

UNIVERSAL PERIODIC REVIEW OBLIGATIONS OF ROMANIA UNDER THE TREATY BODIES

(i) Human Rights Committee – CCPR

The freedom of association was a right immediately recognized after the fall of communism, which opened the path for creating political groups and the civil society. One of the characteristics kept even at present is extremism and also nationalism in an organized form. In this sense, on 15.11.2007 the press agency Rompres (www.rompres.ro) presented the following press-release: "The representative of the Pro-Europa League (NGO) declared that the *Romania Mare Party (PRM) and the Party of the New Generation (PNG) are extremist political parties, as the leaders of these groups, have tried to induce, through their speeches, to the Romanian public suspicion, hatred, intolerance to the ethnic, religious and language diversity of Romania and of Europe in general*". Cadran Politic www.cadranpolitic.ro – a review for political analysis and information, reveals in one recent article the fact that "*as there is a possibility for PRM and PNG to grow in public polls, a work hypothesis would be for the two parties to arbitrate between left and right in the future elections*".

The limitation of the freedom of expression has a correspondent in the national legislation in the press offence, which does not have a distinct regulation. This lack will give way to developing civil cases which, if they result in the journalists paying repair, can constitute a sentence under the ECHR jurisprudence (e.g. the cases of Dalban, Cumpana&Mazare, Sabou&Pircalab and other 8 cases recently communicated to the Government).

At present Romania is first from the point of view of claims placed with the ECHR, and the lack of interest of Romanian authorities cost Romania so far 50 mil. Euro spent for repairs. The most frequent civil rights infringed in the last 5 years and reflected in the ECHR decisions are:

- * *using inhuman or degrading treatment and the absence of an efficient investigation, violation of correspondence* – cases of Pantea, Anghelescu, Bursuc, Moldovan, Mocanu;
- * *violence against Roma minority* – cases of Gergely, Kalanyos, Tanase, Baci, Nita, Stoica, Hadareni;

- * *infringing the right to access to a Court* – cases of Brumarescu, Canciovici, Mosneanu.

The lack of a strategy of education and adequate information on human rights resulted in directing the population towards confuse legal values, the citizens of Romania not being aware on the provisions contained in Protocol 2 of the CCPR on individual complaints or special procedures of the HRC - urgent appeal, letters of allegation). This, in spite of the fact that Romania presided the Council of Ministers of the Council of Europe (Nov. 2005-May 2006) and no presides the Human Rights Council.

The freedom and security of the person, including the respect for the presumption of innocence are affected by the organization of the legal system where interventions should be made for: *the effective respect of provisions on the exclusive subordination of police officers to the prosecutor; the professional training of legal bodies with UN expertise, the publication of common orders of the Public Ministry and of the Ministry of Interior and Administrative Reform, the limitation of cases of taking prevention measures by police officers with no special training, the investigations against police offices for criminal acts solely by the prosecutor, the respect of legal terms for criminal investigations*. The disturbing factors should also be analyzed to fulfill the act of justice: *the name of*

prosecutor's offices which are called "near the Court", the lack of difference between the prosecutors and judges from the point of view of their title of "magistrates", the resemblance in clothes worn by prosecutors and judges, the physical setting of the prosecutor in the topography of the Courts which is now next to the judge, the maintenance of the prosecutor in the introduction part of mentions of judge decisions, the annulment of the privileged treatment of the prosecutor related to the circulation of files and applying similar conditions with those of the lawyers, the existence of privileges during the solutions of files by admitting the presence of a prosecutor with a leadership role and not the one who should lead the meeting, "the transfer" of prosecutors as judges due to the assimilation of their title of "magistrates" in a procedure with a minimum of formalities which could result in incompatibilities in the measure of preventive arrest.

(ii) Committee on economic, social and cultural rights – CESCR

According with a study made by the Soros Foundation (www.osf.ro released for the public on 07.12.2007) in 2007 Romania has a very high poverty rate in the European context, the absolute poverty rate being of 35% in Moldova, which is an area with a percentage of 77% poorer than the national average. The persons identified as "lower class" are predominantly localized in areas of poverty of rural and periphery areas. The Global Report of human development on 2007 for Romania reveals the most important characteristics of the situation: *the crisis of employment force and the decline of the population*. The gravity of problems signaled is related to the fact that the life hope at birth is the lowest in Europe and infant death is the highest among EU states. According with charts made by the UNDP, Romania is 72nd worldwide on the income per person, life hope and level of education of the population (the illiterate population represents 3%).

The information of the National Statistics Institute (www.insse.ro for 2006) reveal that only 53% of Romanian homes have water and that the city standards are precarious. The active population is of 10,5 million persons from an approximate total of 21 mil. of which ½ mil. are unemployed. 50% of the inactive persons, approximately 10,5 mil, are pensioners, 40% pupils or students and 10%, although they could work, are supported by someone (1,1 mil. housewives, 100.000 prisoners/arrested persons).

