedings, the measure of provisional arrest shall be served in a prison (please see Article 108 and Article 115 of Law No. 254/2013 on the enforcement of sentences and of measures involving deprivation of liberty ordered by the judicial bodies during criminal proceedings).

30. The hypotheses set forth in Article 45 (6) of Law No. 254/2013 on the enforcement of sentences and of measures involving deprivation of liberty ordered by the judicial bodies during criminal proceedings, also referred to in the Report, has regard to the case where a person is held in custody in a prison (either while on provisional arrest during the court proceedings stage, or while serving a sentence), and, at the same time, criminal prosecution is underway for a different offence.

31. A person is transferred from the prison to an arrest detention center subordinated to the Ministry of Internal Affairs for the purpose of increasing the efficiency of criminal prosecution proceedings in connection with the new criminal offence (for instance, hearing the suspect/defendant or due to the fact that the prison is a long way away from the venue of the prosecutor's office competent to conduct criminal prosecution for a new offence).

32. Transfer of inmates in the arrest detention centers subordinated to the Ministry of Internal Affairs is necessary for the activity of judicial bodies, with a view to undertaking activities required during the stage corresponding to the submission of evidence, in accordance with the provisions of the Penal Procedure Code, such as: conducting house searches, recognition/reconstitution, cross-examination with other procedural entities, line-ups for the identification of individuals/objects, conducting investigation on site, conducting medical/technical expert appraisals, etc.

33. In taking all of the means of evidence referred to above, inmates have to be present in specialized venues or institutions, but also at the offices of police precincts. At the same time, mention is to be made that, in accordance with the provisions of Article 56 of the Penal Procedure Code, the prosecutor leads and directly controls the criminal prosecution activity undertaken by the judiciary police and special criminal investigation authorities, as stipulated by law. Furthermore, the prosecutor watches that the criminal prosecution acts be conducted in observance of the legal provisions.

Reply to paragraph 3 (d) of the list of issues

34. In respect of the preventive measures involving deprivation of liberty which may be ordered during criminal proceedings, the Penal Procedure Code stipulates, in all cases, specific means of appeal, in particular: a complaint may be submitted against the remand order, in accordance with Article 219 (14) and (15) PPC, and a challenge may be filed against the measures of provisional arrest or house arrest, in accordance with Article 204-206 PPC, both during the criminal prosecution stage, preliminary chamber, and during court proceedings.

Reply to paragraph 3 (e) of the list of issues

35. In accordance with the United Nations (UN) Standard Minimum Rules for Non-custodial Measures, the Penal Procedure Code allows judicial bodies to further order preventive measures, other than those involving deprivation of liberty, such as judicial control (Articles 211–215¹) or judicial control on bail (Articles 216–217), but also allows the prosecutor to issue a decision to waive criminal prosecution when it is deemed that, depending on certain criteria, there is no public interest in prosecuting the offence (Article 318). Furthermore, the court of law, upon finding that the offence amounts to a felony, that it was committed by the defendant and that he may be held under criminal liability, may choose from a wide range of sentence calculation, and may opt for a sentence in the form of fine (when stipulated by law) or a decision to waive the enforcement of sentence, to defer the enforcement of sentence, or to suspend the service of sentence on probation. Moreover, while serving the sentence, a possibility consists of release on probation.

36. Consequently, having regard to the legislative amendments deriving from the enforcement of Law No. 286/2009 on the Penal Code, on 01 February 2014, in particular setting forth penalty measures alternative to the sentence involving deprivation of liberty (waiving the enforcement of sentence, deferring the enforcement of sentence), but also less restrictive conditions to reach the suspension of sentence under supervision, measures which fall under the supervision of probation directorates, in practice there were many individuals who benefited from such measures, to the detriment of the measures involving deprivation of liberty, this trend being, in the overall, decreasing.

37. Thus, in accordance with the statistics drawn up by the Romanian Police, the total number of preventive measures, both those involving deprivation of liberty, and those not involving deprivation of liberty, adopted against suspects in 2018, was of 29,257.

From this total number, measures not involving deprivation of liberty are 11,612 (judicial control – 9162, judicial control on bail – 41 and house arrest – 2409).

38. In relation to the dynamics in the number of persons deprived of liberty, between 01 January and 31 December 2018, 17,645 incarceration operations were performed (of which 3,459 in reliance upon a provisional arrest warrant, 13,688 in reliance upon a remand order and 498 in reliance upon a detention order).

39. An analysis of the statistics described reveals that, out of all preventive measures, those involving deprivation of liberty account for 60%, while those not involving deprivation of liberty 40%. At the same time, out of those involving deprivation of liberty, the ones which had a stronger impact on restricting the exercising of the right to liberty consist of measures imposed in reliance upon warrants, in a percentage of merely 22%, and the measure of remand for 24 hours is prevailing.

Reply to paragraph 3 (f) of the list of issues

40. As regards the conditions of detention, the Government approved the Timetable of Measures 2018–2024 to resolve the issue of prison overcrowding and conditions of detention, with a view to executing the pilot-judgment *Rezmiveş* and others against Romania delivered by the European Court of Human Rights (herein after referred to as ECHR or the Court) on 25 April 2017, concerning both administrative, and legislative measures.

41. According to the above-mentioned Memorandum, in respect of the Ministry of Internal Affairs, the plan, mentioned in annex No. 1, point 2, was structured in three stages, for the period 2018–2023.

42. In 2018, the investment works envisaged in stage I were completed in the arrest detention centers within the County Police Inspectorate of Galați (34) and the County Police Inspectorate of Iași (50), and activity was resumed in the said establishments. As for the arrest detention center within the County Police Inspectorate of Maramureș (30), works were completed, and are currently undergoing acceptance. Upon the completion of acceptance procedures, activity will also be resumed in this facility.

43. In respect of the measures corresponding to the arrest detention centers, forming the object of stage II, (involving the building of new arrest detention centers and/or upgrading the existing ones), mention is to be made that specific activities are in progress, necessary to reach the envisaged goals within the timeframes set forth in the reference document. The investment targets will be financed/revised, pending on the budget funds made available for that purpose, depending on the priorities laid down at the level of the Ministry of Internal Affairs and in line with the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Reply to paragraph 4 (a) of the list of issues

44. The number of cases concerning criminal offences of violence committed by law enforcement agents of the State, settled between 2016 and 2018 was 5687, where 52 defendants were sent before a court.

45. In the case of indictments, sentences were imposed consisting of imprisonment sentences to be served in custody were imposed (higher than 4 years and 8 months) or on probation, sentences in the form of fine or deferred enforcement of the sentence.

Reply to paragraph 4 (b) of the list of issues

46. By means of ordinance No. 1606/P/2010, dated 25 October 2011, the Prosecutor's Office attached to Bucharest Court of Appeals ordered, in reliance upon Article 228 (6) of the Penal Procedure Code in conjunction with Article 10 (a) and (d) of the previous Penal Procedure Code, to dismiss all criminal charges against police commissioner G.C. for

having committed the criminal offences of illegal arrest and abusive investigation and ill-treatment, as provisioned by Article 266 (1) and (2) of the previous Penal Code and Article 267 of the previous Penal Code, but also against police officers H.T., A.D.S., G.I.A. for having committed the same criminal offences.

47. In the reasoning, in substance, it was noted that the evidentiary material submitted in this case did not reveal any definite elements within the meaning that the above-mentioned police officers had struck the injured persons on 26 February 2010 and 27 February 2010, respectively, at the headquarters of Ilfov County Police Inspectorate.

48. At the same time, the preventive measure of remand, ordered in the criminal case in which the injured persons were being investigated did not infringe the requirements of Article 143 of the previous Penal Procedure Code. Investigations were carried on in connection with the police agents.

49. For more details in connection with the summary of facts and the reasoning for the decision to dismiss all charges, please find enclosed hereto a copy of the above-mentioned ordinance, but also of the resolution dated 23 November 2011 issued by the general prosecutor within the Prosecutor's Office attached to Bucharest Court of Appeals, dismissing the complaints filed against the ruling to dismiss criminal charges.⁴

Reply to paragraph 4 (c) of the list of issues

50. The small number of arraignments and sentences concerning offences of ill-treatment by law enforcement agents of the State, when compared to the total number of cases on this subject, which were settled, may be explained by: the difficulty of overturning the presumption of guilt, considering the absence, in the prevailing number of cases, of direct evidence (other than the statements given by injured persons), the absence or late issuance of medical documents and forensic medical documents, the ambiguous conclusions of forensic medical expert appraisals, the absence of objective witnesses, the fact that the offences were committed outside the coverage areas of video surveillance means existing in the police stations, detention facilities, prisons, but also the large number of minor offences notified.

Reply to paragraph 4 (d) of the list of issues

51. As for the matter of notifying the judge in connection with cases of ill-treatment and torture in the arrest detention centers, mention is to be made that, in the context of the medical examination of the person deprived of liberty ordered upon admission to the center, the medical personnel conducting it, where it is found that the examined person has traces of violence, that they were subjected to torture, inhuman or degrading treatment or ill treatment or if they accuse violence against them, has an obligation to immediately notify the competent prosecutor's office.

52. The obligation of ascertaining any traumatic injuries further persists in the context of medical examinations conducted while detained in the center [Article 72 (3) of Law No. 254/2013 on the enforcement of sentences and of measures involving deprivation of liberty ordered by the judicial bodies during criminal proceedings, as subsequently amended and supplemented, Article 238 (4) of the Regulation for the implementation of Law No. 254/2013, approved by Government Decision No. 157/2016, as subsequently amended and supplemented, and Article 32 and Article 142 of the Regulation on the organization and operation of arrest detention centers, but also the measures necessary for their safety, approved by Order No. 14/2018 of the Minister of Internal Affairs].

53. At the same time, the Penal Code stipulates the legal instruments necessary for guaranteeing and protecting the right to file complaints by persons held in custody in the arrest detention centers within the General Inspectorate of Romanian Police (I.G.P.R.), but also against any repercussions deriving from them, setting forth coercion measures to be imposed against persons/servants for having committed criminal offences such as: threat (Article 206), sexual assault (Article 219), influencing the statements (Article 272), revenge

⁴ Annex No. 2.

for assisting the justice (Article 274), abusive investigation (Article 280), ill-treatment (Article 281), torture (Article 282), abusive behavior (Article 296), abuse of office (Article 297), violating the secrecy of correspondence (Article 302).

Reply to paragraph 4 (e) of the list of issues

54. In accordance with the provisions of the Penal Procedure Code, criminal investigation bodies of the judicial police and special criminal investigation bodies conduct criminal prosecution under the coordination and supervision of the prosecutor. At the same time, the above-mentioned normative act stipulates that legal assistance be provided to the suspected perpetrators for all criminal prosecution proceedings, with very few exceptions, and the latter may not be influenced in their procedural positions by investigators (criminal investigation bodies of the judicial police).

55. Certain recurring shortcomings highlighted in a number of cases in which judgments were handed down against Romania by the European Court of Human Rights brought forth the need to draw up an institutional policy, which materialized in the enactment of order No. 214/2015 of the general prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice.

56. The goals envisaged in preparing this order were as follows:

- Ensuring the functional and practical/actual independence of the investigator to the investigated person (in the context of the new penal procedure code coming into effect, which repealed the provisions of Article 27 (3) of Law No. 218/2002 on the organization and operation of Romanian police) through the provision that the prosecutor's offices attached to courts of appeals and the prosecutor's offices attached to tribunals to take over, with a view to conducting criminal prosecution, from hierarchically subordinated units, all cases in which investigations are under way against police officers and prison officers, and against police agents and prison agents, for having committed the criminal offences provisioned by Article 280 of the Penal Code, Article 281 of the Penal Code, Article 282 of the Penal Code and Article 296 of the Penal Code;
- Specialization of prosecutors conducting criminal prosecution in this type of cases, by appointing at least one prosecutor within every prosecutor's office to mainly be in charge of this type of cases;
- Designating, at the level of each prosecutor's office attached to courts of appeal, a prosecutor to monitor the way in which criminal investigations are conducted in this type of cases, with double-tier purpose: the duration of the procedure and the general manner in which the European Court of Human Rights case-law standards are observed.

