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**Babeş-Bolyai University**

# The child institutional abuse: current knowledge and practices Romanian Report

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“Support to Adult Survivors of Child Abuse in institutional settings -SASCA”

[JUST/2015/JACC/AG/VICT/9292]

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## 1 The issue of institutionalization of children and child abuse *Romania*

Since the shift in the political regime from communism to democracy, Romania started to reform its child welfare system which, before 1998, was almost exclusively based on institutionalization. In spite of the strategies to reform child welfare, the legal reform, the new standards for residential care and the spread for alternatives to the residential system, as well as the measures to develop community social services and train professionals, Romania still did not take public responsibility for the traumatic experiences of those who lived their childhoods in residential care before and after the communist regime.

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- 1.1 The dimension of the phenomenon of children removed from home at national level: brief history , statistics, characteristics of the children, causes for removal, average length of the time spent out of families
  - 1.2 Data on the phenomenon of child abuse in the country (prevalence, incidence, typology, ecc..) , availability of specific data on child institutional abuse
  - 1.3 Characteristics of the residential facilities for children removed from home (typology, diffusion, nature of institution responsible for them, ecc.)

In the communist period and in the first decade after the fall of this regime, residential care was the only form of child-care for those who were temporarily, or permanently abandoned by their families, or maltreated by them. This was due to the lack of resources and of professionals, paired with the communist ideology which imposed the absence of other than residential homes in Romania, before, and even after the political shift in 1989, in the first decade of the 2000`. The Communist Party hadn't had 'recognized' the existence of poverty, the discrimination of Roma (named gypsies), unemployment, alcoholism, HIV/AIDS, and the social correlates of numerous chronic diseases, so those with special needs had to be kept apart of the mainstream, in special care institutions. A large number of residential institutions that were supposed to be care facilities - like children's homes or psychiatric facilities - became places of deprivation, famine, abuse, and sometimes even cruelty and high death rates. Like the main mass organizations they served the communist party's purposes. So people, whatever they needed, were sacrificed for the glory of communism. Community social services were cancelled; education and health services where supposed to help parenting. Children who could not be accommodated by their families (orphaned by one or both parents, uncared children, children with ill parents) were placed in 'appropriate' institutions, as foreseen by the Ministries' Council Decision number 809/1954. Institutions for children under age of 3, children's homes for preschool and school aged children, special schools, school-homes, hospital-homes, correctional schools constituted a complex construction that was not comprehensively evaluated as of today.

The administration of these institutions was passed several times from the Ministry of Labor, to the Ministry of Health, that of Education, and even the Ministry of Internal Affairs. Residences were often placed in old dwellings, even castles like in the bad famed residential homes for children and adults with disabilities in Cigid (Bihor County)<sup>1</sup>, in Siret (Suceava County)<sup>2</sup>, in Gilău, and Borșa (Cluj County), Sighetul Marmatiei (Mures)<sup>3</sup>, Brîncovenesti (Mures County) and others. Their location also contributed to the exclusion and institutional neglect of children and other challenged people placed in them. In 1989, when the world discovered the misery of the Romanian children's homes, and particularly of the centers for severely disabled children, the social protection system had to admit that these residencies had no flushing water, no heating system, were located away from the accessible traffic routes; therefore, qualified professionals were reluctant to work there. A recent document presents testimonials of young people who survived institutions for children with disabilities, who revealed the abuses in institutions<sup>4</sup>.

Historically, after the ban on abortions in 1966 ruled by the Ceausescu-regime, birth rate grew significantly. Because of the anti-abortion law in 1966 radically increased the number of children in need of care, and it also preferred state care of children in institutions to other alternatives, between

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<sup>1</sup> <https://www.youtube.com/watch?v=suoJrZc7Q5w>

<sup>2</sup> A film about the conditions in Siret can be seen at: <https://www.youtube.com/watch?v=5Mk9LgeC5IM>

<sup>3</sup> A film about survivors of several residential homes from Romania, including Sighetul Marmatiei and Poiana Soarelui (center funded by the businessman I. Tiriac: It accuses the law against international adoptions for the continuous high number of institutionalized children and the low number of adoptions in Romania; <https://www.youtube.com/watch?v=ATjPf4rZv7w>

<sup>4</sup> A film about the conditions of children's lives in Cigid, Bihor County <https://www.youtube.com/watch?v=ATjPf4rZv7w>

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1965 and 1988 thirty-two new *leagans* (Cradles) were built. They continued to be directed partially by the Ministry of health, but funds were coming mostly from the local authorities. Official rhetoric stated that the purpose of these new constructions was to play a "humanitarian role" in assisting orphans and abandoned children ... They became part of the "building of socialism." (Greenwell<sup>5</sup>, 2001, p. 5). In fact, "craddles" were medicalised institutions, badly staffed, where children's emotional and activity needs were ignored.

Children's homes for preschool and school aged children were under the direction of the local councils, whether social protection became the responsibility of the Ministry of Labor. The homes for children with severe disabilities, as well as the residential institutions for dependent adults were also regulated by the Ministry of Labor. This did not improve care in these institutions, even worth, but the change resulted in worth conditions: insufficient medication and food, less personnel, extremely high mortality rate.

### Characteristics of residential care during communism (Roth, 1998)

- **institutions had large numbers of children (150-400)**
- *they used inadequate buildings, including old castles*
- *location of many units, especially those for severely disabled cases were placed in small communities were inaccessible to visits and controls*
- *absence of plumbing in many units of the Ministry of Health and the Ministry of Labor, including several institutions for babies and toddlers ("Cradles"), and centers for dependent and severely disabled children and adults*
- *insufficient heating, lack of fuel and electric power*
- *insufficient number of staff, especially lack of highly qualified personnel (staff/child ratio usually 1/12-30)*
- *authoritarian educational style, with the frequent use of physical punishment within the residential care, even for children under the age of 3*
- *avoidance and discouraging of parents and relatives (restricted visitation program, no privacy for parent-child relationship, and dismissal by staff)*
- *restriction to visitation of volunteers, journalists or any other person interested in the quality of life of children*
- *transfer of children among institutions was only possible from institutions for less severe diagnoses to more severe ones.*
- *children were often transferred without complete data on personal, medical and developmental history*

The changes in the residential child-care system after 1990 followed a steady policy reform, which brought slow shifts towards a rights based approach. It started with the ratification of the international conventions on children's rights, as well as for the rights of people with

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<sup>5</sup> Greenwell, F. K. (2001), Child Welfare Reform in Romania: Abandonment and De-Institutionalization, ~~1987-2000~~, report prepared for the U.S. Agency for International Development (USAID) in Romania under Interagency Agreement ENI-P-OO-98-00009 between USAID and the U.S. Department of Health and Human Services, version 2003, <http://www.crin.org/bcn/details.asp?id=9028&themeID=1001&topicID=1006>

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disabilities. Small changes and reparatory reforms were followed by more emphasis on alternatives to the residential care which were introduced in 1997. The changes were initiated and had a large civic support. The NGO movement in Romania supported the service development and the professionalization of care-workers, social-workers and councilors.