Even if the World Bank (web.worldbank - remarks in a study (June 2007) that the economic growth during 2000-2006 (5 – 6 %/annually) resulted in reducing the absolute poverty, *the unequal level of incomes was maintained, as there are areas and social categories affected by extreme poverty*.

This information make it compulsory that Romania approach the progressive side of the mechanism of reform for the implementation of the ICSCR provisions.

(Attn: E/CN.4/2003/5/Add.2; E/CN.4/2005/51/Add.4; E/CN.4/2004/63/Add.2)

(iii) Committee on the elimination of racial discrimination – CERD

The special needs of the Rroma population come from an insufficient mechanism of national institutions on: *a) measures for improving the life conditions (hygiene, education and social security of children) and b) the prevention of discrimination*. The Report of the Objectives of Development of the Millennium according with the UN Plan of action for the prevention of poverty (2005) presents the situation where "the Rroma population is 5 times more exposed to severe poverty and represent 12,5% of the total of poor

population, more than 50% of the Roma individuals living in severe poverty”. The World Bank (in their study on the policy on social protection in Romania - 2007) draws attention on the fact that rural areas in the North-East of Romania, the Roma population, the youth and those with a low level of education where poverty has a higher incidence, need special and flexible programs, as well as social protection measures.

The national action plan, *The Decade of Roma Inclusion* (2005-2015) which has priorities such as the creation of conditions for education, access on the labor market and access to health, is mainly based on the national legal framework (according with the provisions of the Penal Code, discrimination is punished as a crime) and on the National Committee for the Prevention of Discrimination (a unique national entity, created subsequent to obligations resulted from the documents of the Durban Conference in 2001) with many attributions in approaching discrimination – focusing on ethnical, sexual, religious, gender minorities, etc.), to which the direct access of the Roma population is inexistent because of the lack of information provided on the existence of this institution.

The Council of Europe bodies (ECSR and ECRI) have repeatedly requested that the Governments set a priority in solving the living conditions of the Roma population. First of all, Romania should be preoccupied by improving the accommodation conditions, identifying all types of accommodation (houses, caravans and mobile homes) depending on the traditions of organization for all different lifestyles (sedentary, semi-nomadic or nomadic).

In the annex we present documents revealing the critical situation of Roma nationals in Romania related to the state institutions focused on discrimination and torture – case in Lunca Cetatuii, Iasi county.

(Attn: Amnesty International Reports, Romania 2006, 2007 – www.amnesty.org)

(iv) CEDAW Committee

Although The Convention on the elimination of all forms of discrimination against women was ratified by Romania in 1981, the democratic governments after 1989 neglected the matter of women’s rights. Among the worst phenomena affecting women’s life in Romania are *discrimination and violence* (domestic violence, women traffic, prostitution, pornography and violence against women through the media) and as a separate special subject *the discrimination and violence of women in rural areas, whose existence is not even considered by the governants.*

SIRDO’s preoccupation during the 17 years of activity focused on *domestic violence*, as a pervert form in the private area of violence against women, with serious infringements of human rights. In spite of all pressures of the civil society, the measures that should have been applied following the Beijing Conference (“*Beijing+5*”) and those states in the *UN Declaration on the Elimination of Violence against Women*, the regulation of legal provisions, the creation of an institutional framework as well as the organization of public campaigns were determined, on the one hand, by the *process of adhering to the EU* and on the other hand by the *Campaign of the Council of Europe for the prevention of domestic violence in 2006-2008*. Law 217/2003 for the prevention of domestic violence has lacks that need to be revised carefully. The main problems resulting from the inconsistency of the law were signaled by SIRDO to the UN Commission on Human Rights (E/CN.4/2000/NGO/42; E/CN.4/2005/NGO/88; E/CN.4/2006/NGO/9) and are

still standing. The statistics presented by the National Agency for the Protection of the Family (www.anfp.ro), the specialized body of the central public administration with competence in the field, reveal the following officially registered aspects: * 2004 – 8104 cases, of which 84 deaths; * 2005 – 9537 cases, of which 169 deaths; * 2006 – 9372 cases, of which 151 deaths; * 2007 (first 6 months) – 6717 cases of which 103 deaths.

Compared to these figures, the statistics are ampler and can be completed by the high number of imprisonments for violence against the person deriving from the family environment. Faced with this reality, Romania should urgently proceed to *reviewing the legal framework, grant an adequate budget for the organization of shelters for the victims as well as to institute specialized courts for judging cases of domestic violence.*

(Attn: Romania should be attention to the CEDAW/C/ROM/CO/6; At 27 July 2007 (www.just.ro) was signed the Protocol between Ministry of Justice, Public Ministry and Ministry of Work and Family concerning cooperation for prevention and combating domestic violence with special responsibility for each department, but until now isn't visible results in this area.