57. These general principles were implemented by hierarchically subordinated prosecutor's offices by appropriate instructions at their own level.

58. The current legal architecture does not allow the superior prosecutor to issue recommendations or to intervene in the delivery of decisions by the prosecutor appointed to handle an individual case, which means that the order referred to above is aimed at shedding a light on the importance of actually fighting against this type of criminality and of implementing a set of administration measures for criminal prosecution proceedings able to allow the relevant requirements of the European Court of Human Rights case-law to be fulfilled.

59. Such measures, together with those of other authorities, each in their field of jurisdiction, have contributed to closing the supervision in two categories of cases targeted by the Committee of Ministers of the European Council, in particular: *group of cases Barbu Anghelescu v. Romania* (law enforcers – using force and the actual investigation) – final resolution CM/ResDH(2016)150 – and the *group of cases Predică v. Romania* (death or ill-treatment occurred in detention facilities, inefficiency of criminal investigation and lack of actual remedies) – resolution CM/ResDH(2017)291 of 21 September 2017.

60. For clarification, in the resolution it is stated that it takes into consideration the “measures enacted with a view to increasing the efficiency of criminal investigations and

reinforced monitoring into the implementation of such measures”. It is further noted that measures were adopted to ensure an appropriate reply to ill-treatment on the reason of racial prejudice, by taking into consideration the previous considerations of CTP and the activities undertaken by the Commissary for human rights of the Council of Europe in this field.

61. Not denying the further existence of shortcomings, nevertheless, the thematic controls undertaken by the Prosecutor’s Office attached to the High Court of Cassation and Justice in 2015 and 2017 emphasized that, in general, the activity in this field is adequate, in observance of the standards of actual investigation and reasonable duration of proceedings. There are few cases in which decisions to dismiss charges by courts of law were reversed. No cases were noticed where criminal liability became time-barred.

62. Consequently, while there are not many indictments, we can assert that criminal prosecution in such cases is conducted as a matter of celerity (there are few cases older than 1 year after the initiation of proceedings, when compared against the entire volume) and there is consistent concern by prosecutors for complying with the requirements of the European Court of Human Rights case-law (functional independence, involvement of victims in the procedure, service of rulings, well-grounded investigation aimed at clarifying the summary of facts, identification of responsible persons and if necessary accountability). Moreover, many situations were identified where criminal prosecution bodies initiated proceedings *ex officio*.

63. In all cases where statute of limitations is not in force for criminal liability, an analysis will be conducted, after a sentence was handed down by the European Court of Human Rights, into the possibility of resuming criminal prosecution.

Reply to paragraph 4 (f) of the list of issues

64. The Ministry of Internal Affairs has a “zero tolerance” approach to using violence against persons held in custody. Law No. 360/2002 on the status of police servants, as subsequently amended and supplemented, stipulates that police servants are prohibited from using force, other than under the law, and cause physical or psychic suffering to a person, for the purpose of obtaining, from this person or from a third person, information or admissions, to punish them for an act which themselves or a third person committed or is suspected of having committed, to intimidate them or to put pressure on them or on a third person.⁵

65. Furthermore, it is also emphasized that the legal regulations in effect⁶ prevent police servants from applying, from condoning or from tolerating any acts of torture, inhuman or degrading punishments or treatment, physical or psychic coercion, and if they become aware, by any means, of another police officer having committed any such offences, they are compelled to adopt the necessary measures, as the case may be, in order to put an end to that behavior and to inform the superiors of that situation.

66. In the context of recommending the dissemination of the “zero tolerance” message to acts of torture and ill-treatment, the management of the General Inspectorate of Romanian Police takes permanent steps to deliver it, by regular dissemination both through the “Inrapol” network, and during operative meetings with the management of central and territorial structures of Romanian Police, with a view to increasing the awareness of the entire police force on the need to observe human rights.

Reply to paragraph 5 of the list of issues

67. Trafficking in human beings continue to be a dynamic phenomenon, both as regards the traffickers, who seek to gain fast illegal earnings, and the consistent efforts of the international bodies involved in the fight against this phenomenon.

⁵ Article 43 (c) and (d) of Law No. 360/2002.

⁶ Article 18 of the Police Code of Ethics and Deontology, approved by Government Decision No. 991/2005, as subsequently amended and supplemented.

68. The Government of Romania placed particular focus on the trafficking of human beings in the past 15 years, by enacting the required legislative and institutional framework, putting in place measures to assist the victims of trafficking in human beings and by accusing traffickers by adjusting the work method and by developing the mechanisms to tackle this phenomenon at the national, regional and local level. The interest for mitigating the impact of this criminal offence was expressed at the level of the entire society, from the civil society to the Parliament, all entities involved using the available means in this fight for the prevention and control of trafficking in human beings.

69. Trafficking in human beings, in its entirety, is a challenge pursued on the agenda of Romanian institutions and organizations specializing in the fight against this phenomenon and in the support and protection provided to victims. Consequently, Romania has enacted a new Strategy against trafficking in human beings for 2018–2022 and the National Action Plan for 2018–2020, containing a new approach to monitoring its implementation by setting up a committee in this regard, made up of State secretaries within the ministries involved in the strategy, in order to provide a fast response to the challenges posed by trafficking in human beings.

70. Romania continues to coordinate its efforts with the European and international standards for fighting and preventing trafficking in human beings, harmonizing its domestic regulations in that direction. Furthermore, the domestic regulations have regard to the particulars of trafficking in human beings cases involving Romanian nationals. In 2018, the Romanian Police handled 498 cases and 884 persons investigated for criminal offences relating to trafficking in human beings. During the same period, prosecutors sent 400 accused before the court, 209 of which subject to provisional arrest.

71. Starting from 2016, the National Agency against Trafficking in Human Beings has implemented the project “Trafficking in Human Beings – an approach focusing on victims” financed through the Internal Security Fund, the component for Police Cooperation, aimed at increasing the degree of protection and assistance provided to victims of trafficking in human beings. The outcome of the Project consists of carrying on the National Mechanism for Identification and Reference, and 17 training sessions have been organized for all actors involved which could come into contact with a victim of trafficking in human beings (2 of which dedicated to immigration officers).

72. Considering the importance attached to mitigating the risk of trafficking in human beings, Romania has developed numerous prevention campaigns at the local, national and regional level, dedicated to vulnerable groups, including in schools and local communities.

73. As for the development of partnerships with the private sector, Romania plays an active role in engaging various private actors so that the messages reach their target groups.

74. By means of relevant examples provided in the annex No. 1 point 3, we want to underline the importance of prevention campaigns implemented by public-private partnerships, extended at transnational level.

75. The Romanian Police took part in various training programs abroad, under the aegis of the European Union Agency for Law Enforcement Training (CEPOL), in areas concerning the protection of human rights and compliance with professional ethics, preventing the sexual exploitation of juveniles and trafficking in human beings, managing sexual abuse/criminal offences against juveniles, training sessions for the use of European police instruments and systems.

76. Furthermore, the prosecutors within the Directorate for Investigating Organized Crime and Terrorism (D.I.I.C.O.T) attend every year various meetings, conferences and training courses on the topic of fighting against trafficking in human beings.

77. The professional training and other measures ordered with a view to providing specialized training to prosecutors, to help them identify the victims of trafficking in human beings may be broken down as presented in the annex No. 1 point 4.

78. The number of cases settled the object of which consists of criminal offences of trafficking in human beings (including minors), the number of defendants arraigned for

having committed such criminal offence (in the specified period) and data on the sentences imposed can be found in annex No. 1 point 5.

Reply to paragraph 6 (a) of the list of issues

79. In respect of the enforcement regime for criminal penalties to juveniles, the New Penal Code of Romania, which came into effect on 01 February 2014, no longer provides the enforcement of an imprisonment sentence in the case of juvenile perpetrators, against whom only educational measures may gradually be taken. The selection of an educational measure, to be imposed against the juvenile, takes place in accordance with Article 114 of the Penal Code, stipulating as follows: “a juvenile who, at the time of the offence, was aged between 14 and 18, shall be subject to a non-custodial educational measure”.

80. In the case of juvenile perpetrators, in accordance with Article 114 (1) of the Penal Code, the rule is to impose an educational measure not involving deprivation of liberty, and the exception, in accordance with paragraph (2), is to impose an educational measure involving deprivation of liberty (admission to an educational or detention center), which may be imposed, only on an exceptional basis, if the perpetrator has committed another criminal offence, in respect of which an educational measure was already imposed against them, which was served or the service of which commenced before the criminal offence was committed, for which they are on trial or when the sentence stipulated by law for the criminal offence thus committed is minimum 7 years imprisonment or life detention. Consequently, juveniles against whom a custodial educational measure is imposed are not subject to interdictions and preclusions deriving from the enforcement of a sentence.

Reply to paragraph 6 (b) of the list of issues

81. In respect of the recommendation to ensure the fulfillment of fundamental rights of juveniles held in custody, please note the following:

82. At present, criminal prosecution of juveniles having committed criminal offences takes place in observance of specific procedural guarantees, set forth in the provisions of Article 505 of the Penal Procedure Code and in accordance with Constitutional Court Decision No. 102/2018.

83. Thus, hearing of juveniles aged between 14 and 18 years takes place subject to prior subpoenaing of one of the holders of parent liability or, as the case may be, the custodian, guardian or person taking care of or supervising the juvenile, but also the representatives of the General Directorate for Social Assistance and Child Protection. Moreover, the law-maker provided an additional security for observing the rights of juveniles suspected of having committed criminal offences and setting forth the obligation, in all cases, to provide legal assistance, in observance of the provisions of Article 90 of the PPC.

84. Thus, in accordance with the provisions of Article 90(a) of the PPC, legal assistance is mandatory:

(a) When a suspect or defendant is underage, is admitted to a detention center or an educational center, when they are detained or arrested, even in a different case, and when in respect of such person a safety measure was ordered remanding them to a medical facility, even in a different case, as well as in other situations established by law;

(b) When a judicial body believes that a suspect or defendant could not prepare their defense on their own;

(c) During preliminary chamber procedure and during the court proceedings in cases where the law stipulates, for the criminal offence committed, the sentence of life detention or imprisonment for longer than 5 years.

85. Furthermore, the preventive measures involving deprivation of liberty may be ordered against juvenile defendants on an exceptional basis, “only if the effects of their deprivation of liberty on their personality and development are not disproportionate to the objective pursued by such measure” [Article 243(2) of the PPC].

86. In respect of juveniles held in custody in arrest detention centers, with a view to mitigating the negative effects of deprivation of liberty on the physical, psychic or moral development, all criminal enforcement laws provide as follows:

- Shared accommodation, as a matter of rule, separately from adults, in observance of the principle of gender separation;
- Achieving the notification referred to in item 2(a), depending on the age, providing clarifications for their particular status;
- The possibility of keeping in touch with persons with which they have family or strong emotional relationships by supplementing the right to visits (6 visits/month, usually without separation devices), telephone conversations (five times a week, 3 telephone calls) or on-line (if they are not visited by family members or caretakers for a period longer than 30 days, because of the long distance from their domicile to the arrest detention center or for other reasonable reasons);
- On a mandatory basis, psychological assistance during the deprivation of liberty.

