

Romania's response to the Questionnaire on the use of legislation, including criminal legislation, to regulate the activities and work of human rights defenders

- Regarding *question 1 a)*, it should be underlined that human rights defenders can be both public institutions and public official or private persons, especially NGOs. Therefore, the activity of each and every one of the above mentioned is governed by their own law on organization and functioning.

Hence, the following categories of human rights defenders can be identified:

- the Ombudsman – *Law no. 35/1997 on the organization and functioning of the ombudsman, republished;*
- the magistrates – *Law no. 303/2004 on magistrates, republished;*
- the lawyers – *Law no. 51/1995 on the lawyers' activity, republished;*
- the NGOs – *Government Ordinance no. 26/2000 on associations and foundations, with further amendments and supplements;*
- the National Council for Combating Discrimination – *Government Decision no. 1194/2001 on the organization and functioning of the National Council for Combating Discrimination, with further amendments and supplements;*
- any volunteer, whose activity shall be regulated by *Law no. 195/2001 on the volunteer activity, republished.*

The human rights defenders cited above undertake their activity in the human rights matters in full compliance with the provisions of the laws governing their activity.

As for *question 1 b) and c)*, it is to be stressed that, when drawing up legislation, the human rights international commitments are considered. Both the *Romanian Constitution* (Article 52 – The right of the person to seek redress from the state as a consequence of a wrongful action of a public institution) and *Law no. 554/2004 on the administrative-contentious procedures* (Article 1) provide for safeguards in case a person is the subject of a wrongful action undertaken by the state against him/her.

- Concerning *question 2*, it is to be underlined that the process of adoption of legal acts in the field of national security observes the Law no. 52/2003 on decisional transparency within the public administration, which ensures the access of the civil society in the phase of public consultation of law projects that are about to be submitted for approval.
- With regard to *question 3 a)*, it is to be noted that the criminal law restricts *per se* certain rights and freedoms. Yet, such a restriction shall only operate under strict conditions and for very well determined purposes. Moreover, the Constitution itself (Article 53) restricts one's rights and freedoms for duly purposes. This restriction can be imposed only if necessary in a democratic society and the measure has to be proportional to

the situation that determined it, applied in a non-discriminatory way and without prejudice to the existence of the right or liberty.

As for the legal or administrative safeguards put in place in order to prevent baseless legal action against and/or prosecution of human rights defenders for undertaking their legitimate work (*question 3 b*)), a part from the already mentioned provisions (the Romanian Constitution and Law no. 554/2004 on the administrative-contentious procedures), in case of discrimination, the provisions of *Government Ordinance no. 137/2000 on preventing and sanctioning all forms of discrimination, republished* can also be raised.

- Regarding *question 4 a) and b)*, the associations and foundations are governed by the provisions of the aforementioned *Government Ordinance no. 26/2000 on associations and foundations, with further amendments and supplements*. It defines the associations and foundations set up according to its provisions as non-lucrative private law legal persons and regulates the set up and registration of associations and foundations, covering their internal structure and operation.

As for the compliance of these provisions with Romania's international human rights obligations regarding the right to freedom of association (*question 4 b*)), it is to be mentioned that, according to Article 11 of the Constitution of Romania, the treaties ratified by Parliament, according to the law, are part of national law. Furthermore, Article 20 stipulates the following: „Constitutional provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties Romania is a party to. Where any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favourable provisions.”

In this context, it is to be noted that the European Court of Human Rights found a violation of the freedom of assembly and association (Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms) in only three cases concerning Romania, among which in only one the legal basis was represented by Government Ordinance no. 26/2000 on associations and foundations (case *Bozgan v. Romania*, application no. 35097/02, judgment of 11 October 2007). However, it is to be stressed that the violation found in this case was not determined by the quality of the legal provisions, but by the refusal of the courts to register the applicant's association without informing the applicant of the alleged irregularities in the association's statute and without asking him to remedy them.

- As for *question 5 a) and b)*, all persons (either natural or legal persons) are free to undertake any activity as long as they comply with the law. Once they have gone beyond the law, committing either an administrative or a criminal offence, they shall be liable.

- Concerning *question 6*, the provisions of *Law no. 544/2001 on free access to public interest information, with further amendments and supplements* stipulate the obligation of providing public interest information to whoever might ask for such information.

Article 3 of *Government Emergency Ordinance no. 24/2008 on the access to personal files and the uncovering of the "Securitate"* (former Romanian secret service) stipulates that, in order to ensure the right of access to public information, any Romanian citizen, with the residence in Romania or abroad, the press, the political parties and the NGOs have the right to be informed, upon request, concerning the existence of the quality of collaborator of the Securitate of the candidates for the European Parliament or in presidential, general and local elections, as well as of the persons occupying functions such as: President of Romania, deputy or senator within the Parliament of Romania or member of the European Parliament, member of the Government, secretary and undersecretary of state, secretary general and deputy secretary general within the ministries, European commissioner, mayors, county counsellors, judges and prosecutors, the diplomatic and consular personnel, etc.

Also, as mentioned at *question 2*, the process of adoption of legal acts in the field of national security observes the legal provisions on decisional transparency within the public administration, which insure the access of the civil society in the phase of public consultation of law projects that are about to be submitted for approval.

It is also to be underlined that a legislative reform in the field of national security is currently under way, given the sensitive character and the complexity of the issue.

- With regard to *question 7 a) and b)*, the provisions of Article 30¹ of the Romanian Constitution (freedom of expression) are applicable.

As far as slander and defamation are concerned, they were repealed by Article I point 56 of *Law no. 278/2006 on the amendment and supplement of the Criminal code, as well as for the amendment and supplement of other laws*, published in the Official Journal no. 601 of 12 July 2006, Part I.

¹ Article 30

Freedom of expression

(1) Freedom of expression of thoughts, opinions, or beliefs, and freedom of any creation, by words, in writing, in pictures, by sounds or other means of communication in public are inviolable.

(2) Any censorship shall be prohibited.

(3) Freedom of the press also involves the free setting up of publications.

(4) No publication shall be suppressed.

(5) The law may impose upon the mass media the obligation to make public their financing source.

(6) Freedom of expression shall not be prejudicial to the dignity, honor, privacy of a person, and to the right to one's own image.

(7) Any defamation of the country and the nation, any instigation to a war of aggression, to national, racial, class or religious hatred, any incitement to discrimination, territorial separatism, or public violence, as well as any obscene conduct contrary to morality shall be prohibited by law.

(8) Civil liability for any information or creation made public falls upon the publisher or producer, the author, the producer of the artistic performance, the owner of the copying facilities, radio or television station, under the terms laid down by law. Indictable offences of the press shall be established by law.