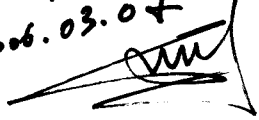


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les députés de
la Commission
pour information
2006.03.07


L'Ambassadeur

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Bruxelles,
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Monsieur le Président,

Je vous remercie pour votre lettre du 22 février 2006, relative à la constitution de la Commission temporaire sur l'utilisation alléguée des pays européens pour le transport et la détention illégale des prisonniers (TDIP).

Tout en vous félicitant pour votre élection en tant que Président de cette Commission, j'aimerais en premier lieu vous faire connaître que j'ai immédiatement informé les autorités roumaines du contenu de votre lettre. Pour ce qui est de l'invitation adressée au Gouvernement roumain de prêter son concours et de participer activement aux travaux de votre Commission, j'aimerais vous rassurer de toute la disponibilité à cet égard. En fait la preuve, la lettre dont vous êtes certainement au courant, que M. le Premier ministre Calin Popescu-Tariceanu, a adressée en janvier à M. le Président Josep Borrell Fontelles, par laquelle il exprimait l'engagement et le souhait du Gouvernement roumain de coopérer étroitement avec le Parlement européen. Il en est de même pour la lettre de Mme la Sénateur Norica Nicolai, par laquelle elle informait le Président du PE, toujours en janvier, sur la constitution d'une Commission d'enquête du Sénat roumain, en exprimant à la fois, l'intérêt d'établir une étroite coopération avec votre commission.

Il convient de relever à la fois que les autorités roumaines coopèrent étroitement dans le même sens avec le Conseil de l'Europe. J'ai le plaisir d'ailleurs de vous faire parvenir ci-joint la réponse du Gouvernement roumain au questionnaire du Secrétaire Générale du Conseil de l'Europe, M. Terry Davis, dans le cadre de l'enquête menée par cette institution au même sujet.

En vous assurant une fois de plus de toute notre disponibilité de coopérer avec vous, je vous prie d'agréer, Monsieur le Président, l'expression de ma très haute considération,

Lazar Comanescu



M. Carlos Coelho
Député européen
Président de la Commission temporaire sur l'utilisation alléguée
des pays européens pour le transport et la détention illégale des prisonniers
Parlement européen
ASP 08E146

MISSION DE LA ROUMANIE AUPRÈS DE L'UNION EUROPÉENNE

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Response of the Romanian Government on the investigation initiated by the Secretary General of the Council of Europe, in accordance with Article 52 of the European Convention on Human Rights

1. Explanation of the manner in which their internal law ensures that acts by officials of foreign agencies within their jurisdiction are subject to adequate controls

The Romanian internal legislation as well as the international conventions to which Romania is a party ensure proper control on the actions of foreign agencies on the Romanian territory. In accordance with article 20 (2) of the Romanian Constitution “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 favorable provisions”.

Pursuant to article 3 of the Criminal Code, the criminal law applies in cases of crimes committed on Romanian territory. There are a few derogations from the principle of territoriality of the Romanian criminal law. In this respect, pursuant to article 8 of the Criminal Code, the criminal law shall not apply to offences committed by the diplomatic representatives of foreign States or by other persons who, according to international conventions, are not subject to criminal jurisdiction in Romania. These persons are obliged to abide by the Romanian law but, in case they commit an offence incriminated by the Romanian criminal law, the criminal jurisdiction shall be exercised by the sending state.

For example, art. II of the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces, adopted in Washington, on April, 4, 1949, stipulates that the force and its civilian component and the members thereof as well as their dependents are obliged to respect the law of the receiving State. Article VII of the Agreement contains detailed provisions on the jurisdiction that may be exercised on the member of the force, the civilian component and their dependents. In circumstances which involve the primary right to exercise jurisdiction by the sending State, according to art. VII.5 of the NATO-SOFA, whether a case is of a particular importance for the receiving State, “sympathetic consideration” to its request for a waiver of the right to primary jurisdiction of the sending State is to be afforded.

A bilateral SOFA-type Agreement between Romania and the United States of America was signed in Washington, on October 30, 2001. Cases of exercising their criminal jurisdiction by the US over members of their forces, additional to the NATO-SOFA provisions, are provided for in article III of this Agreement. Still, according to article III paragraph 3 of this bilateral Agreement, where the Romanian authorities hold the view a certain case is of “particular importance”, they have the right to recall the above-mentioned jurisdictional waiver.