### **Child Welfare in reform/transition period**

- 1989-2000, Romania was confronted with a large number of children under 3, placed in medical type residential care.
- “Institutionalized children” were coming from poor families, large families, single/teenage mothers and homeless families.
- Romanian child protection always had an ethnic dimension,
- A large part of the children were of Roma ethnicity, but there are no statistics collected according to ethnicity, but only to social situation
- Childhood became extremely different in Romania

### **Evolution of child protection services reform followed some general directions (Roth, 2000):**

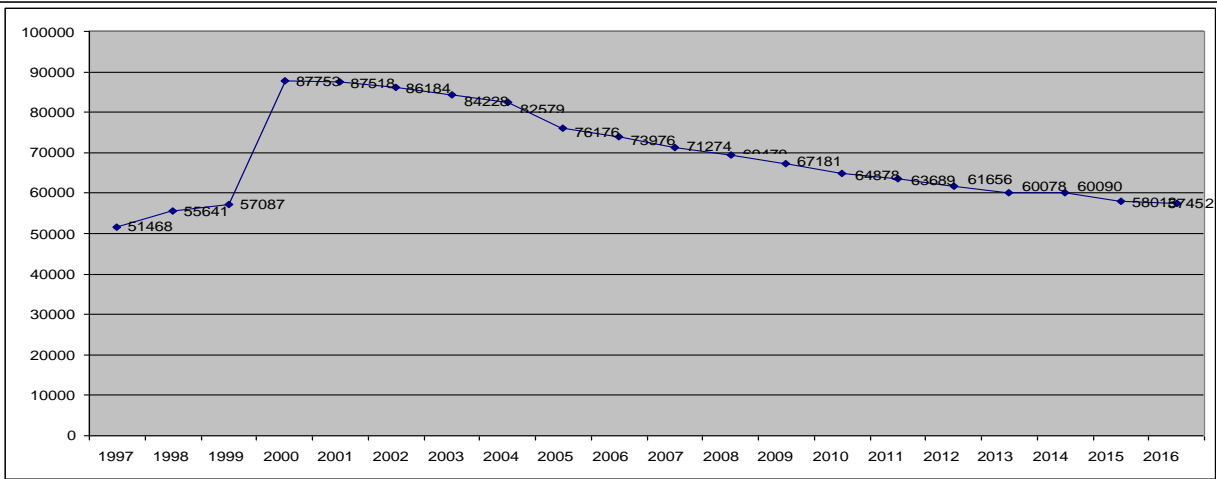
#### *Tendencies*

- *Decentralization, responsibility left at local level*
- *Shrinking of mammoth residential care for children*
- *Numerous new small family type units*
- *Guidelines developed for child protection services*
- *Children with disabilities left in large or family-type residential care units*

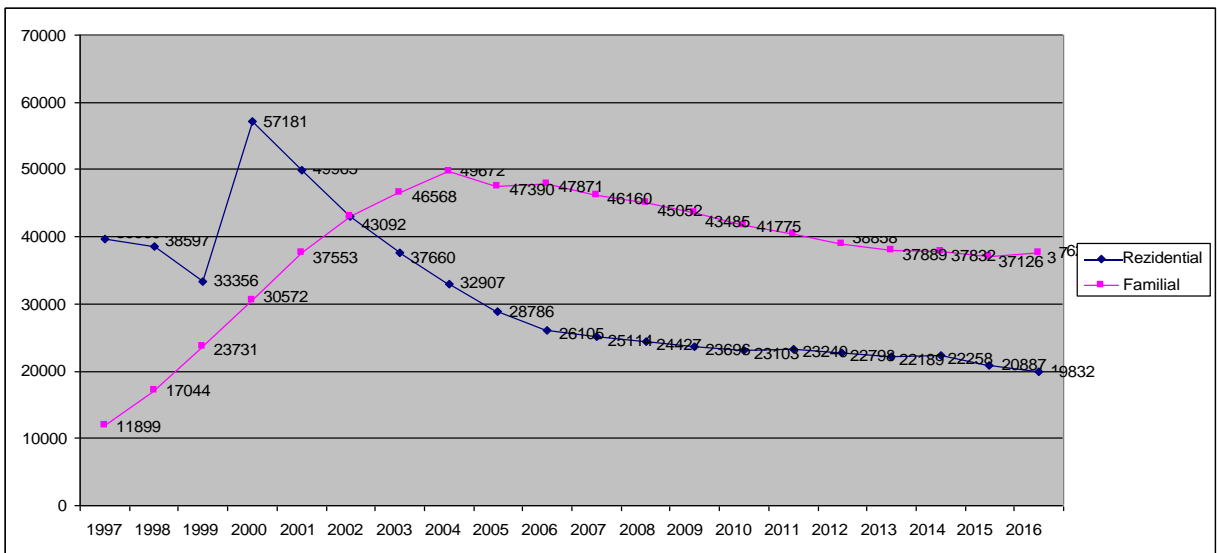
#### *Consequences*

- *Unequal evolution, no evaluation of the changes*
- *Children sent home without preparation*
- *Staff of new family type units not trained and not supervised*
- *Accreditation of services not involving children*
- *More abuse is revealed in units for children and youth with disabilities*

The following graphs demonstrate the changes in the percentages of children in different forms of residential care facilities in Romania, and in alternatives to residential care.

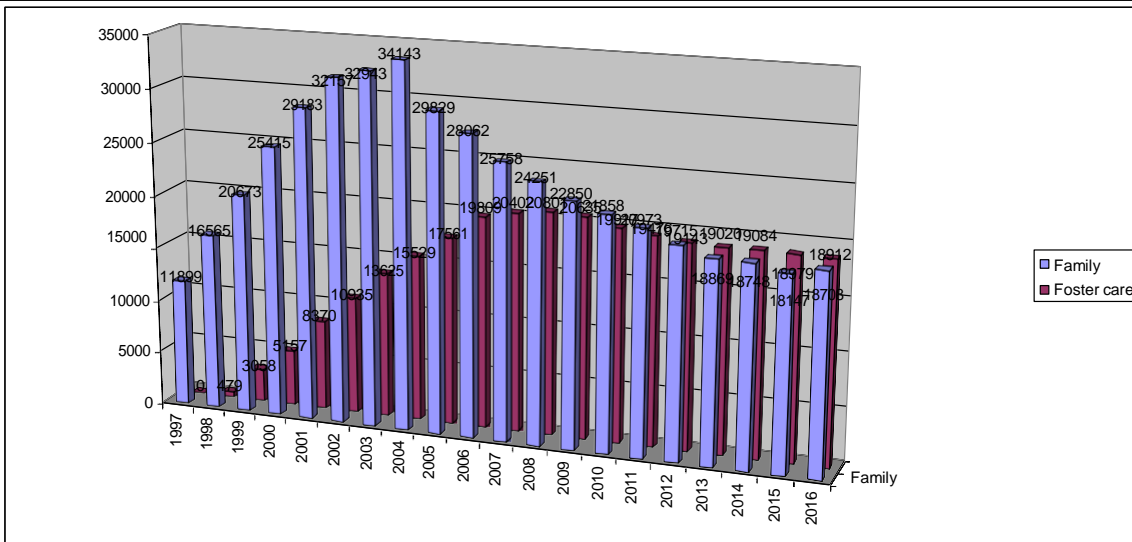


Graph 1. Children in special care (1997- 2016)



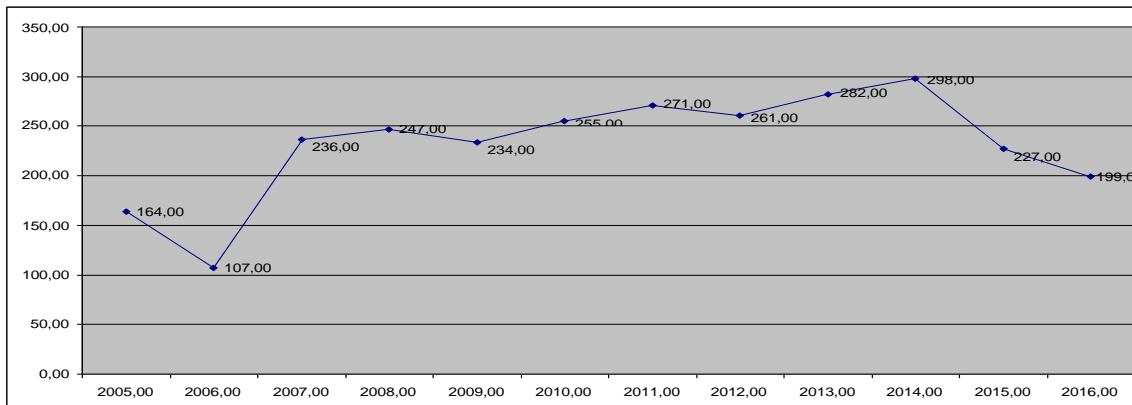
Graph 2. Children in residential and family types of care (1997- 2017)



