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ROMANIA

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I. LAND AND PEOPLE

1. Romania, a country situated in central Europe, with a land area of 237,500 km^2 and a population of 22,760,449 inhabitants (according to the preliminary results of the census taken on 7 January 1992), has common frontiers with the Republic of Moldova, Ukraine, Hungary, the Federal Republic of Yugoslavia and Bulgaria. The country has a continental climate and a landscape of surprising diversity, from Alpine peaks to the beaches of the Black Sea and the Danube.

2. While nature has been generous to Romanians, history has dealt rather harshly with this country. Living for centuries at the crossroads of the migrations of peoples, then at the intersection of the interests of three great empires, the Romanian people have not been able to develop fully the material and human resources at their disposal.

3. After 45 years of communism and foreign political and economic domination, the main economic indicators and the statistical data for the year 1991 are as follows:

Per capita income	lei 44,987 (provisional data)
Gross national product	lei 2,065 billion (provisional data) (US$ 25.77 billion)
Per capita GNP	US$ 1,132 (provisional data calculated by the National Statistical Commission)
Inflation rate: monthly average	10.3 per cent
Foreign debt	US$ 1,121 million (medium- and long-term debts)
Unemployment rate	3.0 per cent
Literacy rate	95 per cent
Religion	Preliminary data taken from the census of 7 January 1992
Orthodox	86.8 per cent
Catholic	5.0 per cent
Protestant	3.5 per cent
Uniate	1.0 per cent
Other religions	4.5 per cent
No religion	0.2 per cent
Structure of the population by mother tongue	Provisional data taken from the census of 7 January 1992
Romanian	89.4 per cent
Hungarian	7.1 per cent
German	0.5 per cent
Other languages	3.0 per cent

Life expectancy	
Men	66.6 years
Women	72.7 years
Infant mortality rate	22.7 deaths of children under one year old per 1,000 births
Maternal mortality rate	0.66 per 1,000 births
Fertility rate	48.7 births per 1,000 women aged 15-49 years
Percentage of the population under 15 years old and over 65 years old	33.7 per cent
Urban population	54.4 per cent (provisional data taken from the census of 7 January 1992)
Rural population	45.6 per cent (provisional data from the census of 7 January 1992)
Percentage of women who are heads of households	8.0 per cent

II. GENERAL POLITICAL STRUCTURE

A. Historical background

4. In 106 AD, after the second Dacian war, the Emperor Trajan succeeded in conquering Dacia which he organized as the province of Dacia. He paid special attention to the new province, sending troops to colonize it on a large scale.

5. In 271 AD, the Emperor Aurelian withdrew his army as well as the administration from the Province of Dacia under the pressure of the migratory peoples. After the intensive romanization process, a stable Dacian-Roman population remained.

6. The period from the third to the ninth centuries saw large migratory movements which had a major political and ethnic impact on the Carpathian-Danubian-Pontic area. By the end of this period, the formation of the Romanian people was complete.

7. Between the ninth and thirteenth centuries, the Hungarian tribes penetrated central Europe, the kingdom of the Hungarians was set up and Transylvania was gradually conquered from the north-west to the south-east following protracted conflicts with the Romanian political groupings.

8. The fourteenth century saw the formation of the feudal Romanian States of Walachia and Moldavia to the east and south of the Carpathians. This process was the result of the unification of previously existing groups of States. The first conflicts occurred between Romanians and Ottomans.

9. In the fifteenth and sixteenth centuries, major military conflicts occurred between Romanians and the Ottomans and the suzerainty of the Ottoman empire was finally accepted, in exchange for the internal autonomy of the Romanian States.

10. Between 1600 and 1601 the first political union of the Romanian States was formed under Michael the Brave and the common anti-Ottoman front was organized.

11. During the eighteenth century, the Romanian principalities were the theatre of the wars between Russians, Austrians and Turks. In 1775 the northern part of Bukovina was annexed by the Hapsburg Empire acting as mediator for peace between Russia and Turkey, following the 1768-1774 war.

12. In 1812, there was another flagrant violation of the autonomous status of the Romanian States. After the Russo-Turkish War of 1806-1812, which ended in the defeat of the Sublime Porte, the Tsarist Empire proceeded to annex the territory located between the Prut and Dnestr (Bessarabia), which was an integral part of the autonomous principality of Moldavia.

13. In 1848, the Ottoman and Russian armies crushed the revolution for national liberation.

14. In 1859, Moldavia and Walachia were united under Prince Alexandru Ion Cuza.

15. Between 1859 and 1866 the united principalities were unified administratively and legislatively and organized on a modern basis.

