

Romania's response concerning Resolution A/RES/69/172 of 18 December 2014 on human rights in the administration of justice and Resolution A/RES/70/160 of 17 December 2015, entitled "The International Convention for the Protection of All Persons from Enforced Disappearance"

I. Resolution A/RES/69/172 of 18 December 2014 on human rights in the administration of justice

Legal aid is provided in different matters, as follows: in criminal matters the legal aid is mandatory for several categories of defendants and under certain conditions (Criminal procedure code) while as far as the rest of the proceedings are concerned, people having financial difficulties can benefit from legal aid under certain circumstances. To this end, the provisions of *Government Emergency Ordinance no. 51/2008 on public legal aid in civil matters*, approved by the Law 193/2008, can be mentioned.

As far as the national capacity building and the post-conflict situations are concerned, Romania contributed as donor to different fields of action, such as: secondment of experts to numerous civil management crisis operations (EUMM – Georgia, EUJUST LEX – Iraq, EUPOL COPPS – Palestine Territories, EUPOL Afghanistan, EUPM BiH (Bosnia – Herzegovina).

Regarding the fighting against terrorism, the criminal procedure code ensures the defendant/indicted persons all the safeguards for a full observance of the fundamental human rights: presumption of innocence (Art. 4 of the Criminal procedure code), fair trial and reasonable duration of the trial (Art. 8), right to defense, (art. 9 of the Criminal procedure code), etc. the preventive measures of depriving of one's liberty provided for within the Criminal procedure code shall only be ordered by the court of law, except for the custody measure that can be ordered by the prosecutor or by the criminal prosecution bodies for a period of at most 24 hours (Art. 209 of the Criminal Procedure Code). The decisions ordering the preventing arrest can be challenged with second appeal.

By adopting the new criminal code and new code of criminal procedure, a number of alternative measures to imprisonment penalty have been introduced in order to prevent the main problem of the prison system – overcrowding.

The fine penalty has a new regulation but also a significantly larger scope in comparison to the criminal code in force, by increasing the number of crimes for which the fine can be imposed as an unique penalty and especially as an alternative to the imprisonment.

Two new institutions were regulated: giving up the sentence and postponing the execution of the penalty. The suspension of the sentence execution under supervision was reconsidered. The aforementioned three institutions are conceived in a progressive sequence determined by the seriousness of the offense, how dangerous offender is, the degree of intervention for the correction of the sentenced person and the respective consequences.

The parole institution underwent significant changes both in terms and conditions governing the social reintegration of the sentenced person through state's active and qualified involvement. In this respect, the probation counselors have a crucial role.

Another new institution provided in the Romanian criminal procedure code is the house arrest, aiming to extend the possibilities for individualization of preventive measures as an alternative to preventive measures involving deprivation of liberty.

The Romanian penitentiary system provides special penitentiaries for women.

According to the provisions of *Law no.254/2013 on the enforcement of penalties and of measures ordered by the judicial bodies during the criminal proceedings*, entered into force at 1st of February 2014, at the same time as the criminal and criminal procedure codes, the pregnant women that have in their care a child up to one year old are exempted from the maximum security regime of enforcement of penalties involving deprivation of liberty. The women sentenced to deprivation of liberty penalties shall serve the later separately from male convicts.

The same law stipulates medical assistance for special cases.

- (1) The women sentenced to serve penalties involving deprivation of liberty, who are pregnant, shall benefit from medical care both before and after giving birth, measures being taken so that the birth takes place outside the penitentiary. The administration of the penitentiary shall take measures so that the sentenced person, upon her request, be able to take care of her child up to the age of one.
- (2) When turning one year old or before that, the child may be entrusted, with the mother's consent, to the family or person indicated by her.
- (3) In case the child cannot be entrusted to the family or person indicated by the mother, the child may be entrusted for the entire period of arrest of the mother, with her consent, to a specialized institution, by informing the competent authorities for the child protection.

According to the provisions of Art. 84 of the same law – The work undertaken by different categories of sentenced persons - special cases - “The women sentenced to imprisonment, the ones who gave birth during the detention period and have to take care of their children until the later are one year old, cannot undertake night work or work in places which are damaging, dangerous or pose a high risk for their health and integrity.

According to Art. 93 of the same law, women and young offenders should have access to the educative activities, psychological and social assistance, according to their needs and personalities.

Moreover, the provisions of Art. 101 of the aforementioned law stipulate that the pregnant woman or women who have in their care children up to one year old are also exempted from the following disciplinary sanctions:

- suspension of the right to receive and buy goods, except for those necessary for their personal hygiene, for a period of maximum two months;
- suspension of the right to receive visits, for a period of maximum 3 months;
- isolation for maximum 10 days.

According to the provisions of Art. 39 of Law no. 272/2004: “ (1) Every child who is, either for a definite or indefinite period of time left without protection of his/her parents or who, in order to have his/her interest protected cannot be left under the former's care shall be entitled to alternative protection measures. (2) The protection provided in para. (1) shall include the establishment of the guardian, the special protection measures provided by the present law, the adoption. When deciding upon one of the abovementioned solutions, the respective authority shall have regard in an appropriate manner to the necessity of ensuring certain continuity in educating the child, as well as, child's ethnical, religious, cultural and linguistic origin. “

According to the provisions of Art. 202 of the new Criminal Procedure Code (Preventive measures), (1) Preventive measures may be ordered if there is evidence or probable cause leading to a reasonable suspicion that a person committed an offense and if such measures are necessary in order to ensure a proper conducting of criminal proceedings, to prevent the suspect or defendant from avoiding the criminal investigation or trial or to prevent the commission of another offense.