(v) Committee against torture (CAT)

For 17 years, SIRDO has been consistently preoccupied with protecting persons deprived of freedom under the impact of penal law. One of the main segments was the treatment of persons by authorities in penitentiaries and police lock-ups, under the aspect of Romania's obligations to the Convention against torture and other cruel, inhuman or degrading treatment or punishment ratified in 1990. Starting with 1999, our activity was developed together with the UN Voluntary Fund for the assistance of the victims of torture (UNVFVT), with the Special Rapporteur (UN Rapporteur on Torture, the European Committee for the prevention of Torture. The UN Commission on Human Rights was equally informed through statements in the beginning of 2000 (the most recently is E/CN.4/2005/NGO/85; E/CN.4/2006/NGO/8) informing on the acts of torture and inhuman treatments to which the persons deprived of freedom are subjected and on the non-punishment of the torturers. Considering that the instauration of the Human Rights Council coincided with a possible reform promised by the authorities in reviewing and applying the criminal dispositions in Romania, SIRDO has temporarily closed the information materials to the HRC in this area. Still our annual reports to the UNVFVT reveal that the phenomenon increased both under the aspect of conditions of detention assimilated with torture (over-crowding, conditions under the limit of human dignity in penitentiaries and police lock-ups, punishment applied with high cruelty, beyond any admitted norms, medical services applied against the person in need) and by the police and prosecution practices in instrumenting the criminal investigation. If the demilitarization of the penitentiaries as well as that of the police meant an important step towards democracy, the practices remained unchanged, while measures for reform are still awaited for: *the organization of house arrests, setting preventive arrest at the above-the-ground level in conditions of dignity for the persons who benefit from the presumption of innocence, the demolition of the Jilava penitentiary and its hospital which, due to the disastrous conditions, can be assimilated with instruments of torture (E/CN.4/2005/NGO/85), restrictions in using fire guns by police officers, etc.*

Revealing for this chapter are the annexes attached to the present document, the opinions of the UN Special Rapporteur on torture and of the CPT, but also the case that SIRDO's

lawyers supported before the ECHR for 4 years (application 22088/04 – Bragadireanu vs. Romania) where the state was sentenced on 6.12.2007 for infringing art. 1,3,7,13,14 of the European Convention.

Considering the facts presented, we think that Romania could make the object of a claim to be sanctioned for vices of consent resulted from infringing international imperative norms (jus cogens), with the obligation to urgently ratify the Optional protocol signed on 24.09.2003. the Romanian Government should equally consider the provisions of the Committee against torture of 23 Nov. 2007 (CAT/C/GC/CRP.1/Rev4).

(Attn: A/Res/61.153 – Romania should respect the rights of victims exercise the universal jurisdiction to the principle “aut dedere aut iudicare”; A/HCR/4/Add.2-15 march 2007 – Romania sould revised the application of measures that was reported).

(vi) Committee on the rights of the child (CRC)

The Convention of the rights of the child was ratified by Romania in 1989. The system of constitutional guarantees towards the rights of the child and the policies in the major interest of the child are still unclear. In our statement to the UN Commission on Human Rights SIRDO draws attention on the *abandonment of new born in hospitals*. in spite of all concerns, at that time from UNICEF – Romania, this phenomenon continues to be present, in a reality where there can still exist children without identity who can easily become victims of illegal adoptions or of human traffic.

The research made by Human Rights Watch during February-June 2006 reveal *Romania’s failure in protecting and supporting children and youths infected with HIV*. The report of HRW (14.08.2006) presents the following aspects: *over 40% of the children infected with HIV are not part of the education system, those who do not go to school take the status of outcast, the doctors frequently refuse to treat them so to discourage them to ask for any medical care, the medication is insufficient because of the limits of the compensation budget, the mechanisms of information to authorities are inefficient, the cessation of the activity of the national commission resulted in malfunctions and the sector commission led by the Prime Minister never met in 2005 and in 2006 it had meetings with no concrete results. Romania has over 7200 persons aged 15-19 years old infected with HIV and for the youths belonging to this category, the HIV testing is compulsory to become employed. The evaluation made in the annual reports of the National Council for the prevention of Discrimination, reveals the failure of this institution to systematically approach the discrimination against persons infected with HIV.*

A new problem for Romania is related to *the existence of children without parental care*, following the massive migration of the labor force in developed countries. *In this sense, there is no coherent national policy, in spite of suicide cases being recorded among children who had been long abandoned in a precarious family environment or with no form of adult care.*

(Attn: E/CN.4/2005/78/Add.2; on 16.01.2008 “Realitatea” Romanian TV was presented the 347cases of the disappear chirdren in Romania at the end of 2007).

(vii) Committee of Migrant Workers (CMW)

Considering the conclusions presented in the UNDP report for 2007 according with which Romania is now affected by a crisis of workers by the migration of the labor force

in other states (exclusively caused by the low living standards) and also by the interest to attract cheap labor force from the “third world” states, *it is expected that Romania should have the intention to sign and ratify the Convention of the protection of the rights of all migrant workers and members of their families.*