The Law 302/ 2004 on international judicial cooperation in criminal matters regulates the cooperation and the judicial assistance between the Romanian and foreign judicial authorities in the criminal field. It establishes the legal regime applicable to foreign agents who perform different procedural activities on the Romanian territory.

2. Explanation of the manner in which their internal law ensures that adequate safeguards exist to prevent unacknowledged deprivation of liberty of any person within their jurisdiction, whether such deprivation of liberty is linked to an action or an omission directly attributable to the High Contracting Party or

whether that Party has aided or assisted the agents of another State in conduct amounting to such deprivation of liberty, including aid or assistance in the transportation by aircraft or otherwise of persons so deprived of their liberty.

A person can be deprived of liberty in so far the provisions of the Romanian Constitution, of the Criminal Procedure Code (CPC) and the criminal legislation are respected.

Pursuant to article 23 of the Romanian Constitution, the individual freedom and the security of the person are inviolable; pre-trial detention and search can only be ordered by a judge. Detention may not exceed twenty-four hours and arrest shall be made under a warrant issued by a magistrate, for a maximum period of thirty days.

According to CPC (Art. 5, 5¹, 5², 6), the following principles govern the criminal trial: safeguard of the liberty of the person, safeguard of the human dignity, the presumption of innocence, safeguard of the right to defense.

According to the provisions of the CPC (Art. 136 – 160), during the criminal investigation stage, the maximum length of the pre-trial detention shall never exceed 180 days (the period can be extended by 30 days, up to a period of 180 days). The pre-trial detainees under investigation are kept within the Police custody.

Pursuant to article 143 of the CPC, the confinement measure may be taken, for a period of maximum 24 hours, by the criminal investigation body against the accused person if there are pieces of evidence or strong signs that he/she committed a deed stipulated by the criminal law, only in the conditions stipulated by article 148 CPC, no matter which is the maximum period of imprisonment punishment. In accordance with article 146 CPC, if the conditions mentioned previously continue to be fulfilled, the prosecutor, ex officio or solicited by the criminal investigation body, may ask the court of law to decide upon the pre-trial detention of the accused person. The prosecutor must present arguments that the arrest serves the objectives of the criminal investigation, that all conditions provided by the law are fulfilled; prior to presenting the demand to the court, the prosecutor is under the obligation to hear the accused in the presence of his / her lawyer and to present to him the case file. The pre-trial detention may be decided only by a court of law.

Following the indictment stage and during the trial, the court is under obligation to verify, at least every 60 days, whether the detention is legal and well grounded. If the court finds that the grounds for the pre-trial detention have ceased to exist or if it finds that there is no new evidence to justify the continuous deprivation of liberty, it has to revoke the arrest. The defendant must be released at once. During the proceedings before the court, the detainees are in the custody of the National Administration of Penitentiaries.

According to article 140 CPC pre-trial detention ceases *de jure* at the end of the pre-trial detention period, as provided for in the warrant.

In the Romanian penitentiary system there are 45 criminal institutions (34 penitentiaries, 2 penitentiaries for minors and young people, 3 centers for reeducation and 6 penitentiary hospitals, whose locations are made available to the public also by accessing www.anp-just.ro.

The access of persons deprived of liberty in the subordinated units is made available on the basis of legal acts for detention (a preventive arrest warrant, warrant of executing the imprisonment punishment, decision of hospitalization into a re-education centre) issued by a judicial court, after the identity of the referred person has been previously established. In case of lack of concordance regarding the data existent in the identity acts, in the legal acts of detainment and those declared by the arrested or convicted person, the latter is not accepted in the penitentiary or the re-education centre.

The above mentioned regulations, stipulated by articles 1, 2 and 39 under the Law no 23/ 1969 on execution of the punishment, as well as under the Order of the Minister of Justice no. 2360/2000 for approving the Instructions regarding nominal and statistic evidence of the detained persons in the detention locations subordinated to National Administration of the Penitentiaries, guarantee that no person shall be subject to arbitrary arrest or detention.

Officials, either governmental or of the judicial bodies, are held liable for infringing the rules on detention. The infringement of all these legal provisions entails the criminal liability of the officials who committed these offences. To this respect the Criminal code stipulates severe sanctions in case of illegal confinement or arrest. (Art 266 Criminal Code). The illegal arrest of a person or a submission of this person to the execution of punishment, security or educational measures in other manners than those provided by the law is considered an offence punished by imprisonment from 6 months to 3 years, pursuant to article 266 of the Criminal Code. In case of aggravating circumstances, the penalty applied may be raised up to 5 years imprisonment.

