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## How A Country Plagued with Corruption Leads to Lax Sex Laws for Women

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# HOW A COUNTRY PLAGUED WITH CORRUPTION LEADS TO LAX SEX LAWS FOR WOMEN

Alexandra Angyalosy\*

## Abstract

This Comment addresses Romania’s failure to statutorily define and prosecute sexual violence perpetrators. Throughout history, women in Romania have found a justice system that fails them due to lax laws, corruption, and negligence by police departments. Specifically, Romanian women who are victims of sexual violence, domestic violence, and forced prostitution are often unable to report their crimes, attain proper counseling, and get justice against their abusers. Since the Romanian Revolution, the country has struggled with corruption and human trafficking and has become a major European hub for prostitution. The lack of adequate and appropriate laws needed to protect women, specifically in instances of rape and sexual assault, directly conflicts with human rights obligations and leads to more predators either domestically or from foreign countries. Ambiguity in the laws is a primary issue, specifically, the lack of a definitive definition of what rape or sexual violence entails. As it stands, the current laws do not define rape or sexual violence as the “lack of freely given consent.” These ambiguities enable abusers, hinder sexual assault investigations, and prevent abusers from being prosecuted. The contamination of corruption in Romania makes it easier for abusers to get away with crimes, while simultaneously inadvertently encouraging these crimes.

The Romanian legislature must prioritize the basic rights of women and victims in the country by statutorily defining what rape and sexual violence are and making it a priority that all instances of sexual violence are investigated and prosecuted. Romania is one of several countries in the European Union which are bound by the Istanbul Convention, which aims to stop violence against women and girls. As it stands, Romania is not in compliance with this treaty, and in order to be compliant, they must elevate their protection of women. Specifically, Romania must statutorily define sexual violence so there is no room for ambiguities, as well as set up a comprehensive data collection system, train professionals to deal with crises, and improve the response of law enforcement and the judiciary to investigate and prosecute these crimes.

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### I. Introduction

Andrew Tate – known for his blatant misogyny, sexism, and lust for power, made his reasons for moving to Romania very clear: to escape sexual harassment and rape charges due to how lax Romania’s sex laws are.<sup>1</sup> If this is public knowledge, and someone is very clearly making this statement known, what does that mean for victims of sexual violence, and how many abusers might this further encourage? Currently, Romania does not have a working definition of what rape actually is, clearly omitting a definition for “lack of freely given consent.”<sup>2</sup>

Ambiguity in criminal statutes and codes creates problems, confusion, and potentially more crimes committed due to the lack of notice the statutes give these

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<sup>1</sup> See Shanti Das, *Inside the Violent, Misogynistic World of TikTok’s New Star, Andrew Tate*, THE GUARDIAN (Aug. 6, 2022), <https://www.theguardian.com/technology/2022/aug/06/andrew-tate-violent-misogynistic-world-of-tiktok-new-star>.

<sup>2</sup> Grevis Strasbourg, *Romania Has Improved Protection of Women from Domestic Violence, But Progress Needed on Definition of Rape*, COUNCIL OF EUROPE (June 16, 2022), <https://www.coe.int/en/web/portal/-/romania-has-improved-protection-of-women-from-domestic-violence-but-progress-needed-on-definition-of-rape> (explaining Romania’s general improvements in the context of domestic violence, but those same efforts must be implemented towards sexual violence).

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individuals.<sup>3</sup> This further leads to a lack of statutory recourse for the victims of alleged crimes, and is incredibly harmful to individual human rights.<sup>4</sup> Not only do ambiguous laws cause harm to victims, but they also may incentivize other criminals to move to such countries knowing that they might not be prosecuted for crimes they may have committed in other countries with stricter statutory definitions. How many more alleged criminals like Andrew Tate, might move to Romania to escape crimes, or be motivated to commit them in a Romanian jurisdiction?

Sexual violence is a big problem amongst the Romanian public, as 80 percent of Romanians are pushing toward stricter punishments for individuals who are found guilty of rape or sexual violence.<sup>5</sup> Several years ago, a case where an 18-year-old girl was raped and tortured for several hours gained serious national attention after her abusers were released from jail and placed under house arrest.<sup>6</sup> Following their release, the outcry amongst Romanians sparked a conversation about how the laws and punishments in the Romanian justice system may not be sufficient to deter prospective criminals and fails to give victims and society the closure and justice they deserve.<sup>7</sup>

So what is the recourse the Romanian public deserves? The Romanian government must strictly define their statutory definition of what rape is, and explicitly include the notion of “lack of freely given consent.”<sup>8</sup> Furthermore, there must be strict compliance with the Convention on Preventing and Combating Violence Against Women and Domestic Violence (“Istanbul Convention”), a treaty created to protect women from sexual and domestic violence, which includes strictly defining what sexual violence means.<sup>9</sup> Lastly, Romania must provide a working protective framework, provide resources like rape crisis centers, and properly train all police departments, judges, and prosecutors to ensure that every single sexual violence accusation is properly investigated and potentially prosecuted.<sup>10</sup> This must be a public policy and legislative priority, or else more abusers will

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<sup>3</sup> Timothy Sandefur, *Get Rid of Vague Laws*, FORBES (Mar. 30, 2010, 1:30 PM), <https://www.forbes.com/2010/03/30/vague-laws-economy-government-opinions-contributors-timothy-sandefur.html?sh=4230f1cbd6ce>.

<sup>4</sup> *Id.*

<sup>5</sup> Irina Marica, *Most Romanians Want Harsher Punishments for Rape*, ROMANIA INSIDER (Sept. 25, 2015), <https://www.romania-insider.com/most-romanians-want-harsher-punishments-for-rape> (discussing the findings of a survey found by INSCOP).

