



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

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List of issues prior to the submission of the second periodic report of Romania (CAT/C/ROM/2)*

Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations

Articles 1 and 4

1. Please indicate whether there have been any cases of direct application by the courts of the Convention and, in particular, of its article 1 on the definition of torture. Please provide information on application by the courts of article 5 of the Criminal Procedure Code, and articles 267 and 358 of the Penal Code, which set out the prohibition and definition of torture, and prescribe penalties respectively. In addition, please provide detailed information on current criminal provisions concerning the exact penalties imposed for offences such as attempted acts of torture, instigation, consent or complicity in torture, participation in or the order to commit torture by a public official or other person acting in an official capacity.

* The present list of issues was adopted by the Committee at its forty-fifth session, according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic reports. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

Article 2¹

2. Please provide information on:

(a) Steps taken by the State party to ensure that all detained persons are afforded, in law and in practice, fundamental safeguards from the very outset of detention, including the right of access to a lawyer and an independent medical doctor, if possible of their own choice, as well as the right to inform a relative, to be informed of their rights and to be promptly presented to a judge. Please also indicate whether all persons detained are registered from the very outset of detention.

(b) The legal aid system implemented in the State party, including on the functioning and financing of the system.

(c) Please also indicate whether incommunicado detention is authorized. If so, please indicate under what conditions and according to which legal provisions it is used and provide information on measures taken to abolish it.

3. Please indicate the current length of pretrial detention and legal provisions regulating it. Please also provide information on any steps taken by the State party to reduce the length of the pretrial detention period, including for minors. In addition, please also indicate whether, and if so which, alternatives to pretrial detention are being implemented.

4. Please provide information on measures taken to effectively and systematically monitor all places of detention, including those of aliens and of juvenile offenders.

5. Please provide detailed information on the role and respective spheres of competence of the prison administration and the Office of the Public Prosecutor in the conduct of periodic inspections to ascertain whether prison establishments conform to legal provisions.

6. Please provide detailed information on the role of the Romanian People's Advocate with respect to the implementation of the provisions of the Convention, in particular whether this institution has competence to receive complaints of torture and ill-treatment and to conduct investigations.

7. Please provide:

(a) Updated information on the legal framework and measures taken to adequately prevent and combat trafficking in persons, especially women and children, and to prosecute and punish such acts.

(b) Detailed information on the practical implementation of these measures and the resources available for that purpose. Information should also be provided on the impact and effectiveness of the measures implemented to reduce cases of human trafficking.

(c) Updated statistical data on the incidence of human trafficking since the consideration of the previous report. Statistical data should also be provided on the number

¹ The issues raised under article 2 could imply also different articles of the Convention, including but not limited to article 16. As general comment No. 2, paragraph 3, states "The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter 'ill-treatment') under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. (...) In practice, the definitional threshold between ill-treatment and torture is often not clear." See further chapter V of the same general comment.

of complaints relating to human trafficking, and on the related investigations, prosecutions, convictions and sanctions, as well as on compensation provided to victims.

(d) Updated information on specific training and sensitization programmes developed by the State party for law enforcement personnel on human trafficking as well as on the outcome of these programmes.

8. Please provide:

(a) Updated information on measures taken to adequately prevent, combat and punish violence against women and children, including domestic violence. In this respect, please indicate whether such violence is criminalized under the legislation of the State party.

(b) Statistical data on the prevalence of violence against women, including rape and sexual harassment, and children. Statistical data should also be provided on complaints relating to violence against women and children, and on the related investigations, prosecutions, and penal sanctions as well as on any compensation provided to victims.

(c) Detailed information on the protection provided to victims of such acts, including access to medical, social and legal services and temporary accommodation. Data should be provided on the number of victims who have received such protection and the specific form of protection they received.

Article 3

9. Please provide information on any steps taken to ensure that the State party fulfils all its non-refoulement obligations under article 3 of the Convention, in particular to consider all elements of an individual case, and provides, in practice, all procedural guarantees to the person expelled, returned or extradited. In addition, please indicate the number of requests for extradition received and their outcome.