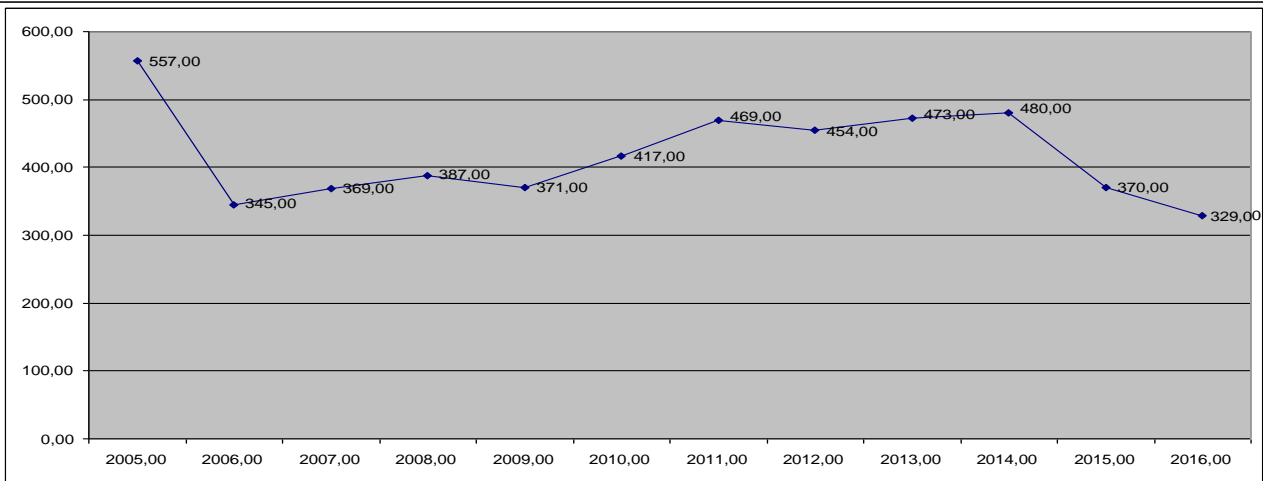


Graph 3. Children in care of families and foster care (1997- 2016)

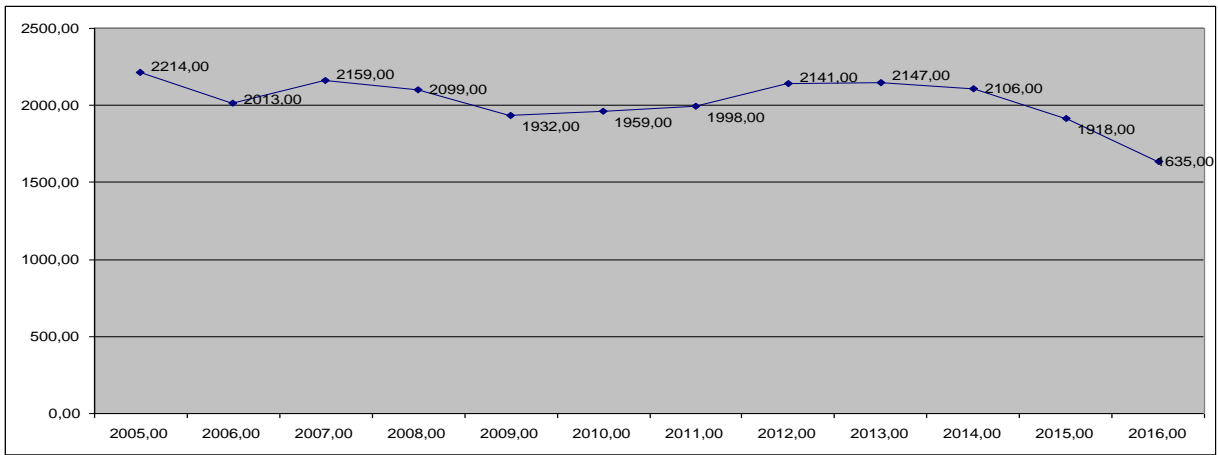
The dynamics of children according to their age



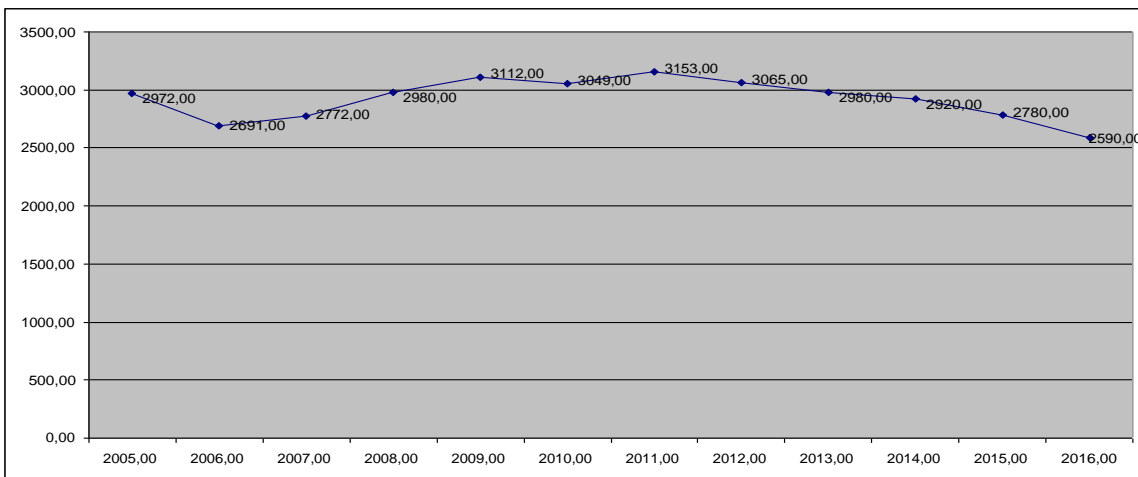
Graph 4. Children in residential care under 1 years old (2005-2016)



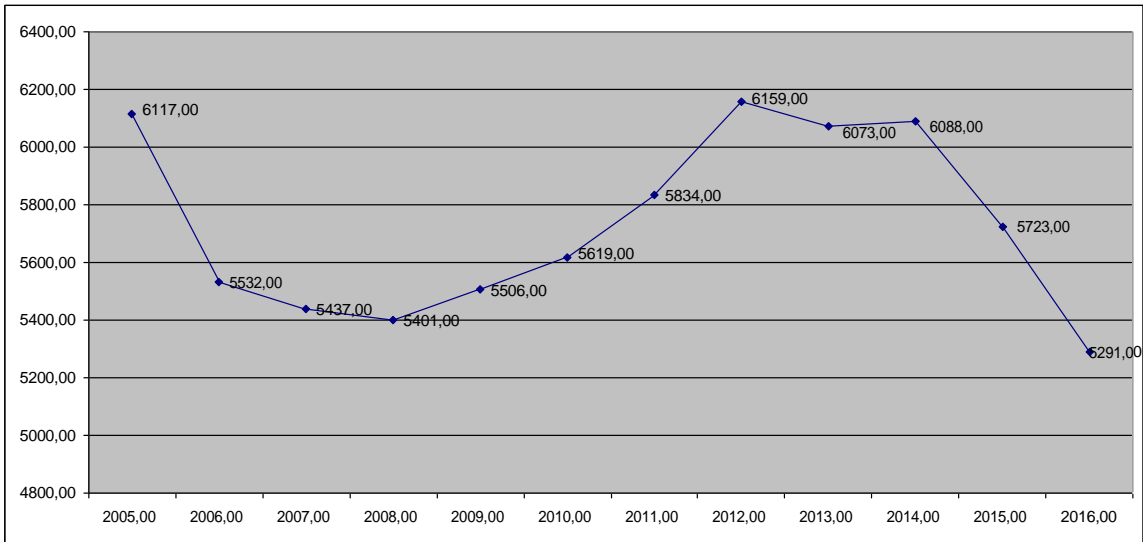
Graph 5. Children in residential care 1-2 years of age