87. As a matter of novelty, mention is to be made that the bill of law for amending and supplementing normative acts in the field of order and public safety (No. PL-x 405/2018, undergoing Parliamentary procedure), proposed including to supplement Law No. 218/2002 on the organization and operation of Romanian Police, within the meaning of inserting a new article – Article 32⁶ which, in paragraph (4), stipulates that, if the juvenile or person without legal capacity is taken to the police precincts, subject to administrative means, the police servant shall have the following obligation:

(a) To inform, in respect of the measure thus enacted, the parents, guardian or another legal representative or, if none of them may be contacted or does not come, the competent authority under the law;

(b) Not to take statements from them or not to request documents to be signed, in the absence of a legal representative or of the representative of the competent authority, save for the provision of identification data.

88. The criminal procedural rules set forth that the juvenile who, at the time when the criminal offence was committed, was aged between 14 and 18 years, will be subject to a non-custodial educational measure, however, if they committed another criminal offence, for which an educational measure was imposed and served, or the service of which commenced before the perpetration of the criminal offence for which they are tried or when a sentence stipulated by law for the criminal offence thus committed was 7 or more years imprisonment or life detention, one of the educational measures involving deprivation of liberty will be imposed against the juvenile.

Reply to paragraph 7 (a) of the list of issues

In respect of the financial resources of the National Prevention Mechanism (NPM)

89. In accordance with the provisions of Article 51 of Law No. 35/1997 on the organization and operation of the Ombudsman institution, republished, “Financing current and capital expenses for the activities of preventing the torture and cruel, inhuman or degrading treatment shall be provided from the State budget, and the funds intended thereto form part of the budget of the Ombudsman institution”.

90. Consequently, there is a budget allocated to the NPM, covering the expenses incurred for visits and for the performance of any other activities thereof, and the budget thereof forms an integral part of the budget of the Ombudsman institution. In 2018, the budget allocated for the National Prevention Mechanism was RON 3,352,823.48.

91. With a view to ensuring the financial independence of NPM, the bill of law for amending and supplementing Law No. 35/1997, republished (PL-X 1/2018) includes the following proposals:

- The National Prevention Mechanism shall be organized and shall operate in the Ombudsman institution, as a structure separate from the other fields of activity,

fulfilling specific duties of the National Prevention Mechanism, for the purpose of Optional Protocol;

- The annual budget of the NPM shall be proposed and drawn up by the deputy Ombudsman coordinating the NPM, and approved by the Ombudsman.

In connection with the NPM personnel

92. Law No. 35/1997, republished, provides that the Field for the prevention of torture in detention facilities (NPM) is organized in the central structure, also including the Regional Center of Bucharest and the territorial structure, made up of 3 territorial centers (Alba, Bacău, Craiova).

93. The same normative act stipulates as follows:

- In the central structure of the Field, including the Regional Center of Bucharest, in addition to the deputy Ombudsman, in connection with the Field for the prevention of torture in detention facilities, there are 11 employees, of which: 4 specialized non-management employees, with legal education, 3 specialists-doctors, psychologists, social assistance, sociologists or any other professions necessary in the performance of specific activity and 4 employees in the financial, payroll, human resources and administrative departments (Article 37 (4));
- In the 3 regional centers in the territorial structure of the Field for the prevention of torture in detention facilities, there are 12 employees. Each regional center comprises: one specialized non-management employee, with legal education, 2 specialists-doctors, psychologists, social assistance, sociologists or any other professions necessary in the performance of specific activity and one employee – administrative staff (Article 38 (3)).

94. As far as the personnel is concerned, the Ombudsman issued *Order No. 1 of 5 January 2015 on personnel selection criteria* within the Field for the prevention of torture in detention facilities, containing general and specific conditions for selecting permanent employees.

95. In order to select specialized personnel with legal studies by contest, in addition to specialists, who will be permanent employees, several contests have been organized. At present, the National Prevention Mechanism performs its activity with 17 employees: 7 legal advisors, 3 doctors, 3 psychologists, 2 social assistants and 2 administrative personnel (drivers).

96. In conducting the activities of the Field for the prevention of torture in detention facilities (NPM), external collaborators are also coopted, in reliance upon services agreements. External collaborators are selected by the Ombudsman, in reliance upon the suggestions received from the Romanian College of Physicians, the Romanian College of Psychologists, the Romanian Society of Sociologists, the Romanian College of Social Assistants or from other professional entities of which they form part. Thus, at present, the Ombudsman institution has 46 external collaborators (11 doctors, 15 social assistants and 20 psychologists).

97. The notices concerning the selection of external collaborators are published on the websites of professional associations and in specialized journals (for instance, the *Viața Medicală* journal).

98. In coopting external collaborators for the NPM activity, meetings were held with the representatives of professional associations, addenda were concluded to Protocols already in place and permanent notices were uploaded on the website of the Ombudsman institution concerning the conditions necessary for taking part in selecting an external collaborator for NPM.

99. The services of external collaborators are purchased through the Electronic System for Public Procurement (SEAP).

In connection with the multidisciplinary of visiting teams

100. In accordance with the provisions of Law No. 35/1997, republished, the visiting team will necessarily comprise, together with the legal counsel, a doctor and a representative of a non-governmental organization. Furthermore, depending on the object of the visit, other specialists may also participate: psychologist and social assistant.

101. Consequently, the visiting teams of NPM are multidisciplinary: legal advisor, doctor, psychologist, social assistant and a representative of a non-governmental organization. The doctors, psychologists and social assistants are either part of the permanent personnel or external collaborators.

102. Having regard to the fact that the list of external collaborators does not include psychiatrist doctors, the deputy Ombudsman for the Field for the prevention of torture in detention facilities and NPM members had meetings with the chairman of the Romanian College of Physicians and submitted requests with a view to appointing such specialists, to take part in NPM's activity monitoring the detention facilities. Furthermore, the Deputy Ombudsman for the Field for the prevention of torture in detention facilities had a meeting with the chairman of the Romanian Association of Forensic Medical Psychiatry and a Cooperation Protocol will be concluded, in reliance upon which psychiatrist doctors will be appointed to take part in visits and other joint interest actions.

Reply to paragraph 7 (b) of the list of issues

103. As regards the powers of the Ombudsman institution in connection with the Field for the prevention of torture in detention facilities, Article 35 of Law No. 35/1997 on the organization and operation of the Ombudsman institution stipulates, in letter (a), the visit, whether previously appointed or dawn raid, of detention facilities for the purpose of checking the conditions of detention and treatment imposed to persons held in custody; Thus, the visiting teams pay notified or dawn raid visits in detention facilities.

104. Furthermore, in accordance with the provisions of Article 93 (f) of the Regulation on the safety of detention facilities subordinated to the National Prison Administration, approved by Order No. 4800/2018 of the Minister of Justice, "depending on the position and powers conferred by it, but also with a view to fulfilling the professional duties, the following persons may have access to the detention facilities: ... f) the Ombudsman and the deputies thereof; ...".

105. At the same time, Article 94 (1) (d) of the same normative act stipulated as follows, "within the jurisdictional limits governing them and for the purpose of fulfilling professional duties, in the detention facilities subordinated to the National Prison Administration, the following may have access, in reliance upon delegations signed, as the case may be, by the Minister of Justice, State secretaries within the Ministry of Justice, general manager and deputy general managers of the National Prison Administration or one of the persons referred to in Article 93 (f), (h) and (i) of this Regulation: d) personnel forming part of the Ombudsman institution and delegated to conduct specific inspections".

106. Visits take place *ex officio*, depending on an annual visit schedule, submitted by the deputy Ombudsman for the Field for the prevention of torture in detention facilities and approved by the Ombudsman or as dawn raid, to be decided depending on criteria such as: types of existing detention facilities; geographical distribution of detention facilities; known vulnerabilities of certain types of detention facilities; previous reports of the Field for the prevention of torture in detention facilities and of the other fields of activity within the institution.

107. Mention is to be made that, in Romania, monitoring by NPM, in accordance with the latest assessment conducted in 2016, is conducted in 2318 detention facilities: 44 subordinated to the National Prison Administration; 139 centers subordinated to the Ministry of Internal Affairs; 2103 social assistance facilities of the Ministry of Labor and Social Justice; 34 facilities subordinated to the Ministry of Health.

108. In light of all of the above, between 1 January 2015 and 31 December 2018, NPM performed 296 visits, as follows: 61 in prisons, 41 in arrest detention centers, 73 in

residential centers for children, 29 in centers for disabled adults, 42 in homes for the elderly, 22 in psychiatric hospitals, 28 migrants centers.

109. Considering that the entire national territory is covered, by Order No. 56 of 15 September 2014, the Ombudsman approved the structure of the Field for the prevention of torture in detention facilities, as follows:

- The central structure, also comprising the Regional Center of Bucharest, having under its jurisdiction the Bucharest Municipality and the following counties: Buzău, Călărași, Constanța, Dâmbovița, Ialomița, Ilfov, Giurgiu, Prahova, Teleorman, Tulcea.
- The territorial structure comprised of 3 regional Centers, as presented in annex 1, point 6.

Reply to paragraph 7 (c) of the list of issues

110. The deputy Ombudsman for the Field for the prevention of torture in detention facilities (NPM) shall prepare the draft annual report for the activity of this field, to be submitted for approval to the Ombudsman. The annual report contains: the analysis and conclusions of visits paid during that year; proposals and recommendations issued; measures enacted by domestic authorities in connection with the same; suggested improvements of the legal frame in the field of activity, as well as any other data or information relevant for the activity of the Field for the prevention of torture in detention facilities.

111. In accordance with Law No. 35/1997, republished, the NPM report forms an integral part of the annual activity report of the Ombudsman, to be submitted by the Ombudsman to the Parliament, no later than 1 February of the following year, with a view to being debated in the joint session of the two Chambers. The report contains information concerning the activity of the Ombudsman institution and may contain recommendations to amend laws or any other measures to protect the rights and freedoms of private individuals. The annual report shall be published.

112. In order to publicize the findings of the Field for the prevention of torture, the Annual Activity Report was disseminated depending on the public authorities targeted in the meetings organized with them.

113. In the draft law for amending and supplementing Law No. 35/1997, republished (PL-X 1/2018), it is provided to prepare the annual activity report of the NPM on a separate basis, to be submitted for approval to the Ombudsman, but also the fact that the Ombudsman submits, in the joint session of the two Chambers of the Parliament, an annual report on the activity of the Ombudsman institution and an annual report on the activity of the NPM.

114. The findings deriving from the visits are detailed in a visit report which, in the cases where irregularities are found, will be accompanied by reasoned recommendations for the purpose of improving the treatment and conditions of persons deprived of liberty and of preventing the torture and inhuman or degrading treatment or punishment. The targeted institution has an obligation to provide a reasoned reply to the suggestions and recommendations contained in the visit report, pointing out its standpoint on what was found, the reasoned timeframe within which measures are to be adopted in order to comply with the content thereof or, as the case may be, the reasons which compliance may not be achieved. If the visited institution does not comply, the Ombudsman or, as the case may be, the deputy Ombudsman for the Field for the prevention of torture in detention facilities will inform the hierarchically superior authority or the authority of the local or central public administration having issued the operation authorization accordingly, in the case of private detention facilities, and may act in line with the provisions of the Law and of the Regulation for the organization and operation of the Ombudsman institution.

115. In the cases where a violation of human rights is ascertained, through torture or cruel, inhuman or degrading treatment causing an impending risk for human life or health, a preliminary emergency report will be prepared.

116. The Ombudsman has the obligation to immediately notify the judicial bodies when, in discharging his duties, he finds that there are clues pointing to the perpetration of offences stipulated in the criminal law.

117. All visit reports drawn up by NPM and the replies of visited facilities are uploaded to the Ombudsman institution's website.