10. Please provide data referring to the reporting period, disaggregated by age, sex and ethnicity, on:

(a) The number of asylum applications registered;

(b) The number of applicants in detention;

(c) The number of applicants whose application for asylum was accepted;

(d) The number of applications for asylum submitted and those accepted on the grounds that the applicants had been tortured or might be tortured if returned to their country of origin;

(e) The number of cases of refoulement or expulsion;

(f) The number of cases of non-return on the ground that the person may be subjected to torture.

11. Please indicate whether the State party relies on “diplomatic assurances” to return persons to countries where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. If so, please provide detailed information on:

(a) The procedures in place for obtaining diplomatic assurances;

(b) Steps taken to establish an appropriate mechanism for review of diplomatic assurances in any applicable case;

(c) Steps taken to guarantee effective post-return monitoring arrangements;

(d) Cases of refoulement, extradition and expulsion subject to receipt of diplomatic assurances that have occurred since the consideration of the previous report;

(e) Assurances that have not been honoured and any appropriate action taken in such cases by the State party.

12. Please provide information on steps taken to:

(a) Ensure that detention of asylum-seekers is used only in exceptional circumstances or as a last resort, and then only for the shortest possible time;

(b) Ensure due process in asylum applications and deportation proceedings, including access to counsel, legal aid and an interpreter;

(c) Guarantee access to judicial review for all asylum-seekers and to an entirely independent appeal mechanism to review rejected applications.

13. Please indicate whether the State party has signed any agreements with other States related to the return of asylum-seekers. If so, please indicate the concrete procedure established for the return in these cases. Please also provide information on any bilateral agreement concluded with another State party to the Convention aimed at exempting the latter's nationals present in the State party's territory from being extradited to the ICC for crimes within the jurisdiction of the Court, including torture.

14. The Committee received information about the reported rendition flights through Romania and the inadequate response to the allegations by the authorities (arts. 3, 4 and 12). Did the State party establish an independent and thorough inquiry to investigate allegations of the involvement of the State party's officials in rendition flights on the State party territory, or in its airspace, and in secret detentions and, if so, what was the result of this investigation?

Articles 5, 6, 7 and 8

15. Since the examination of the previous report, please indicate whether the State party has rejected, for any reason, any request for extradition by a third State for an individual suspected of having committed an offence of torture, and thus initiating its own prosecution as a result. What is the status and outcome of such proceedings? Which provisions of the State party's legislation were or would be violated in such cases?

16. Please provide information on the measures taken to establish the State party's jurisdiction over acts of torture in cases where the alleged offender is present in any territory under its jurisdiction, either to extradite or prosecute him or her, in accordance with the provisions of the Convention. Furthermore, please provide information on any agreement on judicial cooperation signed by the State party with other countries.

Article 10

17. Please provide information on educational programmes developed by the State party to ensure that law enforcement officials, prison staff and border guards are fully aware of the provisions of the Convention, that breaches will not be tolerated and will be investigated, and that offenders will be prosecuted. What measures have been undertaken to ensure that all relevant personnel involved with detainees receive specific training on how to identify signs of torture and ill-treatment, on the basis of the Istanbul Protocol of 1999 (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)? Does the Istanbul Protocol constitute an

integral part of the training provided to medical personnel and those professionals involved in the documentation and investigation of torture?

18. Please indicate whether the State party has developed a methodology to assess the effectiveness and impact of training/educational programmes on the reduction of cases of torture, violence and ill-treatment, and, if so, please provide information on the content and implementation of such a methodology.

Article 11

19. Please provide information on any new interrogation rules, instructions, methods and practices, as well as arrangements for the custody of persons subject to any form of arrest, detention or imprisonment, that may have been introduced since the consideration of the last periodic report, and the frequency with which they are reviewed, with a view to preventing any cases of torture or ill-treatment.

20. Please indicate whether the State party uses solitary confinement in detention. If so, please describe steps taken by the State party to limit the use of solitary confinement as a measure of last resort, for as short a time as possible, under strict supervision and with a possibility of judicial review.