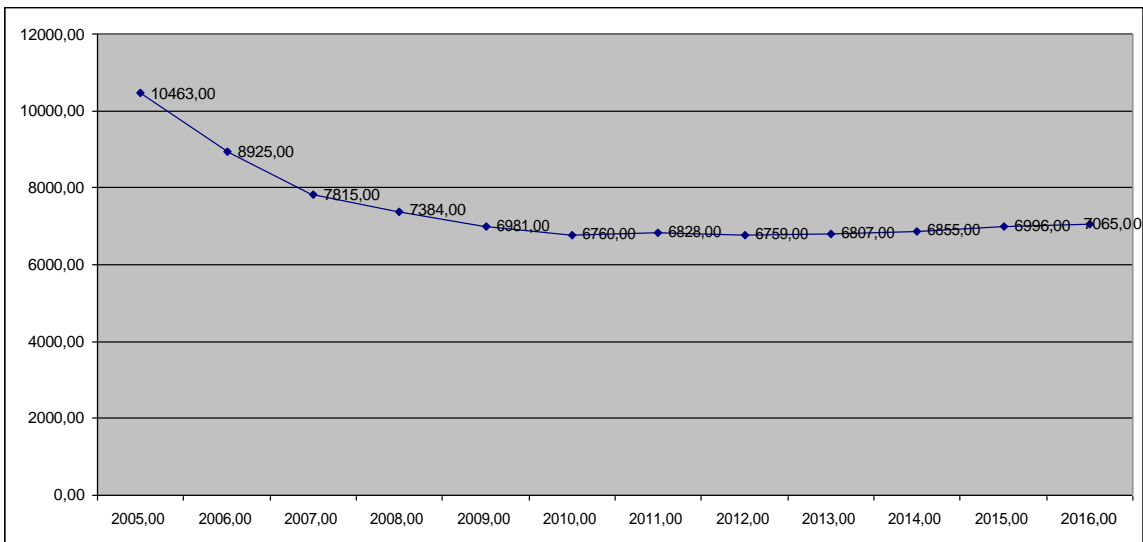
Graph 6. Children in residential care - 3-6 years of age



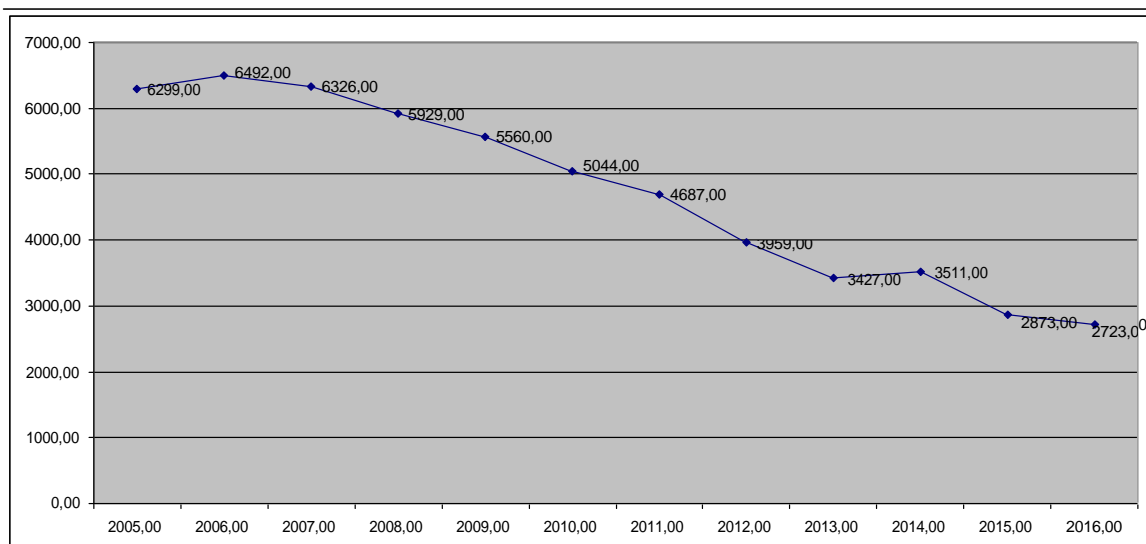
Graph 7. Children in residential care 7-9 years of age



Graph 8. 10-13 years old children in residential care



Graph 9. 14-17 years old children in residential care



Graph. 10. Young people 18 of age and over, in residential facilities.

Since 2008 the National Authority of Child Protection collects data from county administration of child protection directorate on reported cases of child abuse and neglect in looked-after children<sup>6</sup>. The data show Child Protection authorities at central and regional level acknowledge a very low number of situations of child abuse and neglect:

Table 1. The incidence of child abuse and neglect reported from residential services to the CP Authority: number of cases

Number of cases of :	2008 (an)	2009(an)	2010	2011	2012	2013	2014 (trim 1)	2015 (trim 1)	2016 (sem 1)
Physical abuse	6	12	3	5	6	10	2	2	19
Emotional abuse	0	0	1	1	4	1	5	0	12
Sexual abuse	2	10	2	9	2	7	2	2	2
Neglect	47	50	34	34	33	10	0	11	5
Work exploitation	1	0	0	9	0	0	0	6	0
Sexual exploitation	0	0	1	0	0	0	0	0	0
Exploitation through committing crimes	0	0	0	1	0	0	0	0	0

Source: Data from the Statistics published on [www.copii.ro](http://www.copii.ro), downloaded 1. March 2017

<sup>6</sup> The raw data are being published each semester on the site of the National Authority of Child Protection, [www.copii.ro](http://www.copii.ro)

Table 2. The incidence of child abuse and neglect reported from residential services to the CP Authority: percentage of cases from total cases of reported child abuse and neglect

Percentage of cases of :	2008 (an)	2009(an)	2010 (an)	2011 (an)	2012 (an)	2013 (an)	2014 (trim 1)	2015 (trim 1)	2016 (sem 1)
Physical abuse	0.37	0.90	0.24	0.46	0.57	0.88	0.75	0.72	2.75
Emotional abuse	0.00	0.00	0.08	0.08	0.27	0.06	1.08	0	1.35
Sexual abuse	0.46	1.75	0.32	1.76	0.35	1.02	1.37	1.74	0.60
Neglect	0.62	0.62	0.44	0.43	0.38	0.12	0	0.41	0.09
Work exploitation	0.21	0.00	0.00	4.55	0.00	0	0	6.82	0
Sexual exploitation	0.00	0.00	1.69	0.00	0.00	0	0	0	0
Exploitation through committing crimes	0.00	0.00	0.00	1.41	0.00	0	0	0	0
Total	0.48	0.62	0.37	0.53	0.37	0.23	0.28	0.58	0.50

Source: Data from the Statistics published on [www.copii.ro](http://www.copii.ro), downloaded 1. March 2017

Table 3. The incidence of child abuse and neglect committed in child protection services (residential care and foster care) reported to the CP Authority: percentage of the total number of reported cases of child abuse and neglect cases

Percentage of cases of :	2008 (an)	2009(an)	2010	2011	2012	2013	2014 (trim 1)	2015 (trim 1)	2016 (sem 1)
Physical abuse	1.47	1.21	0.48	0.55	1.24	1.41	1.14	2.88	3.91
Emotional abuse	0.31	0.26	0.49	0.42	0.40	0.26	1.08	0.00	1.81
Sexual abuse	1.37	2.27	0.48	2.34	7.80	1.45	1.37	1.74	0.60
Neglect	1.10	0.80	0.63	0.52	0.49	0.18	0.09	0.42	0.11
Work exploitation	0.63	0.00	0.00	4.55	0.00	0.00	0.00	9.09	0.00
Sexual exploitation	0.00	0.00	1.69	0.00	0.00	0.00	0.00	0.00	0.00
Exploitation through committing crimes	0.00	0.00	0.00	1.41	1.22	0.00	0.00	0.00	0.00
Total	1.04	0.83	0.57	0.67	0.88	0.37	0.37	0.80	0.67

Source: Data from the Statistics published on [www.copii.ro](http://www.copii.ro), downloaded 1. March 2017

## 2 Child institutional abuse

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- 2.1 Knowledge and awareness in relation to the problem of child institutional abuse at national [and/or] Community level
- 2.2 Description of researches on the issues
- 2.3 Events disclosed in the public opinion: reactions, lessons learned

### Child institutional abuse , national statistics

#### Research Studies on the Prevalence and Incidence of CAN in Institutions

The first relevant study is dated back in 2002 and was a common effort of a research planned by UNICEF and the Romanian Government<sup>7</sup> (Stativa et al., 2002). The main purpose of the survey had been to obtain / establish a database on the forms and dimensions of neglect and abuse in residential care institutions. The study was conducted on a sample of 3164 children in residential care institutions, with ages between 0 - 18 years, representing 7.8% of the total population. The total sample included 80 residential care institutions (72 placement centers and 8 *camine spital*). Beyond the quantitative data collected by means of the questionnaires, they also collected qualitative data from a number of 18 case studies, 9 focus group discussions with institution staff, 5 interviews conducted with managers of the Specialized Public Services and 7 focus group discussions with children in residential care.