<sup>6</sup> *Id.*; see also Alessio Perrone, *Missing Romanian Teenager Begged Police to “Stay On Line” Before Murdered, Records Revealed*, INDEPENDENT (Aug. 3, 2019), <https://www.independent.co.uk/news/world/europe/romanian-teenager-murdered-police-alexandra-macesanu-delay-caracal-call-transcript-death-a9037121.html>.

<sup>7</sup> See Marica, *supra* note 5.

<sup>8</sup> See Strasbourg, *supra* note 2.

<sup>9</sup> See generally Council of Europe, *Convention on Preventing and Combating Violence Against Women and Domestic Violence* (“Istanbul Convention”), 11 V. 2011 (Aug. 1, 2014) (discussing the purpose behind the Istanbul Convention being to tackle violence against women and domestic violence throughout Europe, and its responsibilities as members of the European Union).

<sup>10</sup> See generally Strasbourg, *supra* note 2 (explaining how Romania currently does not apply the same prosecutorial standards towards sexual violence as it does towards domestic violence crimes).

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continue to take advantage of a weakened system, and more victims will be left with little to no recourse.

### II. Background

This section begins with a background on the history of Romania's government, its dictatorship, communism, and how that has affected the nature of the laws in Romania. It then explores why corruption is so rampant in the country, and how that has an implication on sexual violence, investigations, and the lack thereof in prosecution.

#### A. Romania Under Communism

From 1964 to 1989, Romania was under the control of a dictator named Nicolae Ceausescu.<sup>11</sup> During this period, there was a constancy of injustice, poverty, and restriction including food shortages, gas shortages, and housing problems.<sup>12</sup> A new constitution was adopted the year after Ceausescu came into power, where the implications on the Romanian people were severe, and the dictator enforced several damaging social experiments.<sup>13</sup> Anyone who purchased basic food and household products above the limits set by the government risked imprisonment of up to five years.<sup>14</sup> Outside of food and household product shortages, television was limited, with the main channel being news propaganda.<sup>15</sup> Churches were banished, abortion was made illegal solely to increase the Romanian population, and anyone who tried to leave the country was either tortured, put in prison, or executed.<sup>16</sup> Ceausescu also heavily utilized the "Securitate," one of the most aggressive and dangerous secret police forces in the world, to antagonize, torture, or kill anyone who dissented with Ceausescu's reign.<sup>17</sup>

Following over a decade of tragedies and suffering, the anti-communist rebels began to come to power and started to riot and protest against the horrific mis-

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<sup>11</sup> See *Romania Under Nicolae Ceausescu's Communist Regime*, ROLANDIA, <https://rolandia.eu/en/blog/history-of-romania/romania-under-nicolae-ceausescu-s-communist-regime> (last visited May 22, 2023) [hereinafter *History of Romania*] (illustrating the sequence of events from how Ceausescu came to power to his ultimate demise).

<sup>12</sup> *Id.*; see also *Nicolae Ceausescu*, BRITANNICA (Sept. 20, 2022), <https://www.britannica.com/biography/Nicolae-Ceausescu> [hereinafter *Ceausescu*].

<sup>13</sup> See *History of Romania*, *supra* note 11; see also Jennifer Llewellyn & Steve Thompson, *Romania Under Ceausescu*, ALPHA HISTORY (Oct. 8, 2022), <https://alphahistory.com/coldwar/romania-under-ceausescu/>.

<sup>14</sup> See *History of Romania*, *supra* note 11; see also B.P. Perry, *The Fall of Nicolae Ceausescu, Romania's Last Communist Leader*, SKY HISTORY, <https://www.history.co.uk/article/the-fall-of-nicolae-ceausescu-romania-s-last-communist-leader>.

<sup>15</sup> See *History of Romania*, *supra* note 11; see also *Ceausescu*, *supra* note 12.

<sup>16</sup> See *History of Romania*, *supra* note 11; see also Zanfirache Diana-Andreea, *8 Curiosities About the Romanian Law*, R & R PARTNERS BUCHAREST, <https://rrpb.ro/fara-categorie/8-curiousities-about-the-romanian-law/> (last visited May 22, 2023).

<sup>17</sup> See Perry, *supra* note 14; see generally Mary Battiata, *How Romania's Bloody Revolution Got its Start in Timisoara*, THE WASHINGTON POST (Dec. 31, 1989), <https://www.washingtonpost.com/archive/politics/1989/12/31/how-romania-s-bloody-revolution-got-its-start-in-timisoara/69fd06b4-9eb7-4d7e-8fdb-a2fe4fd5454b/>.

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treatment they had suffered.<sup>18</sup> On November 15, 1987, an anti-communist riot broke out at the Council of the Romanian Communist Party in Brasov, which sparked the beginning of the end for Ceausescu.<sup>19</sup> Although there were no radio or news channels broadcasting this information, word of the riot spread quickly throughout the country through songs, which encouraged other citizens in different cities to begin to also take action.<sup>20</sup> However, those involved in the protests and riots were imprisoned or tortured, and their families were threatened and brutalized.<sup>21</sup>

Following two years of protests, the anti-communist party had increased so substantially that they began seeing success within their movement.<sup>22</sup> However, in 1989, Ceausescu was re-elected, which caused a massive uproar within the Romanian countryside, and protests turned into violent riots.<sup>23</sup> On December 16, 1987, a riot broke out in Timisoara after anti-communist groups attempted to burn down the Communist Party's main headquarters.<sup>24</sup> Ceausescu ordered the army to open fire on any protestors involved, which resulted in the deaths of over one hundred people.<sup>25</sup> This event in particular triggered the final protests and riots before the communist party and Ceausescu fell from power.<sup>26</sup>

Four days later, after the violence which occurred in Timisoara, Ceausescu spoke critically about the violence, stating that there must be an end to the violence and the anti-communist party as a whole and labeling them "terrorists and hooligans."<sup>27</sup> After his speech, a nationwide uprising forced Ceausescu and his inner circle to attempt to flee, however, they were swiftly captured.<sup>28</sup> On December 25, 1989, Ceausescu and his wife were found guilty in a brief trial by a special military tribunal and were executed in front of a firing squad.<sup>29</sup> Following Ceausescu's execution, the communist party attempted to reform, but faced complete opposition and was never able to regain power.<sup>30</sup>

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<sup>18</sup> See *History of Romania*, *supra* note 11; see also *Ceausescu*, *supra* note 12.