- (2) No preventive measure may be ordered, confirmed, extended or maintained if there is a cause preventing the initiation or the exercise of criminal action.

(3) Any preventive measure has to be proportional to the seriousness of the charges brought against the person such measure is taken for, and necessary for the attainment of the purpose sought when ordering it.

(4) Preventive measures are:

- a) taking in custody;
- b) judicial control;
- c) judicial control on bail;
- d) house arrest;
- e) pre-trial arrest.

The *new Criminal procedure code*, in compliance with the case law of the European Court of Human Rights, expressly regulates the principle of the proportionality of every preventive measure having regard to the seriousness of the charge as well as to the principle of the necessity of such a measure in order to achieve the aim pursued.

As far as the preventive arrest is concerned, as a matter of principle, such a measure shall have an exceptional nature and, at the same time, shall be regarded as a subsidiary measure in relation to the other non custodial preventive measures. Hence, the preventive arrest shall only be ordered unless any other preventive measure is enough to attain the legitimate aim pursued. Also as a novelty for the criminal justice system, the house arrest is regulated in the new criminal code.

The new Criminal Code contains an entire chapter regarding minors. Art. 114 provides that a juvenile who, at the time of the offense, is aged between 14 and 18, shall be subject to a non-custodial educational measure. The juvenile referred to in par. (1) may be subject to custodial educational measures in the following cases:

- a) the juvenile committed another offense for which an educational measure was taken and served or the service of which started before the commission of the offense for which the juvenile is subject to trial;
- b) the penalty required by law for the committed offense is a term of imprisonment of seven years or more, or life imprisonment.

According to Art. 115, the educational measures are non-custodial or custodial.

1. The non-custodial educational measures are: a) civic traineeship; b) supervision; c) curfew on weekend and d) assistance on a daily basis.

2. The custodial educational measures are: a) confinement in an educational centre and b) confinement in a detention centre.

The law no. 254/2015 provides special conditions for the minors deprived of their liberty. Therefore, the educative centers and the detention centers for minors are regulated in special articles as well as the rights of minors deprived of their liberty (139 to 169).

It should be born in mind that in case of juvenile delinquency, the underage offender is only deprived of his/her liberty when it is absolutely necessary and no other measures are deemed to have effect.

The Ministry of Justice, through its Probation Service and the National Administration of Penitentiaries, prepares the child offender for the life he/she is supposed to face once the later leaves the penitentiary system or after the probation period is ended. Hence, several months before the child offender is due to conclude the serving of the custodial sentence he/she enters to different programs aimed at preparing him/her for the community life. In case of non-custodial sanctions (probation) the specialized programs are developed with the aim of preventing the reoffending and maintain the children in the community together with their families. Once the whole sentence is served, the Ministry of Justice concludes its mission.

Romania abolished the capital punishment by *Decree – Law no. 6 of the 7th of January 1990 on abolishing the capital punishment, amending and repealing certain provisions from the Criminal code and other legislative acts*, published in the Romanian Official Gazette no. 4 from the 8th of January 1990. The Constitution provides, at art. 22 (3) that the capital punishment is forbidden.

As far as the life imprisonment is concerned, in case of the underage defendant, the penalty shall be the imprisonment from 5 to 15 years (*Law no. 286/2009 on the new Criminal code*).

Romania collects statistical information on juvenile delinquency. For instance, the Public Ministry publishes its annual report on the official website (www.mpublic.ro). Such document provides for information on juvenile delinquency. The information is broken down according to different criteria (types of criminal offence, number of indicted persons, etc).

The Ombudsman has a special department dealing with the protection of children. Also, there is another structure whose object is the protection of children, namely the General Directorate for the Protection of Children under the coordination of the Ministry of Family, Labor and Social Protection. Moreover, Romania ratified by Law no. 109/2009 the Optional Protocol to the Convention against Torture (OPCAT) and according to its obligations assumed thereto it has to establish a so-called National Preventive Mechanism (NPM) for the prevention of torture and other forms of cruel, inhuman or degrading treatment or punishment in places of detention. Such places of detention shall also cover places where children are held.

The National Institute of Magistracy provides for the training of magistrates in all fields of justice, including human rights and juvenile approach, during both the initial as well as the continuous training.

II. Resolution A/RES/70/160 of 17 December 2015, entitled “The International Convention for the Protection of All Persons from Enforced Disappearance”

Romania signed the International Convention for the Protection of All Persons from Enforced Disappearance on the 3rd of December 2008.

The new Criminal code provides in its Article 439 as crime against humanity the provocation of enforced disappearance of a person aiming to place her/him outside the protection of the law for a long time, by abduction, arrest or detention, at the order of a State or a political organization or with the authorization, support or acquiescence of the State, followed by a refusal to admit that the person is deprived of liberty or to provide real information about the fate which is reserved or the whereabouts of the disappeared person, which place such a person outside the protection of the law, as soon this information is required.

The penalty applicable shall be life imprisonment or imprisonment for 15 to 25 years and the prohibition to exercise certain rights.