The survey has revealed that the children's experience of the physical and social environment outside the institutions was very limited. Children were not involved in everyday activities at the institution. Many children did not know their personal history, they do not know how long they have been in the institution, the reason why they have been institutionalized, and the duration of their stay. Psychological abuse is also manifested in institutions through inadequate behaviour by the staff concerning the differentiated conduct they should adopt according to the gender of the children. With institutionalized children, loss of gender is a visible development, materialized in the impossibility of telling boys from girls.

In institutions, physical abuse was manifested by beatings, suppression of meals, physical isolation, submission to various humiliating jobs – applied as punishments. Almost half of the children in residential care (48.8%) confirmed beating as a punitive practice. Most of the punishments were applied by the educational staff and the night attendants. The qualitative surveys also revealed that another common punishment is making the children do all sorts of menial, humiliating jobs (such as cleaning the toilets). The survey revealed that 36.1% of the institutionalized children were aware of cases when children were obliged to have sexual relations, but the percentage of children who would admit that such things do happen in their

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<sup>7</sup> **Survey on Child Neglect and Abuse in Residential Care Institutions, Ecaterina Stativă, Carmen Anghelescu, Rodica Mitulescu, Gina Palicari, Alin Stănescu, Rodica Nanu, 2000**

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own institution or that they have been themselves the victims of this type of abuse was much lower. Abusers included members of the staff (to a very limited extent), and mainly older children in the institution (in over 60% of the cases).

In a regional study in Bihor county on 90 young people who lived through institutional care, L. Chipea et al. (2008) found that 72% of the respondents declared themselves to be subject to violence in the care facilities: 51% respond that they suffered beatings by staff and other children, 17% mention being beaten only by staff, and 32% only by older colleagues; sexual violence, mostly homosexual violence perpetrated by older peers was also known by almost 46% of ex-residents.

Another form of abuse that was present in all residential care institutions was the exploitation of younger children by older children in the institutions. This type of exploitation may include a variety of extremely serious forms (forcing the children to do odd jobs, steal, or beg, or sexual exploitation). Enuresis in children was a behaviour that generated abuse because of the inadequate reactions of the staff to that disorder. The focus groups discussions revealed severe limitations in their knowledge, which prevented them from understanding and providing proper care and education to the children in the institutions.

Secondary analysis of data were performed by Rus et al (2013). In their secondary study on the data of the study of Stativa et al. (2002) on a sample of 1391 school-age children from 44 institutions, two general patterns of results emerged: first, regarding individual level variables, it was found that the amount of time spent by children in their current institutions had a significant effect on the probability of being punished by staff and the frequency of this punishment; the probability of being punished was higher for boys than for girls; and having no siblings in the institution increased the odds of being punished several times. Second, regarding institutional level variables: being in placement centers for school-aged children with a traditional type of institutional organization increased the odds of severe punishment compared to a familial/mixed type (Rus et al, 2013). In another secondary analysis Rus et al. (2016) demonstrated that care personnel in the mammoth facilities could not stop peer exploitation of looked-after children.

In the study initiated by G. Gavrilovici<sup>8</sup> 448 children from institutions from Iasi Country completed questionnaires. The study reported that 68 % of male, 63% of female children were victims of threats in the institutions in the previous year; 71% of male, 69% of female children were witnesses of violent threats in the institutions. The results of a comprehensive *study on attachment styles and psychological disorders of children in institutional care* was conducted in Bucharest on institutionalized children (Zeanah et al, 2005; Zeanah et al, 2009) show that serious disturbances of attachment, learning disabilities and psychiatric

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<sup>8</sup> Gavrilovici, Groza (2007) *Violence in Romanian Institutionalised Children*

disorders are the rule rather than the exception in children raised in the relatively socially deprived context of contemporary institutions for young children in Romania. The majority of institutionalised children in the study was not able to form attachment to their caregivers due to lack of consistency and losses.

Children with disabilities in residential care (CRL, 2014) 7,000 children with mental disabilities who live in social care centers. The monthly medium cost is 670 Euros per institutionalized child, the state offers:

- Minimum 12 hours a day in a special school, where they do not learn basic skills that would help them live an independent life;
- Untrained staff (staff suddenly turned into social care experts, who do not seem to know these children's needs and desires);
- Soap, toilet paper and shampoo, but only if and when the keeper wants;
- Toilets without doors and shower cabins without curtains;
- Beatings and raping, without anyone to hear their call for help;
- No means whatsoever for the children to complain, as their legal guardian is regularly the DGASPC Director, a bureaucrat that has never seen the children.

Council of youth in residential centers<sup>9</sup> and Hope for children (2016) revealed that problems persist in residential centers till today. The authors conclude that young people in placement centers do not learn self care and self determination skills, they wish for a family, and lack social support.

**Center for Legal Resources (CRL) is one of the most active civic organizations that struggles for the rights of children and adults in residential care. CRL compares the costs of residential care to the costs of services that would allow children live in the ir communit<sup>10</sup>ies:**

*All the children want a family or a foster parent. If the state granted them this right, it would pay a monthly allowance of 1,000 Lei (approx. 220 Euros) and another 1,050 Lei (approx. 230 Euros) for the monthly*

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<sup>9</sup> The Council of Youth in residential Centers in one of the several associations of looked-after young people, that functions in different cities in Romania. They are active on social media and develop projects for sustaining the rights of youngsters who are still in care facilities or have been in such facilities.

Facebook for Consiliul Tinerilor Instituionalizati :

<https://www.facebook.com/ConsiliulTinerilorInstituionalizati/>

And the website is: <http://consiliultinerilor.ro/>

<sup>10</sup> <http://www.crj.ro/en/do-we-need-a-revolution-for-the-rights-of-institutionalized-persons-with-mental-disabilities-to-be-respected/>



wage of a foster parent, for every child. This would add up to a total of 2,000 Lei/month (approx. 450 Euro) so that a child with mental disabilities could live in the community. But now the state pays 21 million Lei/month (4.7 million Euros) for all the 7,000 children to live in isolation and loneliness. With less than 14 million Lei/month (approx. 3.1 million Euros), all these children could have a family.

The consequences for children in residential care were emphasized also by CRIPS (Cosmin CÂMPEAN, Paula CONSTANTIN, Elena MIHALACHE, coord., 2010):

- No individualized treatment
- No training of staff
- No preparation for family life
- No support for housing
- <http://www.crips.ro/doc/rfactin.pdf>

### 3 Legal framework

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3.1 Brief description of legislation, policies, procedures and services involved in the removal of children from home (when services intervene, who does what, ecc..)

3.2 Brief description of legislation, policies, procedures and mandates for reporting CAN cases in different professional fields. The roles of the victims in the judicial procedures.

3.3 Characteristics of the crimes connected to different form of child abuse in institutional settings (type for reporting prescription), role of restorative justice, specific measure related to the context of the crime

3.4 Which kind of compensation for children victims of child abuse, what type of compensation for adults who suffered child abuse when they were children. The restorative justice.

3.5 Critical issues concerning the legal support to survivors of child abuse in residential settings. Potential gaps and opportunities.

**The national law on the protection and promotion of children's rights** (Law No 272/2004) sets forth clear provisions related to child protection from all forms of violence and prescribes the obligation for any individual or legal entity to notify relevant authorities when such cases are identified so that effective protection is provided to the child.

#### Article 85

*(1) The child holds the right to protection from all forms of violence, abuse, maltreatment or neglect.*

The law number 272/2004 stipulates the organization, functioning and responsibilities of the institutions specialized in the domain of the child protection both at the local and central level.