<sup>19</sup> See The Estonian Institute of Historical Memory, *Communist Dictatorship in Romania (1947-1989)*, COMMUNIST CRIMES (last visited Mar. 22, 2023), <https://communistcrimes.org/en/countries/romania>.

<sup>20</sup> See *Battiata*, *supra* note 17.

<sup>21</sup> See *History of Romania*, *supra* note 11.

<sup>22</sup> See *id.*; see also Perry, *supra* note 14.

<sup>23</sup> See *Battiata*, *supra* note 17; see also *History of Romania*, *supra* note 11.

<sup>24</sup> See *Battiata*, *supra* note 17; see also *History of Romania*, *supra* note 11.

<sup>25</sup> See *History of Romania*, *supra* note 11.

<sup>26</sup> See *id.*; see also Perry, *supra* note 14.

<sup>27</sup> See Perry, *supra* note 14; see also *Battiata*, *supra* note 17 (quoting Ceausescu and how he would refer to the protestors).

<sup>28</sup> Llewellyn & Thompson, *supra* note 13; see also Petyo Petkov & Michael Simmons, *Romania 1989: Ceausescu Goes Down in Blood*, THE GUARDIAN (Dec. 23, 2019), <https://www.theguardian.com/world/2019/dec/23/romania-ceausescu-goes-down-in-blood-1989>; see also *Ceausescu*, *supra* note 12.

<sup>29</sup> Llewellyn & Thompson, *supra* note 13; see also *History of Romania*, *supra* note 11; see also *Ceausescu*, *supra* note 12.

<sup>30</sup> See Perry, *supra* note 14.

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### B. How Communism Led to Lax Legislation

Twenty-one years after the downfall of communism in Romania and Ceausescu's reign, Romania as a whole continued to struggle.<sup>31</sup> Although it is now a functioning democracy, the path to Westernization coupled with the country's old-school traditions and views makes modernization quite complex and difficult.<sup>32</sup> The political system as it stands, is the most unstable and fragile in all of Europe, as there have been nine different governments in the last decade.<sup>33</sup> The fragility of its government turned the country into one plagued with corruption and poverty, and it became an overwhelming sex-trafficking hub.<sup>34</sup>

Currently, Romania is the leading country of sex trafficking exports and prostitution in all of Europe.<sup>35</sup> This, coupled with massive corruption of government officials, leads to leniency in laws and prosecution for those officials and citizens.<sup>36</sup> As recently as 2017, Romania's government enacted an emergency ordinance to amend their Criminal Code, making it so that officials accused of corruption would receive lesser sentences, with its ultimate goal being to move towards the decriminalization of corruption offenses.<sup>37</sup> This amendment signaled to the Romanian people and its criminals that abuse of power, corruption, and violation of statutory laws would not be pursued.<sup>38</sup>

Romania has still not adequately recovered from the twenty-five years of dictatorship. Corruption and greed, running rampant, are major deterrents to a full-functioning democracy. Because Romania is one of the biggest exporters and hubs for prostitution in Europe, there is no surprise that sexual laws have never been adequately codified and victims remain helpless.<sup>39</sup> In 2018, the Chair of Deputy shared with the Senate that there were about 2,500 reported rapes annu-

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<sup>31</sup> Emanuel Pietrobon, *How Romania Became Europe's Sex Trafficking Factory*, INSIDEOVER (Mar. 19, 2020), <https://www.insideover.com/society/how-romania-became-europes-sex-trafficking-factory.html/amp>.

<sup>32</sup> Peter Schroth & Ana Bostan, *International Constitutional Law and Corruption Measures in the European Union's Accession Negotiations: Romania in Comparative Perspective*, 52 AM. J. COMP. L. 625, 649 (2004); see also Julie Mertus, *Human Rights of Women in Central and Eastern Europe*, 6 AM. U. J. GENDER, SOC. POL'Y & L. 369, 387 (1998).

<sup>33</sup> See Pietrobon, *supra* note 31.

<sup>34</sup> See Schroth & Bostan, *supra* note 32.

<sup>35</sup> See generally Christina Giordano, *Reinventing the Wheel: Returning Sex Trafficking Discourse to Its Basic Human Rights*, 37 SUFFOLK TRANSNAT'L L. REV. 347, 347 (2014); see also Pietrobon, *supra* note 31.

<sup>36</sup> See Schroth & Bostan, *supra* note 32; see also Pietrobon, *supra* note 31.

<sup>37</sup> *Romanian Government's Ordinance Decriminalizes Major Corruption Offenses*, ROMANIA INSIDER (Feb. 1, 2017), <https://www.romania-insider.com/romanian-govtss-ordinance-decriminalizes-corruption-offences-lower-penalties-others>.

<sup>38</sup> See *id.*

<sup>39</sup> See generally Mertus, *supra* note 32; see also Pietrobon, *supra* note 31.

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ally.<sup>40</sup> The people of Romania have called on their government to adequately amend the laws and to increase punishment and prosecution for those accused.<sup>41</sup>

### III. Discussion

This section discusses the current status of Romania's sex laws, the impact the prominence of prostitution has on the country's legislation, the national sex offender registry (or lack thereof), and the current state of the Romanian justice system.