118. Since its incorporation, NPM has permanently kept in touch with the public authorities holding persons deprived of liberty in custody, by submission of visit reports and recommendations issued, setting work meetings, inviting the representatives thereof to round tables/symposia /conferences organized by NPM. Please find the organized events in the annex No. 1 point 7.

119. Furthermore, the National Prison Administration informed the subordinated units, on several occasions, on the need to observe the provisions of Law No. 35/1997 on the organization and operation of the Ombudsman institution, as subsequently amended and supplemented, within the meaning that, "the visit report, but also the reasoned reply set forth in Article 44, whenever delivered, are public and uploaded to the website of the targeted institution, the hierarchically superior authority or the local or central public administration authority having issued the operation authorization, but also the Ombudsman, except for the sections containing personal data or classified information".

Reply to paragraph 7 (d) of the list of issues

120. Law No. 35/1997 on the organization and operation of the Ombudsman institution, republished, stipulates in Article 2 (2) the fact that the Ombudsman institution, through the Field for the prevention of torture and other cruel, inhuman or degrading treatment or punishment in the detention facilities (Field for the prevention of torture in detention facilities), fulfills the specific duties of the National Mechanism for the Prevention of Torture in the detention facilities, within the meaning of the Optional Protocol, enacted in New York on 18 December 2002, during the Convention against torture and other cruel, inhuman or degrading treatment or punishment, adopted in New York on 10 December 1984, ratified by Law No. 109/2009.

121. Furthermore, the normative act sets forth, in Article 49, that in fulfilling his duties, the Ombudsman or, as the case may be, the deputy Ombudsman for preventing the torture keeps in touch with the Sub-committee for preventing the torture, delivers information to the latter and meets with its members.

122. Thus, in the context of the duties of the Field for the prevention of torture in detention facilities in order to enforce the provisional mandate of NPM and having regard to the following:

- The position of the UN Sub-Committee for the prevention of torture (SPT), the report issued following visiting Romania in 2016 (published in August 2017), emphasizing that a clear distinction needs to be made between the mandate of NPM and the other duties held by the Ombudsman, but also that the claims shall not be set forth in the NPM mandate;
- SPT directives, concerning the national prevention mechanisms – Underlying principles stipulating as follows:
 - "the State shall be responsible of providing the creation of a national prevention mechanism, meeting the requirements of the Optional Protocol" (CAT/OP/12/5, paragraph 2);
 - "the mandate and powers of the mechanism shall comply with the provisions of the Optional Protocol" (CAT/OP/12/5, paragraph 6);
 - "if the organization appointed to act as NPM also fulfills other functions, such as in accordance with the Optional Protocol, its functions as a national mechanism should be entrusted to a separate group or department, including own personnel and own budget (CAT/OP/1215, paragraph 32).

123. Starting from 2016, the first steps were taken to harmonize the provisions of Law No. 35/1997 concerning the Field for the prevention of torture (NPM) with the provisions of the Optional Protocol.

124. Thus, the legislative draft for amending and supplementing Law No. 35/1997 on the organization and operation of the Ombudsman institution, but also for amending Article 16 (3) of Law No. 8/2016 on setting up the mechanisms stipulated in the Convention on the rights of disabled individuals (PI-x No. 1/2018) included amendments relating to the organization and operation of the Field for the prevention of torture, which concerned, in principal-the complaints concerning acts of torture, cruel, inhuman or degrading treatment in the detention facilities shall be settled, depending on the type of detention facility, by the activity fields of the Ombudsman institution, playing a reactive role. The national preventive mechanism will only fulfill duties in the field of the prevention of torture in the detention facilities, by paying regular visits to such facilities and where the opinion of specialists is required, by order of the Ombudsman, may also settle claims or requests *ex officio*. The cooperation between the NPM and the fields of activity of the Ombudsman institution will be determined by the Regulation for the organization and operation of the Ombudsman institution.

125. Other significant amendments comprised in the Bill of Law, concerning the activity of the National Prevention Mechanism: examination of and capitalization on information contained in the reports delivered by non-governmental organizations, drawn up upon monitoring the conditions of admission to regional procedure and accommodation centers for asylum seekers, but also upon monitoring the removal of escort; the NPM drawing up an Annual Activity Plan; the management of the detention facilities or the employees of the detention facilities shall be prohibited from confiscating or from compelling the members of visiting teams to disclose any confidential documents and information acquired during the visit; access to the detention facilities for members of the visiting team carrying cameras, audio recorders, instruments for the measurement of surface area, noise level, temperature and moisture, in order to appraise the relevant issues of the conditions of detention and the treatment imposed to the persons held in custody there; guarantees against any form of penalty/retaliation against any person or organization for the fact of having communicated any information to the members of the visiting team; granting a bonus of 15% for jeopardizing conditions for the personnel in the National Prevention Mechanism paying visits to facilities where there are factors which could impact their physical and mental health and integrity.

126. On 14 February 2018, the Ombudsman issued Order No. 8 for compliance with the OPCAT provisions concerning the provisional mandate of the Field for the prevention of torture in detention facilities.

127. According to the above-mentioned Order, any claims relating to acts of torture, cruel, inhuman or degrading treatment in the detention facilities shall be settled by the fields of activity of the Ombudsman institution playing a reactive role, depending on the type of detention facility. Only in cases construed by the Ombudsman to be exceptional can the latter order claims or initiation of proceedings *ex officio* to be settled by NPM.

128. As regards the powers of the NPM, subject to Law No. 9 of 5 January 2018 amending and supplementing Law No. 35/1997 on the organization and operation of the Ombudsman institution, a new field of activity was set up in the Ombudsman institution, exclusively with a view to defending and supporting children's rights, coordinated by a deputy, Child's Advocate which, in fulfilling the mandate specific to the field of protecting and supporting children's rights, also performs dawn raids for inspection, *ex officio* or upon request, together with the representatives of the National Mechanism for the Prevention of torture in the detention facilities, in educational or detention centers where juveniles serve measures involving deprivation of liberty, laid down in Law No. 286/2009, as subsequently amended and supplemented, in the field of criminal liability of juveniles, with entities authorized to supervise and guide juveniles serving measures not involving deprivation of liberty, stipulated in Law No. 286/2009, as subsequently amended and supplemented, in the field of criminal liability of juveniles, with care institutions, family type housing, foster care and family placement where the juvenile is placed as a special protection measure set

out in Law No. 272/2004, republished, as subsequently amended and supplemented, with the extended family, but also with pediatric hospitals.

129. The visiting teams also contain representatives of non-governmental organizations, acting in the field of human protection, selected depending on the activity, by the Ombudsman.

130. In 2018, collaborations were carried on with non-governmental organizations and new Protocols were concluded with the following: ICAR Foundation, “Vocea copiilor abandonati” Association, the Association of Institutionalized Youth Council, the “Junii” Association, the Association for community support and social integration “Ascis”, the Association of “Sf. Maria Ajutorul Creștinilor” Children’s Home, the Association “Aproape de oameni” Iași, the Community Support Foundation of Bacău, the Association for Action and Resources for the Community (ARC) of Bacău. Thus, the Field for the prevention of torture in detention facilities cooperates with 32 Non-Governmental Organizations, as stated in the annex No. 1 point 8.

131. The visiting teams within the Field for the prevention of torture in the detention facilities conducted, in 2018, 81 visits to detention facilities (prisons – 9 visits, arrest detention centers – 13 visits, migrant centers – 8 visits, residential centers for children – 16 visits, neuro-psychiatric recovery centers – 14 visits, psychiatric hospitals – 7 visits, homes for the elderly – 14 visits).

132. Following the 81 de visits, 378 recommendations were issued, as follows: • prisons – 25; • arrest detention centers – 61; • migrant centers – 22; • children centers 93; • homes for the elderly – 58; • psychiatric hospitals – 58; • centers for disabled individuals – 61.

133. A significant matter in the activity of NPM in 2018 consisted of monitoring the implementation of recommendations laid down in the Visit Reports, by arranging a dialog with the representatives of visited institutions and of hierarchically superior public institutions. In that regard, out of the 81 visits paid, 22 visits aimed at examining the implementation of recommendations.

134. Dissemination actions in respect of the duties of the Field for the prevention of torture in the detention facilities (NPM), attending conferences, national and international symposia, personnel training

135. In order to increase the awareness of authorities to which entities subject to NPM monitoring are subordinated, in connection with the prevention of torture and ill treatment, NPM members have conducted an extensive dissemination campaign in 2018. During such events, the following were presented: Activity report of NPM for 2017; concepts such as human dignity, torture, inhuman treatment, degrading treatment and prevention of torture; law governing the prohibition and prevention of torture; suicide; observance of minimum quality standards; findings by NPM during their visits; recommendations delivered to the visited facilities.

136. Therefore, the events thus organized also played a role of training the personnel working in facilities where individuals are deprived of liberty, within the meaning of Article 4 of the Optional Protocol to the Convention against torture and other cruel, inhuman or degrading treatment or punishment.

137. Furthermore, with a view to identifying the possibilities of support from NPM, the concerns which the facilities faced were discussed during the meetings.

138. Please find in the annex a description of the events organized with a view to increasing the awareness in connection with the NPM role in preventing the torture and ill treatment.

139. Training for NPM members. Taking part in courses/symposia/conferences organized at national and international level. Other actions undertaken by NPM at national and international level are to be found in the annex No. 1 point 9.

140. For maintaining the connection with the Sub-Committee for the prevention of torture, please note the correspondence exchanged with Ms. Mari Amos – member of the Sub-Committee for the Prevention of Torture and head of the Regional European Team, a

context in which the Activity Report of NPM for 2016 was submitted, in connection with which the following was noted: • NPM organized and took active part in various events both at the national level, and at the international level; • proactive approach by NPM in reference to NPM activism in claiming own rights, suggesting and negotiating amendments to the law for its operation and contributions to bills of law; • the structure of visits was sufficiently clear to create an understanding of shortcomings, recommendations and their implementation; • fast response to revolts in Iași Prison and Botoșani Prison, through visits performed to such institutions and involvement in settling the case; cooperation with NGOs.

Articles 2, 11 and 13–16

Reply to paragraph 8 (a) and (e) of the list of issues

141. From a legislative perspective, there are no causes of impunity for such offences.

142. As regards the measures adopted with a view to preventing the abusive behavior of police officers to the members of the Roma community, mention is to be made that, in addition to its punitive nature, the Romanian criminal law also has a preventive purpose, by severely penalizing such offences. Therefore, the law-maker stipulated, in the New Penal Code, an aggravating circumstance, in particular the perpetration of this criminal offence for reasons pertaining to race, nationality, ethnicity.

143. At the same time, through the draft law No. 405/2018 (bill of law amending Law No. 218/2002 on the organization and operation of Romanian Police), an article – Article 32⁹ shall be added, reading as follows:

“In fulfilling their professional duties, police officers are entitled to use coercion means, consisting of: physical force, including the use of self-defense or strikes; handcuffs or other means allowing to immobilize the upper and/or lower limbs, herein after referred to as immobilization means; non-lethal means; white and or fire weapons; appropriate means or, as the case may be, vehicles, to forcedly stop, block or open vehicles or closed premises where persons or good may be found, or to remove obstacles.

Using coercion means shall not exceed, as intensity and duration, the actual needs for achieving the purpose of the intervention.

The use of coercion means shall cease as soon as the purpose of the intervention was reached.

Coercion means shall be gradually used, after prior verbal warning of using them and after allowing the required time to the person comply with the police officer’s legal requests. In case of an impending violent actions directed against the police officer or against another person, coercion means may be used without prior verbal warning.”