Law 272/2004 as well as secondary legislation designates the institutional professional responsible and stipulates the development of an institutional infrastructure, of the procedures and internal mechanism that would allow the correct and valid registration of the cases of child abuse and neglect.

Art. 91(2) stipulates the establishment of the specialized departments of "The Child Help Line" (CHP) a telephone number known to public which will record notifications of the cases of abuse.

*“Article 91 (2) For reporting child abuse and neglect, in each general directorate for social assistance and child protection a child helpline shall be created and the number made public. “*

The law 272/2004 refers to the duties of the public service of social work, of general directorate of social work and child protection regarding initial assessment. These duties involve among others to identify risk situations, evaluation, reporting the case, providing services and monitoring cases of abuse and neglect. Article 34(1) stipulates: “The public social work service will take all necessary measures for early detection of risk situations that may cause separation of the child from his family. Regarding the mandatory reporting of suspected abuse by professionals working directly with a child, the law states that they must notify the SPAS or DGASPC in the jurisdiction the case has been identified. Meanwhile, according to art. 92 DGASPC is required: "a) verify and settle all complaints on cases of abuse and neglect, including those coming from foster parents; b) to provide services stipulated in art. 107 specialized for the needs of children victims of abuse or neglect and their families. Article 92 stipulates that all notifications must be verified by DGASPC.

**Governmental Decision no. 177/2003 about the approval of Obligatory Minimal Standards for the child’s phone**, the obligatory minimal standards regarding the Counseling Centers for the abused, neglected, or exploited child as well as the obligatory minimum standards regarding the center of communitarian resources to prevent abuse, neglect and exploitation stipulates the making at the level of every DGASPC of a emergency intervention department altogether with the Child Help Line and a mobile team. This service must operate 24/7 with a short, free of charge phone number. The duty of the service is to evaluate immediate risks of the child involved and to intervene in case of emergency. The standards stipulates that the counselors within Child Helpline department use evaluation instruments to estimate the immediate needs of the caller, the risk and the importance of the situation. The same standards stipulate a compulsory reporting sheet and the initial evaluation performed by the specialist taking over the case.

**Government Decision No 860/2008 approving the National Strategy for Child Rights Protection and Promotion 2008 - 2013 and the Operational Plan for the Implementation of the National Strategy for Child Rights Protection and Promotion 2008 – 2013**

One strategic objective has been to create and develop a unified, coherent and comprehensive system for preventing, notifying/reporting and intervening in child abuse, neglect and exploitation cases.

In the Operational Plan for Strategy Implementation, are specified the following directions for intervention :

- Prevent and report cases of violence – referring to all instances of abuse (physical, emotional, sexual abuse), neglect, exploitation (such as commercial sexual exploitation of children, child labour, but also exploitation of children by the media or in scientific experiments, children forced to develop their talents to the detriment of their physical or mental development, etc.), high-risk child migration, domestic violence, abduction or illicit transfer of children, child trafficking and child trafficking-related exploitation, and other forms of violence against children;
- Improve, develop and diversify interventions and the specialised service network dealing with child victim rehabilitation and social reintegration;
- Provide a unified legal and institutional framework for preventing and combating violence against children.

**The Emergency Ordinance no. 68 /2010 from 30 June 2010** regulates the dissolution of the ANPDC and its reorganization within the Ministry of Education, Family and Social Protection (MFSP) as a specialized

organization. The General Directorate of Child Protection in the frame of the MSSP was created in order to take over the roles and responsibilities of the ANPDC.

**Law No 252/2010 ratifying the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse**, adopted at Lanzarote on 25 October 2007 and signed by Romania at Lanzarote on 25 October 2007

**GD No 49/2011 approving the framework methodology for the prevention of and intervention in instances of violence against children and domestic violence through a multidisciplinary team and network and the methodology for the multidisciplinary and interagency intervention in cases of exploited children and children at risk of child labor, child victims of human trafficking, as well as Romanian migrant children identified as victims of other forms of violence in other states**

The main issues regulated in the aforementioned act are the following:

- a common framework for the identification/notification and investigation of domestic violence cases or of those concerning victims of child labour or child trafficking;
- it creates the framework needed to provide data on major forms of violence against children and domestic violence;
- it requires professionals involved in the prevention of and intervention in cases of child and domestic violence to use assessment skills;
- it creates opportunities for cooperation with foreign authorities when Romanian children are identified as victims of abuse or exploitation in other states.

### ***Reporting obligations***

Law No 272/2004 on the protection and promotion of children's rights sets forth clear provisions on the obligation of reporting child abuse, neglect or exploitation for all practitioners, individuals or authorities with relevant competencies.

*"Article 91 (1) Any person who, by the nature of their profession or occupation, works directly with a child and has suspicions about child abuse and neglect must notify the public social assistance service or the general directorate for social assistance and child protection in whose area the case has been identified."*

Regarding the existence of a child abuse reporting system, the guidelines for the implementation of the Law no. 272/2004 regarding the protection and the promoting of children rights<sup>11</sup> gives details and examples the professional categories to which the law refers to: social workers working in the maternities, pediatrics sections, SPAS representatives, medical staff that monitors pregnant women, teachers, maternal assistance, the staff from the residential institutions for the child's protection, police workers, DGASPC representatives and private authorized institutions (ONG'S). There are no clear sanctions regarding the lack of notification, except some professional categories: if the abuse or neglect has been committed by people who, based on legal employment relations or another kind of relationship, have been providing protection, upbringing, care or education to the child, the employers must immediately notify prosecuting agencies and separate the person in question from the children in their care. Public or private institutions and public or private residential care services providing child protection, upbringing, care or education are not allowed to hire a person who has received a final conviction for an intentional crime.

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<sup>11</sup> **The manual for implementing Law no. 272/2004 regarding the protection and promoting of children rights, UNICEF Romania and ANPDC, Ed. Vanemonde, 2006**

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### 3. Crimes against children as seen by the Romanian law

Some offences against the child committed within the family are considered separate crimes in the Penal Code, and others are included in other types of criminal acts. Thus, separate crimes are considered to be incest, family abandonment, maltreatment of minors, refusing the observation of the child's placement.

The criminal law imposes more severe penalties in case of offences against life, corporal integrity and health, against personal freedom, related to sexual life, offences which affects social cohabitation and family life, if these are committed against relatives or family members, in the presence of a minor within the family.

The penal law states clear punishments for any activities concerning the recruitment, transporting, transfer, hosting or taking any person with the age between 15 and 18 years old for the purpose of exploiting it. The punishment for this kind of activities is of 3 to 12 years of prison and the prohibition of some rights. The punishment consist in severe prison time from 15 to 20 years and the prohibition of some rights if:

- a) the fact is committed against a person who is not 15 years old yet;
  - b) the fact was committed through violence, menace or other forms of force, through abduction, fraud, abuse of authority or by taking advantage of the victims impossibility to express his/her wish, or by giving, accepting, or receiving money or any other benefits in order to have the agreement of the person responsible for the child;
  - c) the action was performed by two or more persons together;
  - d) the victim was caused a severe injury of its integrity or his/her health;
  - e) the fact has produced important material benefits
- In case that such an action had as consequence the death of the victim or the suicidal the punishment is prison for life or severe prison time for 15 to 25 years and the forbidden of certain rights.

According to the Romanian law, exploitation means (Art. 207):

- a) the execution of an activity or fulfilling some services, in a compulsory manner, by disregarding the legal regulation concerning the labor conditions, payment, health or security;
- b) slavery or similar procedures that lead to the lack of freedom or slavery;
- c) oblige a person (especially children) to be involved into prostitution activities, pornographic manifestations in order to produce and broadcast pornographic materials or other forms of sexual exploitation;
- d) obliging someone to beg;
- e) organ prelevations.

In regard to the notion of submitting to forced or compulsory labor, the Romanian law defines it as being the fact of submitting a person, in other circumstances than those stated by the law to perform an activity against his wish, such a fact being punished with prison time from 1 to 3 years.