21. Please provide:

(a) Updated information on measures taken to improve conditions in all detention facilities, including places of detention for asylum-seekers, minors and psychiatric institutions, to bring them in line with international minimum standards, especially to address overcrowding and health care, in particular high rates of tuberculosis. In this connection, please provide updated information, including statistics, disaggregated by sex, age and ethnicity, on the current number of imprisoned persons and the occupancy rate.

(b) Information on the material, human and budgetary resources that are made available by the State party to ensure that the conditions of detention are in conformity with minimum international standards.

(c) Detailed information on the application of alternative forms of punishment. This information should include, *inter alia*, which alternative forms of punishment are used and in how many cases these forms have been used during the reporting period.

(d) Detailed data on the impact and effectiveness of these measures in improving prison conditions, including health care.

22. Please provide information on the availability of separate detention facilities for juvenile offenders.

23. Please indicate whether codes of professional conduct for law enforcement officials exist. If so, please clarify whether they explicitly prohibit torture.

24. Please indicate the current regulation on the use of firearms by law enforcement officials and how it complies with the Convention and other relevant international standards.

Articles 12 and 13

25. Does the Presidential Commission for the Study of the Communist Dictatorship in Romania have within its mandate the identification and exposure of individual perpetrators of human rights violations, including torture? Please indicate what steps the State party

plans to take to end the impunity of the alleged perpetrators of acts of torture and ill-treatment during the communist regime, carry out prompt, impartial and exhaustive investigations, try and, where appropriate, convict the perpetrators of torture and ill-treatment, impose appropriate sentences on them and properly compensate the victims.

26. Please provide detailed information on steps taken to establish an effective system to compile statistical data relevant to monitoring the implementation of the Convention at the national level, including complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, trafficking, and domestic, sexual and ethnically motivated violence, as well as on compensation and rehabilitation provided to the victims.

27. Please provide:

(a) Information on measures taken to ensure that all allegations of torture and ill-treatment, including by law enforcement officials, are promptly, effectively and impartially investigated and that the perpetrators are prosecuted, in addition to receiving disciplinary penalties if applicable, and sentenced under the Penal Code, in accordance with the gravity of their acts.

(b) Detailed information on whether all suspects in prima facie cases of torture and ill-treatment are suspended or reassigned as a matter of course during the process of investigation.

28. (a) Steps taken to ensure in law and in practice that every person, including detainees and persons under arrest, has the right to complain to a fully independent institution;

(b) Statistical data on the number of complaints of alleged torture and ill-treatment, their investigation and prosecution and results of the proceedings, including both penal punishment and disciplinary measures. The information should be disaggregated by sex, age and ethnicity of the individuals filing complaints;

(c) Information on the procedure for lodging a complaint in pretrial detention, as well as the actual number of complaints received and their outcome;

(d) Further information on the complaints mechanism in place for detained minors and asylum-seekers. Does this mechanism include complaints of torture or ill-treatment? Please include information on the number of complaints of torture or ill-treatment submitted by minors and asylum seekers;

(e) Please also indicate the procedure for lodging complaints in the mental health institutions, how many residents filed complaints or petitions of torture or ill-treatment to the authorities during the reporting period and what the outcome of these was.

29. In view of the implementation of the recommendation by the Committee on the Rights of the Child issued in 2003, please indicate whether allegations of children being ill-treated and tortured by law enforcement officers have been effectively investigated by an independent authority. Furthermore, please indicate measures taken by the State party to combat the alleged impunity of the police in cases of violence against children.

30. Please provide information on measures taken to establish and promote effective machinery within the prison system to receive and investigate reports of inter-prisoner violence, in particular sexual violence, and provide protection and psychological and medical assistance to victims.

31. Please provide information on:

(a) The investigation of allegations for ill-treatment and excessive use of force against members of the Roma community by law enforcement officials. Statistical data should be provided on the number of complaints relating to these acts, and on the related

prosecutions, convictions and sanctions, as well as on compensation provided to victims. Please also indicate any steps taken by the State party to recruit police officers of Roma origin.