144. Starting from the legislative models subject to analysis, in particular from the practices imposed during the police procedures also applicable in other States, using the standard “force continuum” or “pyramid of danger”, it proposed to set up clear comprehensive rules, so that violent or potentially violent situations are managed through means commensurate with the behavior of the targeted person.

145. Thus, in the bill of law, it is proposed that the use of coercion means be subordinated to principles of necessity, graduality and proportionality. Thus, the means, procedures and, in general, the conditions subject to which police officers act will be known inclusively by citizens.

146. The principles referred to above will be transposed through accessible predictable wording, allowing the citizens to know and to comply with them, but also to assume the consequences of potential aggressive behavior.

147. It is important to notice that for each of the tiers of danger, entailing a commensurate response from the police officer, the text of law expressly stipulates the purpose why force should be used, be it physical force, using the handcuffs, non-lethal or lethal means. In

respect of the “pyramid of danger”, the statement of reasons for this bill of law details, including by graphic means, the methods for using force.

148. At the same time, Article 32¹⁰ will also be added, laying down that the police officer is entitled to use physical force for the purpose of overcoming physical resistance of the person who, without using violence, opposes or fails to comply with the legal requests of police officers, in accordance with Article 31 (1) (m)–(o) or relating to the following: a) taking to the police precinct b) conducting a search in accordance with criminal procedure regulations, body search and searching the luggage of the targeted person, but also the vehicle used by them; c) using handcuffs or other immobilization means.

149. In building the regulation, the assumption was that the presence of a police officer, the manner in which they stand before the subject, their behavior, spatial location depending on the situation, consists of the first level of using force. Their physical condition, physical training, physical condition of police officers, may determine the subject to change their behavior, to adopt a new attitude, to comply with the lawful requests of police officers.

150. At this stage, verbalization is a significant pillar, considering that it allows police officers to make their conduct known to the present persons (subjects – who are thus summoned to comply; their partners – to efficiently cooperate as a team; third parties – who could be in the area and could avoid or circumvent a potentially hazardous situation) and to defuse or avoid escalation.

151. Therefore, police officers may settle the potentially violent situation occurred, without using force, through:

- An instruction for the person to do or to refrain from doing something;
- Prior warning that force will be used, if the instruction is ignored.

152. Only after such non-violent law-enforcement means have been exhausted, may physical force be used, in observance of the general rules laid down in Article 32⁹.

153. As for the resistance of the person to comply with the lawful requests of police officers, also referred to as the “pyramid of danger”, we could face passive resistance (namely, they do not comply or is uncooperative, however the physical resistance opposed is minimum – for instance, they stand, do not move, do not go in the indicated direction; lay on the ground and refuse to move by themselves; grasps/holds tight to a fixed item or to another person) or active resistance (their physical or verbal actions are such that they prevent the police officer from gaining control and are not aimed at harming the police officer – fleeing the site, the police control; circumvention, breaking loose, escaping the police officer’s grasp).

154. In the same respect, a new article – Article 32¹¹ – was added indicating that the police officer is entitled to use handcuffs or other immobilization means in order to prevent or neutralize the violent actions of anyone.

155. For the purpose of precluding self-inflicting harm by the person or the occurrence of a state of danger threatening the life, health or bodily integrity of police officers or of another person, police officers are entitled to use immobilization means where:

- (a) The person taken to the police precinct is known for violent behavior against themselves, persons or goods;
- (b) The person taken to the police precinct has committed or is suspected of having committed a criminal offence of violence or acts of terrorism;
- (c) The person escaped from lawful remand or detention or circumvented a preventive measure or a sentence involving the deprivation of liberty;
- (d) The equipment of the transport means used or the travelling itinerary do not allow other measures to be adopted, to prevent the perpetration of violent actions or flight;
- (e) The person forming the object of measures involving deprivation of liberty imposed with a view to precluding a state of jeopardy against public order.

156. The legal provisions governing the use of handcuffs or other immobilization means, set forth in the regulations on the service of sentences and measures involving deprivation of liberty, shall apply accordingly.

Reply to paragraph 8 (b) of the list of issues

157. Cases concerning criminal offences of violence, committed by law-enforcing agents of the State against Roma are investigated by prosecutors with the necessary diligence, with focus on the particular requirements specific to the discrimination element and in observance of the standards of case-law of the European Court of Human Rights in this field.

Reply to paragraph 8 (c) of the list of issues

158. Mention is to be made that, in the case of police officers investigated for the death of the person named Gabriel Daniel-Dumitrache, an event which occurred in March 2014 in Bucharest, pending before Bucharest Tribunal—First Penal Division, penal case No. 19113/3/2014, in which the person named I.S.G. was sentenced to prison, for having committed the criminal offence of battery or injury causing death, as provisioned by Article 195 of the Penal Code, and following the defendant’s appeal, by decision No. 1342A/22 September 2016 of Bucharest Court of Appeals, the prison sentence became final. Furthermore, on 22 September 2016, the professional relationship with the entity ceased.

Reply to paragraph 8 (d) of the list of issues

159. Victims of acts of violence may request relief from such damage subject to tort civil liability, either as part of criminal proceedings, or by separate means.

Reply to paragraph 8 (f) of the list of issues

160. With a view to developing a multi-sectoral organizational culture, the Romanian Police continues to take steps within the meaning of developing the human resources within its own organization.

161. Drawing young Roma to build a career in the public order and safety structures and training them fields and topics specific for the minorities is a priority, in the field of human resources. In that respect, the number of places distributed to police agent schools within the structure of the General Inspectorate of Romanian Police in the past four years are presented in the annex No. 1, point 10.

162. At present, the National Prison Administration(NPA) does not have places especially dedicated to Roma ethnicity applicants, in education institutions where personnel is being prepared for the prison system or during recruitment contests, from external source, for vacant positions. This does not restrict the right of representatives of these ethnicities to gain access to methods for entering the system, as specified above.

163. The Human Resource Management Directorate aims that, in the future, in the education institutions referred to above, the NPA is allowed to organize contests for places especially dedicated to this ethnicity.

Reply to paragraph 8 (g) of the list of issues

164. As further noted in the 2015 observations, the Penal Code sets forth a general legal aggravating circumstance consisting of committing a criminal offence for reasons relating to race, nationality, ethnicity, language, religion, gender, sexual orientation, political belief or membership, fortune, social origin, age, disability, non-transmissible chronic disease or HIV/AIDS infection or for other similar circumstances, which, in the perpetrator’s opinion, are signs of inferiority of a person, when compared to others (Article 77, h) of the Penal Code). Furthermore, the special section of the Penal Code incriminates, in Article 369, the criminal offence of instigating to hate or discrimination.

165. Furthermore, the Romanian Police implements, in partnership with the National Council Fighting against Discrimination, the “No discrimination!” Project, aimed at

increasing the degree of awareness for several social categories in anti-discrimination fields and precluding hate-driven criminal offences.

166. Thus, in 2018, more than 100 police officers within the structures for preventing criminality, public order, criminal investigations, special and traffic actions of the General Inspectorate of Romanian Police and General Police Directorate of Bucharest Municipality, which took part in training sessions aimed at non-discrimination and precluding hate-driven criminal offences.

167. On that occasion, police officers and police agents have benefited from a range of information, such as: national and international laws governing the field of reference, EU and Romanian institutions operating in the field of human rights, ECHR case-law, management of inter-ethnic relationships, conflict resolution, etc. Furthermore, police officers were involved, by the expert of the National Council for Fighting against Discrimination, in settling cases in the field of preventing and fighting against discrimination.

168. Prior to organizing courses, the partners drew up a Practical Guidelines for police officer concerning the field of reference, and it was later delivered, in electronic format to all participants. At the same time, in order to support the development of permanent learning for police servants, the guidelines were submitted as soft copy, by the internal network, to all police units.

169. Feedback from the beneficiaries was positive, and they were deemed to be extremely useful, in their activity, both in terms of information delivered, and the practical applications imposed during the two days.

170. At the same time, more than 1500 pupils and students of “Vasile Lascăr” Police Agent School and “A. I. Cuza” Police Academy took part in two informative sessions in which police officers with the Institute for Crime Investigation and Prevention informed the beneficiaries on concepts such as discrimination and its form, hate-driven criminal offences, ECHR case-law the field of discrimination.

171. Furthermore, at the level of the Romanian Police, it is currently underway the preparation of methodology for investigating criminal offences driven by discrimination, together with the Prosecutor’s Office attached to the High Court of Cassation and Justice. The methodology will include rules and take consistent and concerted measures in most issues listed in the questionnaire delivered by OSCE.

172. At present, measures such as those listed in the OSCE questionnaire are handled at the level of the Romanian Police in accordance with the general legal provisions governing the field of preventing and fighting against criminal offences and other illicit actions falling under the jurisdiction of our institution. Furthermore, the main recommendations issued by international organizations are forwarded to police officers, upon initial and continuous training, when the issue relating to the protection of human rights is targeted.

Reply to paragraph 8 (h) of the list of issues

173. The permanent training of police officers is a permanent concern, at the level of the Romanian Police, drawing up topics such as: Human Rights and Police, the Rights of national minorities, Preventing discrimination, Good practices for strengthening trust and understanding between the police and the Roma minority, Prevention of hate-driven criminal offences.

174. These are an information support for all officers/agents within the central and territorial structures for crime analysis and prevention taking part in the preparation, conducted at the level of units and informing target-groups.

175. At the same time, specialized police servants in the criminal investigation and public relations structures attended, in 2018, the second monitoring exercise, initiated by the European Commission, for testing the reactions of IT companies (Facebook, Twitter, Google-YouTube and Microsoft) in connection with the removal of online hate-instigator content.

176. Training activities involving the field of prevention and investigation of criminal offences committed for racial reasons which took place at the level of Romanian Police, between 2014 and 2018, are presented in the annex No. 1 point 11.

177. As regards the prevention and fighting against discrimination, in particular for the prevention and fighting against hate-driven criminal offences, in the past years, several training programs were permanently organized in education institutions of the Ministry of Internal Affairs.

178. In that regard, the Institute of Studies for Public Order held training sessions in the field of human rights “Prevention and fighting against all forms of discrimination” and “Prevention of torture and inhuman or degrading treatment or punishment”, “Prevention and fighting against gender violence”, which were attended by police servants within public order, criminal investigations, and transport police structures.

179. The purpose of these training programs consists of preventing acts of discrimination/abuse in the relationship between police workers and persons from groups facing discrimination risks. Certain topics were supported by representatives of civil society organizations, such as Accept Association.

180. The above-mentioned training sessions were attended, in 2018, by 189 police servants within defense and public order structures, and since the beginning of 2019, 16 police servants have been trained.

181. It is important to notice that, every year, in the initial training program organized by “Vasile Lascăr” Police Agent School of Câmpina and by “Septimiu Mureșan” Police Agent School of Cluj-Napoca, specific training topics are provided, concerning the protection and respect of human rights in the activity performed by police servants.

182. At the same time, focus was placed on reviewing similar topics in additional training in the field of “Hate-driven criminal offense”, set forth for career initiation training for personnel employed from external sources, organized at the level of police agent schools and improvement centers subordinated to the General Inspectorate of Romanian Police.

183. In the Multifunctional Schengen Training Center, improvement courses were organized every year, in the field of torture and inhuman treatment for the personnel in the Coordination Service for Arrest Detention Facilities, which were attended, in the past two years, by 30 police servants.

184. The above-mentioned bill of law⁷ suggests to amend Law No. 218/2002 within the meaning of adding Article 32⁴, which stipulates, in paragraph (1), that police servants are entitled to take an individual to the police precincts, in the case where:

(a) In accordance with Article 32² (3), their identity could not be determined, or there are trustworthy reasons to suspect that the declared identity is not the actual one or that the submitted documents are not genuine;

(b) In light of the behavior, venue, time, circumstances, or goods found on them, there are trustworthy reasons to suspect that they prepare or have committed an illegal act;

(c) Their actions jeopardize the life, health or bodily integrity of themselves or of another person or public order;

(d) Taking legal measures, on the spot, could create a state of jeopardy for them or for public order.