As for the crimes against the sexual life is concerned, the law states clear punishments whenever we are talking about sexual relationships of any nature with a person of the same or different sex as a consequence of force use or the victim's impossibility of expressing his/her wish. When the victim is under the care, protection, education, guardianship or treatment of the person committing the fact incriminated by the penal law or was a minor who was not 15 years old yet, the punishment is prison time from 15 to 20 years and forbidden of certain rights.

A separate regulation has the crime known as "sexual act with a minor", the law stating that the sexual act of any nature performed with a person which is not 15 years old yet is punished with prison time from 3 to 10 years and forbidden of some rights.

With the same punishment is sanctioned the sexual act of any nature performed with a person under 15 years old if committed by a tutor, teacher, tutor, doctor in the use of its position or quality or if that person has abused of the victim's trust or authority or its influence over the victim.

If such an act has as consequence receiving material benefits by the victim which is not 18 years old yet, the punishment is prison time from 3 to 12 years old and forbidden of some rights.

If the facts mentioned above have been committed in order to produce pornographic materials the punishment is prison time from 5 to 15 years, forbidden of some rights and if the victim was forced to do such activities the punishment is prison from 15 to 20 years.

If the fact has as consequence the death or suicidal of the victim the punishment is severe prison from 15 to 25 years.

Another fact incriminated by the Romanian law is the “sexual corruption” which represents the acts with an obscene character done with a minor or in the presence of a minor, such activities being punished with prison time from 1 to 5 years. If those activities are to produce pornographic materials the prison time increases with 2 more years.

A fact that should be underlined is that in all those cases the attempt to commit such facts is also incriminated.

As for child pornography it is defined as being the fact of exposure, sell, broadcast, rent or distribute, made or produce in any other way, offer or make available in order to broadcast or to keep without any rights pornographic materials with minors. The punishment for such an action is prison time from 3 to 12 years.

With the same punishment is sanctioned also the import or export of such materials to a transport or distribution agent, in order to sell or distribute them.

It is incriminated and punished with prison time from 3 to 12 years the production in order to distribute, offering or making available, transmission, obtaining for the own use or for the others of any kind of pornographic materials with minors through an informatic system or a device used for stocking informatic data.

By pornographic materials the law defines any material which presents a person having a sexual explicit behavior or images which although do not present a real person simulates, in a credible way, a minor with an explicit sexual behavior.

With respect to territoriality, according to the Romanian legislation the penal law is applied to all the crimes committed on the Romanian territory. The penal law is applied to all crimes committed outside the national territory by a Romanian citizen or a person without citizenship with a domicile in Romania if that fact is incriminated by the penal legislation of the country on whose territory the crime was committed.

In case of children sexual exploitation and child pornography in case a European mandate for arrest is issued, no matter the name given to such an activity under the legislation of that country, if the fact is incriminated with prison time for minimum 3 years, the extradition is given if the condition of double incrimination is not fulfilled:

In order to prevent children’s exploitation by involving them in activities with a pornographic character was adopted law no. 96/2003 *concerning the prevention and combating of pornography*. Such a law instituted a number of measures for preventing and combating and pornography in order to protect the person’s dignity, morality and has intended to limit the broadcasting of materials with an pornographic character which might harm the human dignity and the public morality, forbid the access/participation of minors to such kind of activities which might affect their development, their health as well as generating a general framework for the conditions in which activities with involved programs with an erotic character are to be developed.

As for the victim’s age, the law incriminates the deed of the persons who by promising marriage to a person under the age of 18 convince her to have a sexual relationship, punishing it with prison time from 1 to 5 years. In order to underline the gravity of such a fact the same law stated that the parts reconciliation do not constitute a reason for avoiding penal responsibility.

In case such facts subject to penal exploitation are committed against children within the family environment the penal action is started implicitly. This is possible whenever the prosecutor appreciates that the victim cannot express such a complaint and the penal responsibility should be applied. When the victim expresses its wish for a possible reconciliation the penal action is extinguished.

It should also be mentioned that the minor who is a victim is also part within the penal trial, such a quality not being assumed by his legal representatives. The child victim is assisted by the his legal representatives all over the trial period such an assistance being meant to exercise his legal capacity. The law does not state the obligation for the guardianship office representatives to be summoned throughout the penal inquiry procedures, a procedure which is compulsory instead in case of the minors who have committed a crime.

#### 2.4.1. Identified limitations/gaps in other CAN related laws/ policies

[Under this section 3, please include any available information about definition(s) of CAN by national law, provisions about: reporting procedures, mandatory reporting, child protection orders, legal issues reqa children witnesses of domestic violence, penalties, and any other information that you consider important].

- The lack of efficient safety measures such as restriction order in case of domestic violence (forbidding for the perpetrator to return to the family home) and child abuse (forbidding for the perpetrator to approach the child outside of the family home)
- Participation to rehabilitation programs for aggressors is not mandatory
- There are no penalties in case of violation of presidential ordinance

For children in residential/institutional care, they have the right to complain if their rights are not respected, but the guidelines are not sufficient to give children time and means to inform a trusted person about experiences of violence. As The Center for Legal Resources (CLR<sup>12</sup>) reported, the regulations are not strong enough to protect children in residential care from violence committed by staff or other young residents, nor for making sure that reporting is heard and responses are protecting children. In their report there is a note about the failure to register complaints:

*“During the monitoring visits, the CLR representatives have made the following observations: • there are no procedures to record and settle complaints; • to justify this situation, the representatives of the institutions often argue, in contradiction to CLR representatives' findings, that "there are no complaints" from the admitted persons; • almost no institution keeps a registry for recording complaints, not even formally; in most cases, the information about beneficiaries' rights, addresses and contacts of public institutions or non-governmental organizations are not displayed; ...” (CLR, 2014, p.4 )*

## 4 Brief overview of child protection system and the local network for supporting the project

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4.1 Organization of the system: actors, roles and responsibilities

4.2 Description of the local **steering** Committee: members, rationale for the inclusion of each of them, points of strength in relation to the project, foreseen difficulties and solution for handling them

### Child Protection System

Law no.272/2004 on protection and promotion of child rights, stipulates the organization, operation and responsibility of the institutions that are specialized in this field, on a central and local level.

On a central level, the **institution specialized in the field is the National Authority for Protection of Child Rights (NAPCR)**. It is a **regulation** authority in the field, having the aim **to coordinate** and **control** the entire activity concerning the protection and promotion of children on a **national level**, as well as to **monitor** the observance of child rights in Romania. Thus, the National Authority for the Protection of Child Rights elaborates law projects, methodologies, guides and work procedures for child service providers. At the same time, it centralizes data concerning the child protection system and data concerning child rights on a monthly, quarterly or annual basis. Through its representatives, the National Authority for Protection of

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<sup>12</sup>

The Romanian name of CRL is CRJ (Centrul pentru Resurse Juridice)

<http://www.crj.ro/userfiles/editor/files/summary-report%20-%20eng%281%29.pdf>

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Child Rights performs controls concerning information they have received or automatic controls, it recommends and, accordingly proposes to public or private legal persons who are in charge of supplying protection services to apply sanctions. It also elaborates the strategy in the field and programs for the accomplishment of strategic objectives.

On the level of the Romanian territorial administrative units, respectively on the level of counties/districts (41 and, respectively, 6 districts), as well as on the level of towns, cities and communes (totalling to 3038), the public county and local administrative authorities have the obligation to guarantee and promote the observance of child rights, through the insurance of activities and services of risk prevention concerning the violation of child rights (on a local level), as well as to insure special protection for children who are temporarily or permanently lacking parental care (on a county level).

1. Thus, the following institutions operate on the level of the 41 **counties** and on the level of each of the 6 **districts** of Bucharest:

- **Child Protection Commissions (CPC)**, as a specialized deliberative body of the County Council, respectively of the Local District Council of Bucharest, which has the role, among others, of ruling (as an administrative instance) special protection measures, with the parents' agreement.

- **General Directorates for Social Assistance and Child Protection (DGASPC)**, as public institutions with a legal personality, in the suborder of the County Council / the Local District Council of Bucharest, with the role of insuring the application of social assistance policies and strategies concerning the protection of children, family, single persons, elders, persons with disabilities, as well as any persons who are in need, on a county, respectively on a district level.