#### A. Current State of Romania's Sexual Violence Legislation

Currently, Romania's legislature does not explicitly define what sexual violence fully means, nor does it include the essential element of "lack of freely given consent" within its definition.<sup>42</sup> This lack of statutory definition goes in direct conflict with compliance with the Istanbul Convention. Although Romania has made significant progress regarding its domestic violence legislation, sexual violence legislation has unfortunately not advanced at the same pace.<sup>43</sup> Sexual violence and injuries inflicted on women are considered part of normal family orders in Romania, mainly because it is a fundamental, traditional, and religious stereotype where men are the main dominant authority of the family and women are supposed to be submissive.<sup>44</sup>

#### B. Prostitution in Romania

Since Romania's accession into the European Union in 2007, Romania has turned into one of the biggest exporters of prostitutes in all of Europe.<sup>45</sup> Around 70 percent of Europe's prostitutes are from Romania, and around 86 percent of women in British brothels are Romanians.<sup>46</sup> As it stands, most are underage minors sold or kidnapped by family members, boyfriends, or strangers.<sup>47</sup>

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<sup>40</sup> See Irina Marica, *Romanian MP Wants Punishment for Rape Similar to That for Murder*, ROMANIA INSIDER (Feb. 26, 2018), <https://www.romania-insider.com/deputy-rape-punish> (discussing how the current number of rapes annually are concernedly high, and by increasing the punishment for rape the annual rate would potentially decrease).

<sup>41</sup> See Marica, *supra* note 5.

<sup>42</sup> See Strasborg, *supra* note 2.

<sup>43</sup> Strasborg, *supra* note 2.

<sup>44</sup> See generally Doina P. Harsanyi, *Women in Romania*, in GENDER POL. & POST-COMMUNISM 39 (Nanette Funk & Magda Mueller eds., 1993).

<sup>45</sup> See Andrea Bruce, *Romania's Disappearing Girls*, ALJAZEERA AMERICA (Aug. 9, 2015), <http://projects.aljazeera.com/2015/08/sex-trafficking-in-romania/index.html> (discussing that the majority of women working in brothels throughout Europe are from Romania); see also Graema Culliford, *Inside the Romanian Human Trafficking Rings Where Desperate Parents Are Selling Underage Daughters to Be Raped in UK*, THE SUN (Apr. 21, 2021), <https://www.thesun.co.uk/news/13492095/romania-human-trafficking-uk-gangs-sex-trade/>.

<sup>46</sup> See Pietrobon, *supra* note 31; see also Bruce, *supra* note 45.

<sup>47</sup> See Pietrobon, *supra* note 31; see also Bruce, *supra* note 45.

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Unfortunately, Romania's response to prostitution and sex trafficking has been some of the worst in Europe.<sup>48</sup> The US Embassy in Bucharest recently downgraded Romania from level 1 to level 2 regarding awareness, sexual trafficking, and prostitution, creating some concern for the Romanian people.<sup>49</sup> Many people believe this to be motivated by the increase in corruption and alleged collusion between sex traffickers and politicians alike.<sup>50</sup>

Akin to sexual violence laws in Romania, prostitution laws suffer in a similar manner. Prostitution is one of the oldest professions in the world, but Romania has yet to clarify its prostitution laws in its criminal code.<sup>51</sup> Such ambiguous provisions make it difficult for the Romanian population to adhere to regulations, while simultaneously having an unclear understanding of what is criminally reprehensible and what is not.<sup>52</sup>

### C. Lack of a Comprehensive National Sex Offender Registry

One glaring issue that Romania had long overlooked was creating a national sex offender registry. Although one currently exists, it was not signed into legislation until June 20, 2019, and it did not go into effect until January 1, 2020.<sup>53</sup> Prior to the sex offender registry being implemented, parliament member Oana Bizcan noted that frequently, “notes or reports” in the criminal record would be erased.<sup>54</sup> At the time, Romania had a 70 percent reoffending rate, leaving children and women exposed to a very dangerous reality.<sup>55</sup>

### D. Workplace Sexual Harassment

Workplace harassment has been and continues to be a massive setback in the workforce for Romanian women. According to a report conducted by the local recruitment platform “BestJobs,” 44 percent of Romanian employees have allegedly experienced sexual harassment in the workplace, 86 percent being female employees.<sup>56</sup> Importantly, the report noted that most of the time, sexual harassment cases are not reported, indicating that the number of cases is much higher

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<sup>48</sup> See Bruce, *supra* note 45.

<sup>49</sup> See Pietrobon, *supra* note 31.

<sup>50</sup> *Id.*

<sup>51</sup> See Andrei Tinu, *Relevant Contemporary Aspects of Incrimination & Exculpation of the Prostitution in Romania*, THE INT'L. CONF. EDUC. & CREATIVITY FOR A KNOWLEDGE BASED SOC'Y – L. 255, 258 (2013).

<sup>52</sup> Tinu, *supra* note 51, at 258.

<sup>53</sup> See *Romania to Have a National Sex Offender Registry*, ROMANIA INSIDER (June 21, 2019), <https://www.romania-insider.com/romania-sex-offender-registry>.

<sup>54</sup> See Oana Bizgan, *Sex Offenders Register – A Story from the Romanian Parliament*, DEPUTATĂ INDEPENDENTĂ (Sep. 7, 2020), <https://oanabizgan.com/en/sex-offenders-register-a-story-from-the-romanian-parliament/>.

<sup>55</sup> *Id.*

<sup>56</sup> See *Study: Workplace Sexual Harassment, Quite Common in Romania*, ROMANIA INSIDER (Feb. 20, 2019), <https://www.romania-insider.com/study-workplace-sexual-harassment> [hereinafter *Study: Workplace Sexual Harassment*].