185. The wording of the reference bill of law, stipulating, *inter alia*, inclusively the decreased down to maximum 12 hours of the period necessary for taking and determining the identity of a person to the police precinct, is currently undergoing parliamentary procedure.

186. As regards the penalizing and entailing criminal liability of persons guilty in cases of excessive use of force, Law No. 286/2009 on the Penal Code, incriminates the following

⁷ The bill of law for amending and supplementing normative acts in the field of public order and safety No. PL-x 405/2018.

acts as criminal offences: abusive investigation (Article 280), ill-treatment (Article 281), torture (Article 282), abusive conduct (Article 296).

187. Furthermore, the Penal Code penalizes, as an aggravating circumstance, the perpetration of a criminal offence for reasons relating to race, nationality, ethnicity, language, religion, gender, sexual orientation, political opinion or membership, fortune, social origin, age, disability, non-transmissible chronic disease or HIV/AIDS infection or for other similar circumstances, which, in the perpetrator's opinion, are signs of inferiority of a person, when compared to others.

188. In fulfilling specific missions, servants within the Romanian Gendarmerie conduct their activity in strict compliance of domestic laws, international conventions, but also the provisions of the Code of Ethics and Deontology of Police Servants.

189. During the reference period, the workers within the Romanian Gendarmerie took part in various training activities (training or post-university courses), in connection with Human Rights in public order and safety institutions or in the non-discrimination field, organized by various institutions competent in the field, among which: "Alexandru Ioan Cuza" Police Academy – National College for Internal Affairs, Romanian Council for Action against Discrimination, National Intelligence Academy.

190. By means of annual orders of the general inspector of Romanian Gendarmerie on permanent training, the personnel of Romanian Gendarmerie also review topics in the fields of international humanitarian law and human rights.

191. During training courses intended for preparing the personnel for taking part in international missions, topics such as the following are also addressed: international law governing UN peace-keeping operations; protection of human rights in UN peace-keeping operations; women, peace and security; child protection.

192. During the initial training process taking place at the level of Military Gendarmerie Sub-Officer Schools of Drăgășani and Fălticeni, students attend 20 hours falling under the scope of the Cooperation in Schengen area module and in the field of human rights.

193. Furthermore, please note, on an indicative basis, activities, which were attended by prosecutors, as presented in annex No. 1 point 12.

Article 3

Reply to paragraph 9 (a) of the list of issues

194. Non-refoulement is a fundamental principle in the asylum field, as laid down in Article 6 of Law No. 122/2006 on asylum in Romania, as subsequently amended and supplemented, as presented in annex 1 point 13.

195. Compliance with the principle of non-refoulement implicitly requires access to the asylum procedure. If access to the asylum procedure is not provided, it is not possible to analyze the reasons relied upon by the foreigner and to determine the risks which they may face in their country of origin.

196. Access to the asylum procedure is expressly governed in Article 4 of Law No. 122/2006 on asylum in Romania stipulating as follows "The competent authorities ensure access to the asylum procedure to any foreigner or stateless person who is in Romanian territory or at Romania's borders, from the moment the desire is expressed, either in writing or orally, which states that the latter is requesting the protection of the Romanian state, except for the situations set forth in Article 50¹, Article 91 (2) (b), Article 95 (2), Article 96 (2), Article 97 (2) and Article 120 (2) (a)."

197. The exceptions laid down in Article 4 of the above-mentioned normative act do not prejudice the principle of non-refoulement and refers to situations reviewing the admissibility of the application for asylum submitted by the beneficiary of a form of protection granted by another Member State or the request to be granted access to a new asylum procedure, but also the procedure of the first asylum country, of the safe European

third country or of the safe third country and the procedure determining the Member State responsible for reviewing the application for asylum.

Reply to paragraph 9 (b) of the list of issues

198. In practice, no cases were pointed out where the principle of non-refoulement was violated, and the legal provisions in effect were observed.

Reply to paragraph 9 (c) of the list of issues

199. For the purpose of fulfilling the necessary formalities, in order to minimize the abuse during the asylum procedure, but also if they are hazardous for national security, as a result of an individual analysis, the General Immigration Inspectorate may impose restrictive measures against asylum-seekers, in accordance with the legal provisions, as follows:

(a) Obligation to come at the headquarters of the General Immigration Inspectorate structure. During the asylum procedure and during the procedure intended to determine the Member State responsible, the General Immigration Inspectorate may compel the international protection application to come regularly, on the specified dates and times, but also upon request, to the headquarters of one of its territorial structures.

(b) To establish their residence in a regional center for procedures and accommodation of asylum-seekers. During the asylum procedure and throughout the procedure for determining the Member State responsible, the General Immigration Inspectorate may order the international protection seeker to establish their residence in a regional center for procedures and accommodation of asylum-seekers, even though they have survival means.

(c) Placement in especially arranged enclosed premises. If the above-mentioned restrictive measures are not sufficient for fulfilling the formalities, but also with a view to limiting any abuses relating to the asylum procedure, the international protection seeker may be placed in an especially arranged enclosed premises, subject to temporary restriction of their freedom of movement.⁸

200. Placement in enclosed premises may only be ordered in the following cases:

(a) In order to verify the declared identity;

(b) In order to determine the elements underlying the international protection application, which could not be obtained in the absence of this measure, in particular where there is a flight risk for the applicant;

(c) Upon the request of one of the institutions competent in the field of national security, whereby it derives that the international protection seeker poses a jeopardy to national security.

201. Flight risk shall mean the factual background justifying the assumption that the international protection seeker could circumvent the performance of specific activities for determining the elements of the international protection application. A flight risk is posed by an applicant subject to any of the following cases:

(a) Crossed or was caught while trying to illegally cross Romania's state border, after submission of the international protection application;

(b) Was caught while trying to illegally cross Romania's state border, and the international protection application was submitted after their apprehension;

(c) There is reason to believe that they intend to leave the territory of Romania, after submission of the international protection application;

(d) Taking or, as the case may be, keeping in public custody.

⁸ Article 195 (1) of Law No. 122/2006.

202. An international protection seeker may be placed or, as the case may be, kept in public custody, in the cases laid down in Government Emergency Ordinance No. 194/2002 on the status of foreigners in Romania, republished, as subsequently amended and supplemented, but also in the following cases:

(a) During the procedure for determining the Member State responsible, with a view to providing transfer to the Member State responsible;

(b) If the applicant was placed in public custody with a view to being removed or expelled from the territory of Romania and has filed an international protection application with a view to delaying or frustrating the enforcement of the removal or expulsion measure, although they could have filed such an application before the measure was imposed.

203. During the procedure for determining the Member State responsible (letter (a) above), the measure of placement under public custody may be imposed against the applicant posing a high flight risk from the procedure of transfer to the State determined to be in charge of reviewing the international protection application.

204. Furthermore, the measure of placement under public custody is imposed after an individual analysis of the case and only after having previously ascertained that the less restrictive measures (“Obligation to come at the headquarters of the General Immigration Inspectorate structure” or “to establish their residence in a regional center for procedures and accommodation of asylum-seekers”) are not possible and sufficient, in reference to the procedure in which they are ordered and in reference to the purpose pursued by the application of that measure. At the same time, mention is to be made that, in accordance with the provisions of the European Regulation governing the procedure for determining the Member State responsible (EU Regulation No. 604/2013) the detention measure is imposed in reliance upon “an individual analysis and solely where this measure is commensurate and if less coercive alternative measures may not efficiently be imposed”.

205. Placing under public custody an asylum seeker against whom the measure of removal/ expulsion from the territory of Romania was ordered (letter (b) above), in accordance with Government Emergency Ordinance No. 194/2002 on the status of foreigners in Romania, is the measure of temporary restriction of the freedom of movement in the territory of Romania, for the purpose of taking all necessary steps to remove from escort, when the foreigner does not leave the Romanian territory voluntarily.

206. Please note that the international protection seeker may be placed under public custody, in accordance with Government Emergency Ordinance No. 194/2002 on the status of foreigners in Romania, only if declared undesirable (“measure being ordered by the court of law upon the motion of the prosecutor, following the recommendations of institutions competent in the field of public order and national security, a measure imposed against a foreigner having conducted, currently conducting or where there are well-grounded clues that they intend to conduct activities likely to jeopardize national security or public order”).

207. With a view to avoiding abuse during the asylum procedure, Law No. 122/2006 on asylum in Romania stipulates to review, within 3 days, asylum applications filed by foreigners placed under public custody (irrespective of the reason why such measure was imposed).

208. Whenever it is deemed that the international protection application forms the object of accelerated procedure, the application shall be dismissed and the asylum-seeker shall continue in public custody, with a view to accomplishing the purpose for which that measure was imposed (removing the foreigner from the Romanian territory).

209. If access to the ordinary procedure is deemed necessary, a decision will be issued in that respect, and the measure of public custody shall cease, save for the case where the foreigner is declared undesirable.

210. At the same time, mention is to be made that the measure of placement in public custody, but also alternative measures (as described above) cannot be ordered as penalties for the behavior of asylum-seekers or for failure to fulfill one or more obligations incumbent upon them, and such measures require an individual analysis in order to be enforced.

211. The measure of placement in especially arranged enclosed premises is last resort, and ordered only after examining whether it is appropriate to impose less restrictive measures, if deemed that they are possible and sufficient in serving to the fulfillment of the purpose for which it is to be imposed. The measure of placement in especially arranged enclosed premises may not be ordered against juvenile international protection seekers, except for the case where the unaccompanied juvenile cannot prove their age and there is serious doubt of their age, in observance of the principle of protecting children's best interest (Article 19⁵ (2) of Law No. 122/2006 on asylum in Romania).

212. The measure of placement in public custody is ordered for a fixed period of time, and may be extended, upon the reasoned request of the General Immigration Inspectorate. At the same time, the possibility is further provided, in accordance with Government Emergency Ordinance 194/2002 on the status of foreigners in Romania, to suspend this measure enacted against a foreigner and to tolerate foreigners to remain in the Romanian territory, who do not have a right to stay and who, for objective reasons, do not leave the territory of Romania.

213. Toleration is granted for a period of up to 6 months, which may be extended for additional 6-month periods, until the causes expire. Toleration may successively be extended by the prosecutor, by means of an ordinance, or by the court of law, by court minutes before the closing of the criminal proceedings.

214. The foreigner has an obligation to regularly come, every two months or whenever invited, to the General Immigration Inspectorate structure having released the toleration document and to notify any change of their residential address.

215. Toleration has a territorial validity limited to the jurisdiction of the General Immigration Inspectorate structure having issued the toleration document, and any movement outside it is only allowed subject to prior approval.

Reply to paragraph 9 (d) of the list of issues

216. Between 01 January 2015 and 31 December 2018, 10,108 asylum applications were submitted, and among them, 3,287 were approved, and the status of refugee was granted in 1,985 cases, while subsidiary protection in 1,302 cases.

217. As a general reference, the examinations conducted by the Ombudsman institution – the autonomous public authority appointed as a national structure holding duties specific for the National Torture Prevention Mechanism in the detention facilities – revealed, upon the latest inspections, no particular concerns pertaining to the conditions of detention and the treatment imposed to persons in custody.