These general directorates have the **set of residential and family type services (special protection measures outside the child's own family)** in their suborder which are destined **for children, under the conditions of the law** (children who are temporarily separated from their family, with the agreement/on their parents' request – the measure is decided by the CPC – children who are in danger in their family, who do not have their parents' agreement and children who have no parents or whose parents have been fallen from their rights.– the measure is decided by the court, on the request of the General Directorates for Social Assistance and Child Protection);

The General Directorates for Social Assistance and Child Protection also have responsibilities especially in cases of abuse, neglect or exploitation when children need protection outside the family. These responsibilities are complementary with those of the Local Councils (see below). Thus, it is essential that General Directorates for Social Assistance and Child Protection and the Local Councils maintain a close collaboration.

Regarding the reporting of CAN **Art. 91 of law 272/2004** regulates the responsibility of each person (medical personnel, educational staff, care taker, family worker etc.), who is in a position that allows him/her to observe the child for a sufficient time period, to notify the responsible authorities of possible acts of abuse or neglect in order to assess and intervene to remove the danger under which the child is placed. According to this article, it is not necessary for the person who files the complaint to have material evidence, the existence of elements that generate suspicion concerning a potential abuse being sufficient.

In order to facilitate the submission of complaints concerning these aspects and in order to establish an operative intervention, law 272/2004 regulates the general social assistance directorates' obligation to create **the children's hotline and to promote this telephone number**.

The children's hotline is a service that aims to receive notifications of child abuse, neglect or exploitation, to obtain a series of preliminary information that allows intervention, to insure a primary telephone counselling and to immediately intervene through a mobile team. These aspects are regulated through Order no.

**Article 92 of law 272/2004** regulates the obligation of the general directorate for social assistance and child protection to check and solve all the notifications that concern potential situations of abuse or neglect. If the result of the performed verification confirms the respective child abuse or neglect, the general directorate for social assistance and child protection is obligated to insure the performance of specialized services for the respective children. Thus, it must be specified that art. 26 align. (1) of Law no. **217/2003 on prevention and control of violence in the family** stipulates that if there are solid evidence or indications that a family member has caused physical and psychological harm to another member, the legal court can rule that the abuser be banned from the family's residence, on the victim's request or if the legal court agrees to it.

Based on **Art. 92 of law 272/2004** representatives of the general directorate for social assistance and child protection has **the access right** of to the headquarters of legal persons, as well as to the headquarters of natural persons, **in order to verify complaints regarding potential acts of child abuse or neglect.**

In order to perform their dispositions according to this article, representatives of the general directorate for social assistance and child protection benefit from the **mandatory support of the Police.**

If the verifications performed by specialists prove the existence of an imminent danger for the child, the manager of the general directorate for social assistance and child protection can decide that the child **be urgently placed in the care of the state**, if the parents agree to this.

In a term of 48 hours after taking this measure, the general directorate for social assistance and child protection will notify the court, which is the only competent institution that can influence the opportunity of maintaining the urgent placement of the child, about the necessity to replace the child's placement and the execution of the parents' rights.

If the natural or legal persons that insure the child's care and protection oppose to the verification of notifications of abuse or neglect and there are solid reasons that prove that the child is abused or neglected, the representatives of the general directorate for social assistance and child protection will notify the court, requesting the establishment of the child's urgent placement in the care of the state through **a presidential ordinance**; thus, the court will receive information concerning the possible harming of the child and the seriousness of this act, the existence of the child's prior injuring, the child's current state and his/her statement.

It is also important to specify that it has been ruled that **causes that involve children will be urgently solved**, court terms for the establishment of a protection measure will not exceed 10 days and, on the basis of a presidential ordinance issued by the competent court, the general directorate for social assistance and child protection can insure the child's urgent protection in cases where he/she is the victim of abuse, neglect, exploitation or child traffic (art. 124-131, art. 64-67, art. 94 – Law 272/2004);

Concerning intervention services in cases of abuse which are offered by the Social Assistance and Child Protection General Directorates, 38 Social Assistance and Child Protection General Directorates have founded a „children hotline” service. In most cases, the telephone line is part of services that insure protection and intervention in cases of abuse, neglect, exploitation: emergency intervention services for an abused, neglected or exploited child (some cases include the problem of trafficking and immigration as well),



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emergency placement centers, counselling services. 35 General Directorates for Social Assistance and Child Protection have a short telephone number especially meant to be used for the notification of cases of abuse, neglect, exploitation, and in 28 General Directorates for Social Assistance and Child Protection the service works permanently.

Aside from these 38 lines, there is also an operating Green Hotline for Child Protection - 0800-8-200-200 – which was created in 2001 and supported by the the National Authority for Protection of Child Rights through Phare programmes, for 4 years and is currently working as a Nongovernmental Organization. The Green Hotline for Child Protection is a free information and counselling telephone service concerning the problems of child and family protection. Recently, it also received the unique telephone number, 116111, that is used on an European level for notifications regarding violence against children which will become operational from October 1<sup>st</sup> 2008. The phone calls from potential beneficiaries are operated by the Green Hotline's qualified personnel, consisting of therapists, social workers and legal professionals and they are directed to specialized services.

2. In the case of towns and cities, on a **local** level, the law stipulates the mandatory foundation of the Social Assistance Public Service (SPAS), in the suborder of the Local Council and on a commune level, the structure of the local communal council stipulates the minimum existence of people who have social assistance attributions.

The role of SPAS is to monitor the observance of child rights in the administrative-territorial unit, to inform families with children about the parents' rights and obligations, about the child's rights, as well as about the identification and assessment services of risk situations which are available on a local level, and granting **services and/or performances** for the child and the family, under the conditions of the law. These services (SPAS), as well as the local communal councils have support services for the child and the family in their suborder and they have to maintain, rebuild and develop the child's and the family's capacity of overcoming situations of crisis and maintaing the family unity.

## 5 Advocating towards the national and an European recognition of institutional abuse

### 5.1 Recent and on-going developments in [Country]

In spite of the modification in the legal system of the last 27 years, Romania is still confronted with a slow rhythm of change in public and professional attitudes , which maintains the approximately same number of institutionalized children, maintains the abandonment of children, cannot fight child abuse effectively etc. The background of all these is due partly to the lack of economical progress and low professionalization of Child Welfare. These changes did not succeed yet in avoiding abuse and neglect in the lives of the large number of children living in residential homes , but there are now peer-type participative forms of action, organized by survivor associations, who intervene in the benefit of children who live today in residential homes.

The Council of Youth in residential Centers in one of the several associations of looked-after young people, that functions in different cities in Romania. They are active on social media and develop projects for sustaining the rights of youngsters who are still in care facilities or have been in such facilities.

The Romanian Institute for investigating the Crimes of the Communist Regime and the Memory (IICMER) of the Romanian Exile has recently launched a campaign to disclose the crimes against children in residential homes for children with severe disabilities, where the death rate of children due to severe neglect of their basic needs: hunger, cold and diseases has been extremely high.<sup>13</sup> The institute investigated the death toll

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<sup>13</sup> More data are published on the site of the IICMER, <https://www.iiccr.ro/sesizare-penala-privind-tratamentele-neomonoase-perioada-comunista-in-caminele-spital/>

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of Cighid, Sighetul Marmației and Pastraveni and submitted a legal complain to prosecute the state for the death of 771 children who died as follows: in the Home for severe disabilities in Cighid, 138 deaths were registered between 1 Oct. 1987 – 26 March 1990, in Păstrăveni there were 394 death between 1 Oct. 1966 – 30 April 1990, and in Sighetu Marmației 239 death between 20 January 1973 – 31 December 1991. Prosecution was notified on the results of the research of IICMER, which revealed the inhuman conditions that resulted in the extermination of so many children diagnosed *with no chances for rehabilitation*<sup>14</sup>. This opens up a new perspective for analyzing the abuses in residential homes for children, there consequences on children’s later lives and the possibility to get some form of compensation for those who had traumatic experiences.

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## 6 Bibliography and online resources [suggested]

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### 6.1A brief description

Suggested length: 2 - 3 pages

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## 7 Annexes