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than what actually is reported.<sup>57</sup> Finally, around 56 percent of employees who experienced some type of workplace harassment reported that the harassment had occurred at least three times, becoming a recurring issue.<sup>58</sup>

### E. Lack of Prosecution, Investigation, and Judicial Intervention

A big roadblock for sexual violence victims seeking protection from their abusers has been the lack of protection orders available.<sup>59</sup> Currently, Romania does not have a protective order system in place for victims of sexual violence, meaning that they are unable to receive any type of protection from the courts or from police officers.<sup>60</sup>

Furthermore, research has shown that Romanian police are incredibly ineffective in investigating and arresting abusers.<sup>61</sup> Research and human rights activists have found that police officers in Romania have consistently tried to prevent victims of sexual violence from filing suit against their abusers.<sup>62</sup> The law as it stands states that prosecutors and police officers must receive a formal complaint from a victim of sexual violence before they investigate or prosecute, even if they have evidence that the crime existed.<sup>63</sup> The police typically only investigate homicide or cases of extreme assault, and therefore public distrust in the police and the judicial process in Romania is very high.<sup>64</sup>

## IV. Analysis

This section addresses and critiques the impact lax legislation has on victims of both sexual and domestic violence in Romania, and how police, legislative, and judicial inaction hurts the country as a whole. Furthermore, this section analyzes where Romania stands with regard to its compliance with the Istanbul Convention and by extension, its compliance with the terms of admission with the European Union.

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<sup>57</sup> Study: Workplace Sexual Harassment, *supra* note 56.

<sup>58</sup> *Id.*

<sup>59</sup> See Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), *Baseline Evaluation Report Romania*, COUNCIL OF EUROPE, 73 (June 16, 2022), <https://rm.coe.int/final-report-on-romania/1680a6e439> [hereinafter GREVIO] (explaining how protective orders are only available for domestic violence victims).

<sup>60</sup> *Romania-Rape*, EUROPEAN INSTITUTE FOR GENDER EQUALITY, <https://eige.europa.eu/-violence/regulatory-and-legal-framework/legal-definitions-in-the-eu/romania-rape> (last visited May 22, 2023).

<sup>61</sup> See generally *id.*; see also U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., 2021 Country Reports on Human Rights Practices: Romania (2021).

<sup>62</sup> U.S. Dep't of State, *supra* note 61 (discussing the prominence of discouraging women from pressing charges or delaying action in investigating alleged abusers).

<sup>63</sup> *Id.*

<sup>64</sup> Mertus, *supra* note 32, at 420.

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### A. Romania's Compliance and Non-Compliance with Elements of the Istanbul Convention

Although the Romanian government has made significant steps to improve its legislation and its implementation of the Istanbul Convention, a report conducted by The Group of Experts on Action against Violence against Women and Domestic Violence (“GREVIO”) shows that progress in sexual violence contexts is still needed.<sup>65</sup> On June 16, 2022, GREVIO published a baseline evaluation report summarizing the Convention as a whole and Romania's requisite compliance.<sup>66</sup> GREVIO specifically observed Romania's actions in relation to “all forms of violence against women,” and proposed additional ways in which the implementation of the Istanbul Convention may be improved.<sup>67</sup> Overall, the report highlighted that, although there has been significant progress toward combatting domestic violence, there is an urgent need for a corresponding effort in the realm of sexual violence and its subsequent investigative process and prosecution.<sup>68</sup>

#### *i. Improvements in Domestic Violence*

The report found that the area in which Romania has made the most significant improvements is that of domestic violence.<sup>69</sup> The Romanian government has implemented significant measures toward preventing and combatting domestic violence against women by creating a national regulatory and institutional framework to protect and care for victims.<sup>70</sup> Romanian authorities have built a comprehensive legal, policy, and institutionalized system catered solely to domestic violence cases.<sup>71</sup> The report highlights how the steps taken are the steps necessary to create the foundation for combating domestic violence through a “multi-agency and multi-sectoral response,” one which was not available previously.<sup>72</sup> A national and multi-agency approach is imperative for departments to work cohesively in order to give victims the recourse and justice they deserve.

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<sup>65</sup> See generally GREVIO, *supra* note 59 (noting GREVIO is an independent human rights group that monitors the implementation of the Istanbul Convention and reports on their findings).

<sup>66</sup> *Istanbul Convention: Romania Has Improved the Protection of Women from Domestic Violence from Domestic Violence, but Progress is Needed*, ACTMEDIA (June 17, 2022), <https://actmedia.eu/daily/istanbul-convention-romania-has-improved-the-protection-of-women-from-domestic-violence-but-progress-is-needed/98198> [hereinafter *Istanbul Convention - Romania*].

<sup>67</sup> GREVIO, *supra* note 59, at 4.

<sup>68</sup> *GREVIO Publishes Its Report on Romania*, COUNCIL OF EUROPE (June 16, 2022), <https://www.coe.int/en/web/istanbul-convention/-/grevio-publishes-its-report-on-romania>.

<sup>69</sup> *GREVIO Publishes Its Report on Romania*, *supra* note 68; see also *Istanbul Convention - Romania*, *supra* note 66.

<sup>70</sup> GREVIO, *supra* note 59, at 6; see also *Istanbul Convention - Romania*, *supra* note 66.

<sup>71</sup> Strasborg, *supra* note 68.

<sup>72</sup> GREVIO, *supra* note 59, at 6.

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### ii. “Lack of Freely Given Consent” and the Categorization of Victims

Furthermore, the report highlights the urgent need to insert language about the “lack of freely given consent” into the Romanian Criminal Code.<sup>73</sup> Article 36 of the Istanbul Convention requires the notion of “consent” to be added to the language of Romania’s Criminal Code because without it, there cannot be a true definition of what sexual violence is.<sup>74</sup> GREVIO also illustrated that the Romanian judicial process must apply the same prosecutorial standards when there is no proof of resistance by the victim, as it is not a mandatory evidentiary burden for prosecuting sexual violence offenses.<sup>75</sup>

Additionally, the report examined a July 2021 amendment to Romania’s Criminal Code, which increased protection for minors, specifically by removing the statute of limitations where victims were minors.<sup>76</sup> The report cited concerns over classifying victims, particularly in cases of non-consensual sexual intercourse.<sup>77</sup> Changing the prosecutorial standards depending on who the victim is ultimately creates more ambiguity within the legal system and hinders the creation of a consistent practice in sexual violence cases.