Reply to paragraph 10 of the list of issues

218. The deputy of the competent division within the Prosecutor's Office attached to the High Court of Cassation and Justice conducted and will continue to actively conduct criminal prosecution. In 2018, notable criminal proceedings included the taking of testimonies from persons holding official high-ranking positions at that time, even a former president and a former prime-minister. The Prosecutor's Office attached to the High Court of Cassation and Justice stipulates that, in 2019, investigations should significantly contain interviews with other decision-making officials at the time, from various authorities and institutions, but also the collection of documents required for the authorities, carrying potential relevance upon ascertaining the offences.

Articles 5 and 7–8

Reply to paragraph 11 of the list of issues

219. The reply to this question is negative, within the meaning that the data available to us reveals that there have been no requests for extradition during the reporting period from other States targeting persons suspected of having committed the criminal offence of torture.

Article 10

Reply to paragraph 12 of the list of issues

220. Most information requested in this section may be found in the reply provided in Articles 2, 11 and 13–16 (8).

221. Furthermore, in the permanent education of personnel within the prison system, topics are covered such as the prevention of torture and ill treatment, but also topics concerning discrimination and human rights.

222. As for the Istanbul Protocol, it was delivered to all prosecutors, in particular those appointed to handle cases of violence by State law-enforcement agents and to monitor this type of cases, in February 2019.

223. At the same time, the Directorate for Medical Supervision within the National Prison Administration delivered to its subordinated units letter No. 65990/21 December 2017, informing their entire healthcare personnel on the need to implement the recommendations of the Istanbul Protocol, but also the main principles closely monitored by CPT, also reiterating the legal provisions in force requiring to document torture acts and other cruel, inhuman or degrading treatment of punishment.

Article 11

Reply to paragraph 13 (a) of the list of issues

224. Between 2015 and 2018, in prison administration system, 912 new places were commissioned and 782 detention places were upgraded, as follows: 2015 – 300 upgraded detention places, 2016 – 672 new detention places, 2017 – 170 new detention places and 200 upgraded places, 2018 – 70 new detention places and 282 upgraded places.

225. At the same time, between 2016 and 2018, at the level of the prison administration system, repair works were performed in detention rooms, consisting of waterproof repairs, plumbing, heating and electrical installations, coating and painting, wall and floor plating, replacement of joinery and glazing, replacement of separating panels in rest rooms, sanitary items, having an aggregate value of RON 14,909,661.81, as follows: 2016 – RON 7,769,558.00, 2017 – RON 3,062,184.00, 2018 – RON 4,077,919.81.

226. Between 2016 and 2018 goods were purchased, at the level of prison administration system, such as inventory items aimed at improving the conditions of detention, reaching a total value of RON 17,565,080.17, as follows: 2016 – RON 12,854,239, 2017 – RON 2,078,268.78, 2018 – RON 2,632,572.39.

227. In the meeting dated 17 January 2018, the Government of Romania approved, by Memorandum, the Timetable for the implementation of measures 2018-2024 to resolve the issue of prison overcrowding and conditions of detention, with a view to executing the pilot-judgment *Rezmives and others against Romania*, delivered by the European Court of Human Rights on 25 April 2017, with a view to submitting the same to the Council of Europe.

228. The implementation of the envisaged measures requires the creation of 8,095 new accommodation places and upgrading 1,351 accommodation places, with investments financed from three sources, as follows:

- The Norwegian Financial Mechanism – 1,400 new accommodation places, with an estimated value of EUR 21,007,300.00 and 100 upgraded accommodation places, with an estimated value of EUR 940,000.00;
- The State budget – 4,795 new accommodation places and upgrading 1,251 accommodation places, with an estimated value of EUR 75,297,550.00;
- Loan from an International Financial Institution, as per the draft approved by the Government of Romania, on 05 December 2017, through the Memorandum on the topic *Decision on the expediency of financing the physical infrastructure of the Romanian prison system, by means of a project financed through reimbursable*

foreign funds, proposing the concept of national project – Investments in prison infrastructure – 1,900 new accommodation places by building and creating two new prisons (Berceni Prison and Unguriu Prison).

229. The plan is structured for the period 2018-2024, as presented in the annex No. 1 point 14.

230. In furtherance of which, during the government meeting dated 07 March 2018, the Memorandum on the topic “Agreement of principle on borrowing a loan from the Council of Europe Development Bank, of up to EUR 223 million, with a view to supporting the project Investment in prison infrastructure” was approved.

231. On 10 October 2018, the financing application signed by the Ministry of Public Finance and the loan application to the Development Bank of the Council of Europe were submitted. The loan amounting to EUR 177 million, to be used for upgrading the judicial infrastructure (prisons), as approved by the board of the Development Bank of the Council of Europe.

232. In 2018, the feasibility study was drawn up corresponding to the investment target P 47 Berceni –Ploiești Prison, whereby 1000 new detention places will be created. At present, the procurement procedure for the feasibility study corresponding to the investment target P 48 Unguriu –Focșani Prison, whereby 900 new detention places will be created, is underway.

Reply to paragraph 13 (b) of the list of issues

233. The prison population witnessed a decreasing trend following the enforcement of legislative measures enacted in the past years (the new codes, the new laws on the service of sentences, Law No. 169/2017), with a significant drop in the total number of persons in custody.

234. In that regard, mention is to be made that the Government approved the Timetable for the Implementation of measures 2018–2024 to resolve the issue of prison overcrowding and conditions of detention with a view to executing the pilot-judgment *Rezmiveș and others against Romania* delivered by the ECHR on 25 April 2017, including both administrative, and legislative measures.

235. In 2018, there was an increase in the degree of occupancy of vacancies in the healthcare sector. Nonetheless, the shortage of doctors is a critical issue in the prison healthcare system, in the wider context of the major shortage of healthcare personnel existing nationwide.

236. While there was a rising trend in the occupancy of jobs in various facilities, given the large number of exits from the system (retirements, resignations), the percentage of occupancy of jobs in the healthcare sector is still dropping. Thus, on 31 December 2018, out of the 350 jobs of doctors only 171 were filled (48.86% as compared to 49.43%, in 2017). At present, in order to cover the shortage of healthcare personnel, in prisons there are 68 healthcare personnel with which services agreements are in place. Although the jobs for which contests were organized, in 2018, were also redirected to cover the shortage of specialists in hospital prisons, still, some of these facilities have difficulties in providing specialized healthcare. With a view to receiving healthcare in the medical specialties where there is shortage of personnel in the prison system, inmates benefited from 618 admissions to the public healthcare network.

237. As for the provision of healthcare in the specialty of psychiatry, at the level of the prison system, on 31 December 2018, psychiatrists were employed in two prison facilities (Gherla and Bucharest-Jilava) and in four hospital prisons (Bucharest-Jilava – 2 employees, Bucharest-Rahova – 1 employee, Constanța-Poarta Albă – 2 employees, Mioveni – 1 employee). Three more doctors will be employed in 2019, who have won the contests for the positions of psychiatrists in the following prisons: Bucharest-Rahova, Craiova, Giurgiu.

238. In accordance with the applicable laws in effect, upon admission to a prison facility, persons deprived of liberty undergo a general clinical examination, aimed at identifying obvious signs of aggression, addictions, mental disorders, suicide risk, identification of

infectious or contagious and parasite diseases, which require isolation from collectivity until cured or admission to a specialized hospital facility and knowing the pathologic antecedents and chronic illness requiring the immediate administration of appropriate medicine therapy and food regimen.

239. Medicine treatment for persons deprived of liberty suffering from tuberculosis or/and HIV is provided through the national healthcare programs. Such medicinal substances are only taken under the direct observation of healthcare personnel, who makes sure that the medicinal products have been taken in accordance with the recommendations. Furthermore, inmates sign in special registries for each dose taken.

240. Persons deprived of liberty suffering from chronic illness are to be monitored by the medical office, and benefit from appropriate clinical, para-clinical and laboratory investigations, both by specialized out-patient facilities in the public healthcare network, and through admission to hospital prisons, for regular reassessments and/or whenever needed. Furthermore, they benefit from regular prescription for treatment, in accordance with the indications of specialty physicians and food regimen depending on their illness.

241. According to the applicable laws in force, healthcare assistance is provided in the healthcare network of the National Prison Administration in observance of the therapeutic standards laid down in guidelines of practice in the relevant specialty, approved at the national level by order of the Minister of Health and published in the Official Gazette of Romania, or, in the absence thereof, of standards recognized by the medical community in the relevant specialty.

Reply to paragraph 13 (d) of the list of issues

242. The National Prison Administration has prepared and imposed measures for the enforcement of the *Strategy for mitigating aggressive behaviors in the prison system*, a complex multidisciplinary endeavor, which is in progress in all prisons and, among the parameters of which, zero tolerance to any act of aggression is a must for the entire personnel in the prison system.

243. All incidents involving violent actions by inmates are recorded in operative files, with no exception from this rule, specific safety measures are enacted, and the competent judicial bodies are made aware.

244. The law-maker set forth that it is prohibited to subject anyone while serving a sentence or another measure involving deprivation of liberty to torture, inhuman or degrading treatment or other ill-treatment, and violation of these provisions is punishable under the criminal law.

245. If the administration of a detention facility finds out that any aggression occurred among persons deprived of liberty or the suspicion exists that ill-treatment or torture was used on the sentenced person, it has an obligation to notify the criminal investigation authorities, but also the judge supervising the sentences involving deprivation of liberty, in line with the criminal law framework for the service of sentences.

246. In accordance with the normative acts in effect,⁹ anyone who is held in custody may file complaints to the management of the detention facility, to the judge supervising the deprivation of liberty, to courts of law, to NGOs specializing in the protection of human rights, to the National Prevention Mechanism within the Ombudsman institution, but also to other public authorities and institutions. The opportunity is guaranteed for inmates to approach the institutions which they deem competent, on anything deriving from the service of their imprisonment sentences.

⁹ Law No. 254/2013 on the enforcement of sentences and of measures involving deprivation of liberty ordered by the judicial bodies during criminal proceedings. Regulation for the implementation of Law No. 254/2013, as approved by Government Decision No. 157/2016;

Law No. 544/2001 on free access to public information;

Government Ordinance No. 27/2002 governing the settlement of complaints.

247. Between 2016 and 2018, 35 cases were identified, concerning instances of torture, ill-treatment or negligence directed against persons held in custody in vulnerable situations. There are 5 defendants arraigned in the same period.

Reply to paragraph 13 (e) of the list of issues

248. Pursuant to Law No. 254/2013 on the enforcement of sentences and of measures involving deprivation of liberty ordered by the judicial bodies during criminal proceedings, persons deprived of liberty may, in connection with the legality of the service of their sentences and measures involving deprivation of liberty, refer to the judge supervising the sentences involving deprivation of liberty, in accordance with the above-mentioned law.

249. The chairman of the court of appeals, holding territorial jurisdiction over a prison, an arrest detention center, a provisional arrest center, an educational center or a detention center shall appoint, every year, one or more judges to supervise the deprivation of liberty, a professional entity having an office in each detention facility in the prison system and carrying on their activity, on a permanent basis, in that facility.

250. Training the personnel of the prison system in respect of human rights, the prevention of torture and ill treatment, in conjunction with the observance of legal provisions governing rules of conduct, but also the unrestricted exercise of rights by the persons deprived of liberty, endorsed by the judge supervising the deprivation of liberty (within the meaning of guaranteeing immediate and efficient appeal), amounts to a guarantee that any potential retaliation directed against the persons filing complaints to the competent national or international institutions, is precluded.

251. It is our opinion that the mechanism affords the necessary independence guarantees and is an efficient instrument to guarantee their rights.

Reply to paragraph 13 (f) of the list of issues

252. Using such structures for interventions is exclusively meant for preventing and fighting against illegal, unauthorized or disruptive actions, which could impact the life, health, bodily integrity of persons deprived of liberty, servants or other persons and could jeopardize the missions or the appropriate course of activities in prisons.