(b) Measures adopted to prevent the use of excessive force during evictions of Roma families, to provide specific training on evictions for police officers, and to ensure that complaints concerning forced evictions are thoroughly investigated and that those responsible are brought to trial.

Article 14

32. Please provide:

(a) Details on steps taken to ensure that adequate compensation and appropriate rehabilitation programmes, including medical and psychological assistance, are provided to victims of torture and other ill-treatment. Please also provide detailed information on the allocation of adequate resources to ensure that rehabilitation which is as full as possible is made available to all victims of such crimes;

(b) Information on redress and compensation measures ordered by the courts and actually provided to victims of torture, or their families, since the examination of the last periodic report. This information should include the number of requests for compensation made, the number granted, and the amounts ordered and those actually provided in each case;

(c) Please also indicate whether the State party ensures in its legal system that the victim of an act of torture or his or her family members obtain redress and has an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible. Please provide a copy of the legislation and any court decision applying or interpreting it.

Article 15

33. Please indicate steps taken to ensure that, in practice, evidence obtained by torture shall not be invoked as evidence in any proceedings, in accordance with article 15 of the Convention. Please indicate which legal provisions apply in this case.

Article 16

34. According to the information before the Committee, there were allegedly cases of deaths due to severe malnutrition at the residential care centre at Nucet and in a psychiatric hospital in Poiana Mare in 2004. Please provide detailed information on the placement, living conditions and treatment of patients in psychiatric wards and hospitals and, in this connection, measures undertaken by the State party to prevent acts of torture or ill-treatment in these institutions. Please also indicate whether the regulations of mental institutions are in conformity with articles 2, 12 and 16 of the Convention and relevant international human rights standards. Finally, please indicate whether the practice of involuntary psychiatric treatment for patients is authorized and, if so, please indicate measures to prohibit it.

35. The Committee takes note of the numerous allegations, corroborated by the Special Rapporteur on the sale of children in his report (E/CN.4/2005/78/Add.2) and other sources, of corruption in the administration of justice and the enforcement of the law. Please comment on the measures taken to combat and prevent this problem.

36. In paragraph 16 of its report on the visit to Romania in June 2006, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) expresses concern regarding excessive use of force by the police during arrest and ensuing interrogations. Please indicate measures taken to remedy this situation.

37. Please comment on any cases of investigation of crimes committed by individuals against Roma and indicate the action taken by the State party to remedy this situation. Please provide statistical data on the cases in courts and sentences imposed by the judiciary in the above-mentioned cases. In particular, please indicate whether the attacks on Roma communities in Hadareni, Plaiesii de Sus and Casinul in the early 1990s have been investigated and, if so, what the results of this investigation are.

Other issues

38. Please provide updated information on measures taken by the State party to respond to any threats of terrorism and please describe whether, and if so how, these anti-terrorism measures have affected human rights safeguards in law and in practice and how it has ensured that those measures comply with all its obligations under international law, especially the Convention, in accordance with relevant Security Council resolutions, in particular resolution 1624 (2005). Please describe the relevant training given to law enforcement officers; the number of persons convicted under such legislation; the legal safeguards and remedies available to persons subjected to anti-terrorist measures in law and in practice; whether there are complaints of non-observance of international standards; and the outcome of these complaints.

39. Please provide information on steps taken to become a party to the Optional Protocol to the Convention. Please also indicate what steps have been taken by the State party to accept the competence of the Committee under articles 20, 21 and 22 of the Convention. In addition, please indicate whether the State party plans to ratify the Convention on the Rights of Persons with Disabilities.

General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention

40. Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the national level that have occurred since the initial report, including any relevant jurisprudential decisions.

41. Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the national level since the initial report, including on any national human rights plans or programmes, and the resources allocated thereto, their means, objectives and results.

42. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of the initial report in 1992, including the necessary statistical data, as well as on any events that have occurred in the State party and are relevant under the Convention.