### iii. Marital Rape

Moreover, as it stands, the Romanian Criminal Code does not criminalize marital rape.<sup>78</sup> The report suggested that an explicit amendment to the Criminal Code would be necessary to explicitly define and further criminalize marital rape.<sup>79</sup> Without such explicit criminalization, victims of sexual violence who are legally married to their abusers have no legal recourse. Furthermore, the report notes that in cases of marital rape, the crime is rarely reported and even more rarely prosecuted.<sup>80</sup>

### iv. Protective Orders

Lastly, although protective orders are granted in cases of domestic violence, the same protection is not afforded to victims of sexual violence.<sup>81</sup> Protective orders (*i.e.*, restraining orders) were made available in Romania in 2012, under

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<sup>73</sup> See generally Strasborg, *supra* note 68 (explaining how the notion must be incorporated to be compliant with the Istanbul Convention).

<sup>74</sup> GREVIO, *supra* note 59, at 56.

<sup>75</sup> *Id.*; see also *Istanbul Convention – Romania*, *supra* note 66 (discussing how all cases of non-consensual sexual violence acts must be a priority to be investigated and prosecuted).

<sup>76</sup> GREVIO, *supra* note 59, at 56.

<sup>77</sup> *Id.* (discussing that a hierarchy of victims based on characteristics like young age, helplessness, or disability may signal that certain victims are more “valuable” than others and deserve special prosecutorial attention).

<sup>78</sup> Mertus, *supra* note 32, at 426.

<sup>79</sup> GREVIO, *supra* note 59, at 56.

<sup>80</sup> See Mertus, *supra* note 32, at 426 (discussing the suspicion and fear of police officers and the criminal justice system and that cases of marital rape are only reported if the victim is “severely injured and cannot hide the crime”).

<sup>81</sup> See GREVIO, *supra* note 59, at 72-73.

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Article 23 of the Domestic Violence Law.<sup>82</sup> Although providing a temporary remedy for domestic violence victims was a big step for Romania,<sup>83</sup> these protective orders are only applicable in the context of domestic violence.<sup>84</sup> Additionally, it was found that these protective orders are often violated, and the sanctions vary greatly in administration.<sup>85</sup>

As it stands, the same protective orders are not available when crimes are not “domestic” in nature. Therefore, victims of sexual violence (who are not living under the same roof as their abusers), are not able to obtain protection from their abusers. The report urges the Romanian government to: (1) ensure the effectiveness of the protective orders; (2) expand the availability of the protective orders for *all* forms of violence against women; and (3) identify the causes of the violations and provide data on the sanctions imposed.<sup>86</sup>

### B. How the Current Laws Permit Police Inaction

As it stands, Romania’s laws do not explicitly define what sexual violence means,<sup>87</sup> and as such, police departments fail to adequately respond, investigate, or arrest alleged abusers. When a legislature does not adequately and explicitly define what a crime is, it can cause ambiguity and confusion amongst its enforcers, specifically regarding what does and does not constitute a crime. If the Romanian legislature does not accurately define what a sexual violence crime consists of, members of the public, along with police, will not be able to adequately determine if a crime was committed, investigate the alleged crime, and further, prosecute the alleged crime. When police officers are unable to identify if a sexually violent crime occurred due to ambiguity or confusion, there can be no enforcement of the laws, nor prosecution of the crime.

#### i. Public Distrust of Police Officers

GREVIO, along with additional researchers, has found that the Romanian public, specifically women, have a serious distrust of police officers and the criminal justice system as a whole.<sup>88</sup> Typically, when a sexual violence crime occurs, police officers are the first to respond to the scene and discuss the circumstances

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<sup>82</sup> GREVIO, *supra* note 59, at 72.

<sup>83</sup> See Giulia Crisan, *Implementing the Istanbul Convention into Romanian Legislation*, WOMEN AGAINST VIOLENCE EUROPE (Jan. 18, 2019), <https://wave-network.org/implementing-the-istanbul-convention-into-romanian-legislation/>.

<sup>84</sup> 40 Human Rights, *The Helsinki Accords and the United States: Selected Executive and Congressional Documents* 1, 30 (2016) [hereinafter *Helsinki Accords and the United States*] (discussing how protective orders are available only in domestic settings where you cohabit with the abuser, but not available if you live in different households).

<sup>85</sup> See GREVIO, *supra* note 59, at 73 (explaining that GREVIO found 30% of the protective orders were breached).

<sup>86</sup> *Id.*

<sup>87</sup> *Istanbul Convention – Romania*, *supra* note 66 (discussing how the definition is not aligned with the Istanbul Convention and should be amended).

<sup>88</sup> See U.S. Dep’t of State, *supra* note 62; see also Mertus, *supra* note 32, at 426; GREVIO, *supra* note 59, at 65.

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of the crime with the victim either at their homes or the police department.<sup>89</sup> However, several human rights activists have reported that police officers regularly try to discourage victims of sexual violence from pursuing charges, or encourage them to drop them altogether.<sup>90</sup> Victims have also reported “humiliation and mistreatment” by police officers and physicians when discussing the circumstances of the alleged crimes.<sup>91</sup>

Furthermore, there have been reports of police officers delaying action against sexual abusers, or refusing to register complaints altogether.<sup>92</sup> Additionally, if there is evidence of the crime, but the parties reconcile or the victim withdraws a complaint or is coerced to, the case is dropped and the abuser avoids punishment.<sup>93</sup> As such, there is a consistent practice by the criminal justice system of discouraging victims. This includes failing to pursue charges in cases of sexual violence and not protecting victims adequately, which leads to victims distrusting the justice system as a whole, and a country that does not protect its female victims.<sup>94</sup>

### V. Proposal

This section discusses the amendments to the Romanian Criminal Code that must be implemented to better comply with the Istanbul Convention. Furthermore, this section proposes the standardization of Romania’s criminal procedures regarding cases that involve violence towards women, and how the inconsistencies in practice lead to victims having little to no recourse. Finally, suggestions are presented for Romania to implement that would give victims resources and aid following trials, as well as the implementation of a standardized data collection system.