Article 189 of the Criminal Code incriminates the illegal deprivation of liberty, punished with imprisonment from 3 to 10 years. In case of aggravating circumstance, the penalty may go up to 25 years imprisonment.

In accordance with the provisions of the international legal instruments ratified by Romania, in particular the Convention for Protection of Human Rights and Fundamental Freedoms and the additional Protocols, and the European Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, any person subject to criminal investigation or to criminal trial shall be treated in respect of human dignity. No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment under legal punishment.

3. Explanation of the manner in which their internal law provides an adequate response to any alleged infringements of Convention rights of individuals within their jurisdiction, notably in the context of deprivation of liberty, resulting from the conduct of officials of foreign agencies. In particular, explanation of the availability of effective investigations that are prompt, independent and capable of leading to the identification and sanctioning of those responsible for any illegal acts, including those responsible for aiding or assisting in the commission of such acts, and the payment of adequate compensation to victims.

Pursuant to the provisions of the Romanian Constitution, of the Criminal Code, of the CPC, the right to life, the freedom and safety of individuals, as well as the other fundamental rights and freedoms are safeguarded.

Pursuant to article 20 of the Romanian Constitution, if 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 favorable provisions.

The articles 21, 22, 23, 129 from the Romanian Constitution, the provisions of the CPC, of the Civil Procedure Code, as well as of other normative acts guarantee the free access to justice and the right to a fair trial, the right to life, to physical and mental integrity (including the prohibition of torture and of any kind of inhuman or degrading punishment or treatment), the individual freedom, the use of an appeal.

The Criminal Code qualifies as offences the illegal arrest and the abusive prosecution (Art. 266), the subjection to ill treatment (Art. 267), the torture (Art.267¹), the unjust

repression (Art. 268), the malfeasance against persons' interest (Art. 246), the malfeasance by limitation of certain rights (Art. 247), the torture (Art. 248), and the illegal deprivation of liberty (Art. 189).

Criminal investigation on these offences is initiated either ex officio or following a denounce or a complaint by the victim. The criminal investigation is conducted by a prosecutor, assisted by law enforcement officials.

The authorities conducting the criminal investigation are obliged to inform the victim on his / her rights, including on the possibility to participate to the criminal trial as injured party. The victim may decide to request for financial compensation from the perpetrator, or in case the offender is an official, from the state. The civil cause may develop in parallel with the criminal trial or as a distinct process.

The ordinance of the prosecutor to stop the criminal investigation for either reason provided by the criminal law may be contested by the victim in a court of law according to Article 278

Pursuant to article 504 CPC, any person who was deprived of liberty, during or following a criminal trial, or whose liberty was restrained, illegally or unjustly, is entitled to reparation of the damages, in the conditions stipulated by the law.

Following the request of the European Union at the closure of the 24th Negotiating Chapter on JHA, the Romanian authorities (the Superior Council of Magistracy, the Ministry of Interior and Administration and the National Administration of Penitentiaries) carried out verifications with regard to respecting the existing norms on preventive arrest. No violations of the human rights or the legal provisions concerning the period of preventive arrest were found.

4. An explanation is requested as to whether, in the period running from 1 January 2002 until the present day, any public official or other person acting in an official capacity has been involved in any manner - whether by action or omission - in the unacknowledged deprivation of liberty of any individual, or transport of any individual while so deprived of their liberty, including where such deprivation of liberty may have occurred by or at the instigation of any foreign agency. Information is to be provided on whether any official investigation is under way and / or any completed investigation.

According to the existing data and information of the Romanian authorities (Ministry of Justice, Ministry of Interior and administration, Ministry of National Defense, the General Directorate for Civil Aviation/ Ministry of Transports, Constructions and Tourism, the Public Prosecutor pertaining to the High Court of Cassation and Justice, the Romanian Intelligence Service and the Foreign Intelligence Service), no public official or other person acting in an official capacity has been involved in any manner in the unacknowledged deprivation of liberty of any individual, or transport of any individual while so deprived of their liberty.

Official investigations have been conducted by several Governmental authorities. Their results confirmed that no such activities took place on Romanian territory.

The Romanian Senate decided to set up an Investigation committee on the allegations concerning the existence of CIA detention centers on Romanian territory or of flights chartered by the CIA, which might have transported persons accused of terrorist acts. All the state institutions and organizations have to bring to the attention of the Commission any information that could serve to its activity. A preliminary report is expected by February 15.