253. At the level of the Romanian prison system, there are 45 facilities holding in custody persons deprived of liberty, the general rule as regards the settlement of incidents being that incidents should be settled by personnel especially selected from prison workers, carrying out their activity in positions within the safe detention and prison regime sector. In that respect, the teams appointed to settle the incidents shall be set up on the spot, when any incident involving inmates is noticed.

254. Out of all 45 facilities subordinated to the NPA holding persons deprived of liberty in custody, only 16 prison facilities are equipped with specialized intervention structures, including dedicated personnel trained and equipped to settle incidents. Such specialized structures operate in reliance upon the principle of mobility of action, and are dedicated to the settlement of types of incidents expressly stipulated in relevant documents, under the proviso that specific intervention rules and procedures were drawn up and implemented for each and every type of incident, depending on the role played in that action.

255. The need to maintain an intervention structure is largely imposed by the architectural particulars of prison facilities, which require the accommodation of inmates in closed and maximum safety regime in large rooms. Thus, in order to prevent and fight against violent actions by persons deprived of liberty in an efficient manner and with minimum risk, we believe it is justified to maintain specialized intervention structures. At the same time, in line with the principle of mobility of action, specialized intervention structures also provide operational support to the other facilities in that geographical area, if intervention abilities at the local level are outperformed.

256. For the purpose of guaranteeing legal, efficient and safe intervention, intervention teams act in reliance upon the following fundamental principles: protection of human beings, the legality, security, proportionality of force, graduality, predictability, and minimum risk.

257. These intervention structures have been organized and set up in such a manner as to be a guarantee of professional intervention in settling incidents, the specific permanent training process specific thus precluding the possibility for abuse to be committed against inmates.

258. To conclude, we believe that the existence and operation of such specialized structures amount to a special resource, used in exceptional situations, a reality which reinforces the general rule of approaching a set of measures particular for dynamic safety during ongoing activities performed with inmates, which is why we believe that, for the time being, it is not expedient to terminate the intervention structures existing in the prison system.

Articles 12 and 13

259. The information may be found in Annex No. 3, which contains detailed statistics drawn up by the National Prison Administration for the period 2013–September 2017.

Article 14

Reply to paragraph 15 (a) of the list of issues

260. Law No. 97/2018 improved the applicable normative framework ensuring the protection of victims of crimes, in order to set up measures to inform the victims of crimes in connection with their rights, such as psychological counselling, free legal assistance and financial indemnification by the State, for the victims of certain criminal offences, in particular a range of measures were set up, such as:

- The victim is entitled to refer to a mediator in the cases allowed by law and may be accompanied by a person of their choice, in order to facilitate the communication with judicial authorities;
- Criminal prosecution authorities have an obligation to notify the victim on the judicial authority which the former may refer to in the future, for the provision of information on the status of the case, but also the contact data thereof, should they wish to file a complaint;
- Any newly built premises of courts of law will be provided with separate waiting rooms for the victims of crimes;
- Adding a provision according to which in the criminal cases where mediation is possible, it may take place in such a manner that the victim does not have any contact with the perpetrator.

261. All of these measures virtually provide new guarantees for the protection of victims of torture and ill treatment.

Reply to paragraph 15 (b) of the list of issues

262. The payment procedure is in progress. On 20 December 2018, the plaintiff's representative requested the authorities to defer payment until the documents required for payment could be procured in accordance with the method selected by the claimant, in particular to a third party. On 1 February 2019, some of these documents were delivered to the authorities, and this allowed the procedure to be initiated.

Article 15

Reply to paragraph 16 of the list of issues

263. In accordance with the provisions of Articles 101-102 of the PPC, it is prohibited to use violence, threat or any other coercion means, such as promises or advice, for the purpose of getting evidence.

264. Furthermore, tapping methods or techniques may not be used which impairs the person's ability to remember and knowingly and willingly describe the facts which form the object of the evidence. This interdiction also applies if the tapped person consents to such a tapping method or technique being used.

265. At the same time, criminal judicial bodies or other persons acting for them are prohibited from causing anyone to commit or to continue to commit a criminal offence, for the purpose of getting evidence.

266. Evidence obtained through torture, as well as evidence derived from it may not be used during criminal proceedings, and illegally obtained evidence may not be used during criminal proceedings.

267. Moreover, obtaining evidence through such means is incriminated in the Penal Code, in Articles 280 and 282 on the criminal offence of abusive investigation and the criminal offence of torture.

Article 16

Reply to paragraph 17 (a) of the list of issues

268. According to the provisions of Order No. 82/2019 of the Minister of Labor and Social Justice approving the Specific Mandatory Minimum Quality Standards for social services of the residential center type dedicated to disabled adults, the Standard of Care and Assistance provides the obligation to ensure a relationship between the personnel and the beneficiary, while maintaining a supportive environment, respect and physical and mental comfort for the beneficiary.

269. At the same time, in accordance with the Standard Assistance for health, if a beneficiary refuses the prescribed medication, the personnel in charge shall record such refusal in the Chart Monitoring the health condition.

270. The residential center shall make sure that the beneficiary or legal representative thereof expressed their consent for care and medical treatment in exceptional cases; such consent will be included in the beneficiary's personal file.

271. The Monitoring Board, set up by Law No. 8/2016 on setting up the mechanisms stipulated in the Convention on the rights of disabled persons:

- Monitors the public or private residential type facilities, dedicated to the service of disabled persons, but also psychiatric hospital/wards;
- Receives and reviews death notifications delivered by the institutions which the board monitors;
- Watches that, in the cases of death of disabled persons, the institutions notify the judicial bodies for post-mortem examination, under the law;

272. Furthermore, the Standard of Protection against abuse and negligence was supplemented with cases of exploitation and violence and a standard was created for Protection against torture and cruel, inhuman or degrading treatment.

Reply to paragraph 17 (b)–(d) of the list of issues

273. The admission of disabled persons to residential type centers (with accommodation) is performed in reliance upon a services agreement concluded between the disabled person, as beneficiary of social services, and the supplier of social services, in consideration of the following:

- The disabled person could not be provided with the required protection and care at home or in other services in the community
- The assessment commission for classification in the disability degree recommends social assistance through residential centers (item iii – social activities/services in the individual program for social rehabilitation and integration). The individual program for social rehabilitation and integration is revised whenever necessary.

274. According to the quality standards for residential centers, approved by Order No. 82/2019 of the Minister of Labor and Social Justice, “a residential center is the social service including accommodation, providing a range of activities performed with a view to satisfying specific individual needs of disabled adults, so as to maintain/develop their personal potential.”

275. The standard *Assessment* contains regulations regarding the regular assessment of beneficiaries in residential centers, including the protection measure (recommended activities/social services through residential centers).

276. The Ministry of Labor and Social Justice (MMJS) has initiated a bill of law to set forth a solution for providing effective and independent representation in favor of disabled persons, beneficiaries of residential social services, placed under interdiction or requiring court protection.

277. The proposed solution refers to the appointment, by the court of law, of a personal representative, from the list made available by the authorities of local public administration organized at the level of municipality, town, commune, if the conditions are fulfilled to set up guardianship over the disabled person, or over the disabled person placed under interdiction, if a guardian may not be appointed, or a custodian from among the persons referred to in the Civil Code.

278. The duties of the personal representative include those referring to:

- Assistance to the disabled person during regular assessments, in order to notice if the social protection measure proposed is still the best option for them;
- Visits paid at least once a week and whenever necessary to the disabled person, in order to gain information on the evolution of their health, medicines received, regular assessments of the person and to make sure that their rights are observed;
- Notifies, as a matter of emergency, the monitoring board, on any unusual degradation occurred in the physical, mental or social condition of the disabled adult, but also any irregularities found in connection with the observance of disabled persons’ rights, in the case of disabled persons benefiting from residential-type social services or a professional personal assistant;
- Defends the rights and interests of disabled persons they represent before any individual, institution, including before the court of law, without any special power of attorney being required;
- Furthermore, healthcare assistance is provided to persons deprived of liberty in accordance with the normative acts mentioned in the annex No. 1 point 15.

279. At the same time, the Ministry of Health maintains the standpoint already detailed in previous reports, in particular, that it does not deem appropriate or feasible for the healthcare personnel within the National Prison Administration to be taken over by the Ministry of Health.

Reply to paragraph 17 (e) of the list of issues

280. Between 2011 and 2018, 922 cases were settled, which concerned the investigation of circumstances in which deaths occurred in psychiatric hospitals/wards. Among these, in 2 cases, arraignment was ordered, in a case, criminal prosecution was released (for grounds of lack of liability), while in the other cases, the court decided to close the case/to dismiss all criminal charges.

Reply to paragraph 18 of the list of issues

281. In accordance with Article 1 (3) of the Constitution of Romania, republished, Romania is a democratic and social state, governed by the rule of law, in which human dignity, the citizens’ rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values, and shall be guaranteed. Furthermore, Article 53 of the Constitution expressly and restrictively stipulates the cases and conditions where the exercise of certain rights and freedoms may be restricted:

- The exercise of certain rights or freedoms may only be restricted by law, and only if necessary, as the case may be, for: the defense of national security, of public order, health, or morals, of the citizens' rights and freedoms; conducting a criminal investigation; preventing the consequences of a natural calamity, disaster, or an extremely severe catastrophe;
- Such restriction shall only be ordered if necessary, in a democratic society. The measure shall be proportional to the situation having caused it, applied without discrimination, and without infringing on the existence of such right or freedom.

282. Mention is to be made that the legislative framework in this field is provided by Law No. 535/2004 on the prevention and fight against terrorism. At the same time, the provisions of the Penal Code and of the Penal Procedure Code also apply.

283. The Penal Procedure Code lays down the guarantees benefiting persons suspected of having committed actions of a criminal nature, such as: the presumption of innocence, right to defense, etc. At the same time, both preventive, and safety measures are to be imposed by the court of law or by criminal prosecution authorities in consideration of Article 136 (8) of the Penal Procedure Code.

284. The decision ordering any of the measures referred to above may be appealed before the superior court, if ordered by the court, or a complaint may be filed to the hierarchically superior prosecutor, if ordered by a prosecutor.

285. As regards anti-terrorism interventions, in accordance with Article 12 of Law No. 535/2004 on the prevention and fight against terrorism, this shall take place "subject to the approval of the Romanian Supreme Council of National Defense and enforced in observance of the methodology issued by the Romanian Intelligence Service, approved by decision of the Romanian Supreme Council of National Defense".

286. The activity of the Romanian Intelligence Service is supervised by the Parliament and the head of the Romanian Intelligence Service (SRI) submits reports to the Parliament, in connection with the activity conducted by this institution (Article 1 of Law No. 14 of 1992 on the organization and operation of the Romanian Intelligence Service).

287. As regards the number of persons sentenced for criminal offences of terrorism, please note that, between 2016 and 2018, there were 6 persons against whom final sentences were handed down (two in 2017 and four in 2018), in reliance upon Law No. 535/2004 on the prevention and fight against terrorism, as subsequently amended and supplemented.

288. Furthermore, mention is also to be made that, in accordance with the provisions of the Internal Regulations of Courts dated 17 December 2015 (Article 157), it was made mandatory, for the specialized personnel in courts of law, to open and to fill out in the Module for the service of criminal sentences, in the ECRIS software, details on the service of each sentenced person by final ruling, in particular to fill out, for statistical purposes, the fields determined and indicated by the Training and Judicial Statistics Department within the Superior Council of Magistracy, since the effective date of the said regulation.

Reply to paragraph 19 of the list of issues

289. The responses provided in the present reply were intended to cover any relevant legislative, administrative or judicial measures taken in order to implement the provisions of the Convention, not only the Committee's follow-up questions.