#### A. Heighten Compliance with the Istanbul Convention

Romania’s legal system needs somewhat of an overhaul in regard to sexual violence laws. As discussed throughout this Comment, the most essential step for the Romanian legislature is to amend its Criminal Code and explicitly define what sexual violence is to include the notion of “lack of freely given consent.”<sup>95</sup> Explicit classifications are an indispensable need in criminal proceedings – without them, law enforcement, prosecutors, and judges will have arbitrary and in-

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<sup>89</sup> Mertus, *supra* note 32, at 419; *see also* GREVIO, *supra* note 59, at 65.

<sup>90</sup> *See* U.S. Dep’t of State, *supra* note 62; *see also* Mertus, *supra* note 32, at 419; GREVIO, *supra* note 59, at 65.

<sup>91</sup> Mertus, *supra* note 32, at 419 (discussing the reports of mistreatment of women by police officers and physicians).

<sup>92</sup> U.S. Dep’t of State, *supra* note 62.

<sup>93</sup> *Helsinki Accords and the United States*, *supra* note 84, at 29 (explaining how prosecutors or police officers are not able to pursue or prosecute crimes if a victim withdraws their complaint, and abusers are relieved of any and all liability).

<sup>94</sup> *See* U.S. Dep’t of State, *supra* note 62; *see also* Mertus, *supra* note 32, at 419, 426; GREVIO, *supra* note 59, at 65.

<sup>95</sup> *See Istanbul Convention – Romania*, *supra* note 66.

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consistent applications of the law. Sexual violence victims will continue to be without recourse solely due to the varying interpretations of the law by different members of the criminal justice system.

Furthermore, requiring proof of “resistance by the victim” is an unnecessary evidentiary requirement which should be removed entirely.<sup>96</sup> Any instance in which a person is involuntarily forced into a sexual act, whether it be through violence or coercion, should be sufficient for a finding of violating sexual violence laws in Romania’s Criminal Code. Additionally, there should be no hierarchy of “victims.”<sup>97</sup> Instances where a minor is sexually assaulted automatically preclude consent, due to the minor’s inability to legally consent. That is, there should not be a differentiation made depending on if a woman of more advanced age was sexually assaulted versus a minor – sexual violence without consent should be treated equally. The Istanbul Convention views all “sexual acts without the consent of the victim”<sup>98</sup> to be satisfactory for sexual violence crimes, and the Romanian Criminal Code should encompass this broadened view.

Finally, marital rape should be explicitly defined,<sup>99</sup> in accordance with the reasons discussed previously, so that victims who are sexually assaulted by their spouses may also seek recourse. In its entirety, there must be more explicit and concrete definitions. A broader definition of what constitutes sexual violence would be beneficial for the Romanian population as a whole.

### *i. Creation of a Nationwide Data Collection Program*

Additionally, a comprehensive and integrated data collection system is necessary to better track offenders and their corresponding sanctions throughout the country.<sup>100</sup> By having a multi-department and national database, departments around the country will be in better positions to work in tandem with one another, and will not allow offenders to slip through the cracks and re-offend. Furthermore, by implementing an integrated data system, prosecutors and judges will be able to verify and set consistent sentencing precedents depending on the severity and complexity of the sexual violence act that occurred. Implementing comprehensive data collection systems will also aid legislatures and policymakers in shaping comprehensive laws that are attuned to their country’s needs.<sup>101</sup>

### **B. The Standardization of Criminal Procedures to Better Aid Victims of Sexual Violence**

As it stands, Romania’s response to crimes against women has varied rather inconsistently. Although Romania has made improvements in terms of domestic

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<sup>96</sup> GREVIO, *supra* note 59, at 56.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> See generally Mertus, *supra* note 32, at 426.

<sup>100</sup> See Strasborg, *supra* note 68; see also GREVIO, *supra* note 59, at 62.

<sup>101</sup> *Data Collection on Violence Against Women*, EUROPEAN INSTITUTE FOR GENDER EQUALITY, <https://eige.europa.eu/gender-based-violence/data-collection>.

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violence crimes, there are additional steps that must be taken to ensure a standardized and consistent approach to the application for women of all crimes. Romania has a problem with the investigation and prosecution of crimes relating to sexual violence against women, including incompetence in the police force, “erasing” criminal records, and allowing abusers to re-offend.<sup>102</sup> When there is a percentage of the police force that has known ties to criminal gang networks, primarily in human trafficking,<sup>103</sup> there is no surprise that they may be lenient with investigating any type of crimes against women.

In order to combat the inconsistencies in application, ensure that officers and members of the criminal justice system perform their jobs effectively, and increase trust in the criminal justice system,<sup>104</sup> there must be some standardization of legal, prosecutorial, and investigatory requirements, along with dependability on the criminal justice process for women who are victims of sexual violence and domestic violence crimes. The GREVIO report highlights that although there have been multi-agency and multi-department frameworks set in place for domestic violence crimes, along with the standardization of police procedures, the same cannot be said for sexual violence crimes.<sup>105</sup> In order to fully protect the women in Romania, regardless of the crime, Romanian authorities and the criminal justice system should utilize or mimic the framework already established for domestic violence crimes.<sup>106</sup> The GREVIO report highlights that there have been no efforts to standardize or provide any institutional or legislative frameworks for victims of sexual violence.<sup>107</sup>

The first and easiest step the Romanian legislature can take to implement or mimic the domestic violence framework is to amend the Criminal Code and allow for protective orders for victims of sexual violence.<sup>108</sup> As aforementioned, protective orders are relatively new to the Romanian legislature, and their implementation is even newer. However, to ensure that women are protected in all cases of violence, their use must be broadened to encompass sexual violence crimes on top of domestic violence crimes.<sup>109</sup>

Furthermore, prosecutors should be obligated to pursue charges against an abuser when crimes of sexual violence occur. As it stands, even if there is physical evidence that a sexually violent crime occurred, prosecutors, along with po-

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<sup>102</sup> Alison Mutler, *How It Took the Disappearance of Two Girls to Halt Romania's Controversial Legal Overhaul*, RADIOFREEEUROPE/RADIOLIBERTY (Aug. 4, 2019, 5:28 PM), <https://www.rferl.org/a/how-it-took-the-disappearance-of-two-girls-to-halt-romania-s-controversial-legal-overhaul/30091869.html> (discussing the incompetence of Romania's police force, along with many of the officers being tied to criminal human trafficking gangs); see also Bizgan, *supra* note 54 (explaining the high prevalence of officers erasing criminal records).

<sup>103</sup> See Mutler, *supra* note 102.

<sup>104</sup> See generally Mertus, *supra* note 32, at 426.

<sup>105</sup> See *Istanbul Convention – Romania*, *supra* note 66; see also GREVIO, *supra* note 59, at 65.

<sup>106</sup> See generally GREVIO, *supra* note 59.

<sup>107</sup> *Id.* at 65.

<sup>108</sup> *Id.* at 73 (explaining the process for which protective orders were implemented into the Romanian Criminal Code solely for domestic violence victims who cohabitate with their abusers).

<sup>109</sup> *Id.*

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lice officers, may not pursue the case without the victim's complaint.<sup>110</sup> With police officers frequently discouraging or humiliating victims from coming forward with complaints against their abusers,<sup>111</sup> the reality is that very few cases are pursued and prosecuted, allowing abusers to get away with their crimes with no consequence. By mandating police officers and prosecutors to pursue and prosecute cases even without the victims' complaint (or if the victim withdraws the complaint), this will ultimately increase public trust in the criminal justice system, potentially encourage more victims to come forward, and alleviate the underreporting of crimes,<sup>112</sup> while eventually putting more criminals behind bars.

### C. Mandatory Training for Professionals, Officers, Judges, Prosecutors, etc.

A critical step Romanian authorities must prioritize moving forward is the training of every member of the criminal justice system that has any interaction or role with women who are victims of sexual violence, along with professionals dealing with victims of sexual violence crimes.<sup>113</sup> Although there have been some efforts to train professionals in cases of domestic violence, the training must be broadened to include all types of violence, not just domestic violence, and must follow an elaborate, systemic, and tailored, training program compliant with the Istanbul Convention. Training of professionals can also have a preventative and "detection" benefit,<sup>114</sup> where women can be educated on what constitutes abuse, and victims can be provided an outlet and safe space if they are not comfortable or able to come forward.

Furthermore, Romanian authorities should prioritize creating safe houses for women and crisis centers for victims of all types of violence, not just domestic violence.<sup>115</sup> When there is a 30 percent breach of protective orders<sup>116</sup> (albeit in domestic violence cases), women need access to safe centers to protect themselves and their children. Additionally, there should be some specific sexual violence crisis and referral centers where women can not only seek refuge but have access to resources that may help them.<sup>117</sup>

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<sup>110</sup> See *Helsinki Accords and the United States*, *supra* note 84, at 29; see also Strasborg, *supra* note 68 (discussing how all instances of non-consensual acts should be investigated, prosecuted, and sanctioned).

<sup>111</sup> U.S. Dep't of State, *supra* note 62; see also Mertus, *supra* note 32, at 419.

<sup>112</sup> See Mertus, *supra* note 32, at 419; see also GREVIO, *supra* note 59, at 65.

<sup>113</sup> GREVIO, *supra* note 59, at 30-32; see also Strasborg, *supra* note 68.

<sup>114</sup> See generally Deborah Fisher, et al., *Training Professionals in the Primary Prevention of Sexual and Intimate Partner Violence: A Planning Guide*, CTNS. FOR DISEASE CONTROL AND PREVENTION (2010), [http://www.ncdsv.org/images/CDC\\_TrainingProfessionalsInThePrimaryPreventionOfSexualAndIPVaPlanningGuide\\_2010.pdf](http://www.ncdsv.org/images/CDC_TrainingProfessionalsInThePrimaryPreventionOfSexualAndIPVaPlanningGuide_2010.pdf) (last visited Apr. 26, 2023) (discussing the benefits of training professionals for cases of domestic and sexual violence).

<sup>115</sup> GREVIO, *supra* note 59, at 43.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 44.

## VI. Conclusion

Romania committed to certain conditions when it joined the European Union and by extension, became a part of the Istanbul Convention. It is time they comply with their obligations and make basic human rights for women and girls a priority. For the reasons mentioned previously, Romania's lax attitudes toward certain crimes enable the mistreatment of women. Overlooking corruption, human trafficking, forced prostitution, sexual violence, *etc.* feeds into a dangerous precedent, signaling to women in the country that their government and criminal justice system will not protect them. It also signals to abusers that their crimes will go unpunished, and they may be more inclined to continue their violent habits. Additionally, people like Andrew Tate may be enticed to move to the country, knowing their abusive and criminal behavior will be overlooked. For the reasons discussed in this proposal, the Romanian government must standardize its criminal procedures, ensure crimes do not go unpunished and prioritize the safety of women in the country. If they do not, women will remain helpless and voiceless, and will continue to be overlooked in a country where their protection is of paramount importance.