16. In 1866, Prince Carol I of Hohenzollern was crowned and the first Constitution of modern Romania adopted. This Constitution established the principle of separation of the powers of the State.

17. In 1877 and 1878, Romania took part in the Russo-Turkish war. It proclaimed its independence, which was recognized by the Congress of Berlin in 1878. The territory of Dobruja situated between the Danube and the Black Sea was ceded to Romania.

18. On 10 May 1881, the Kingdom of Romania was proclaimed.

19. In 1916, Romania entered the First World War on the side of the Entente Powers (Allies).

20. In 1918, following the exercise of the right to self-determination by the majority of the population of the Romanian provinces (Transylvania, Banat, northern Bukovina and Bessarabia) the formation of the national unitary Romanian State was completed by means of the freely expressed will of the representative assemblies.

21. 1919-1920: The Paris Peace Conference endorsed the new political and territorial situation in central and eastern Europe, including the formation

of the national and unitary Romanian State, following the Romanian people's exercise of their right to self-determination, and of their territory (Treaty of Trianon).

22. In 1923, the new Constitution of Romania was adopted.

23. In June 1940, following an ultimatum issued by the USSR on the basis of the Molotov-Ribbentrop Pact, and that country's threats to resort to the use of force, Romania was compelled to evacuate Bessarabia and northern Bukovina, which were occupied by the USSR.

24. In the same year, Romania was forced to cede to Bulgaria southern Dobruja, an area which had reverted to Romania in 1913.

25. In August 1940, after the Vienna Award imposed by Nazi Germany and fascist Italy, Romania was compelled to cede north-western Transylvania to Horthy's Hungary.

26. In June 1941, Romania entered the war against the USSR.

27. In August 1944, Romania went over to the side of the Allied Powers and fought against the Axis powers until the end of the war.

28. In March 1945, under Soviet pressure, a communist-dominated Government was imposed on Romania.

29. On 30 December 1947, King Michael I was compelled to abdicate. A Republic was proclaimed and a full communist dictatorship established.

30. In 1948 and 1965, communist-inspired Constitutions were adopted.

31. In 1965, Nicolae Ceausescu became Secretary-General of the Party and in 1967, Head of State.

32. In 1977, a big strike was staged by the miners of the Jiu Valley.

33. In 1987, the revolt by the workers of Brasov was quelled.

34. From 16 to 22 December 1989, there were widespread popular demonstrations, at Timisoara, then at Bucharest, which were brutally put down by the forces of law and order. On 22 December, Nicolae Ceausescu fled and the Provisional Council of the National Salvation Front took power. The “historical” parties reappeared on the political scene and other parties emerged as well.

35. On 20 May 1990, elections were held for the Constituent Assembly and Ion Iliescu was elected President of the Romanian State.

36. On 8 December 1991, the new Constitution came into force. It had been adopted by Parliament, the Constituent Assembly, on 21 November 1991 and approved by a national referendum.

B. Structure of the State; organization of the legislative and executive powers

37. In accordance with article 1 of the Constitution:

> "1. Romania is a national State, sovereign and independent, unitary and indivisible.
>
> 2. The form of government of the Romanian State is the republic.
>
> 3. Romania is a social and democratic State of law ..."

Article 2 (2) provides that "National sovereignty belongs to the Romanian people who exercise it through their representative bodies and through referendums".

38. Because of Romania's unhappy experience with the one-party system in recent decades, the new Constitution has established special provisions to guarantee a multi-party system. To that end, article 8 (1) of the Constitution provides: "Pluralism is a condition and a guarantee of constitutional democracy in Romanian society".

39. Parliament is the highest representative body of the Romanian people and the sole legislative authority of the country, being made up of the Chamber of Deputies and the Senate (art. 58 (1) and (2)). The Chamber of Deputies and the Senate are elected by universal equal, direct, secret and freely expressed vote for a term of four years, which can be extended by organic law in case of war or disaster (arts. 59 (1) and 60 (1)).

40. The Chamber of Deputies and the Senate meet in separate sessions and in joint sessions. The two chambers meet in two regular sessions a year and also in extraordinary sessions, at the request of the President of Romania, the standing committee of each chamber or at least one-third of the deputies or senators (arts. 62 (1) and 63 (1) and (2)). The Chamber of Deputies and the Senate adopt laws, decisions and motions, in the presence of a majority of the members. The sessions of the two chambers are public. The chambers can decide to hold certain sessions in camera (arts. 64 and 65).

41. Legislative initiative can be taken by the Government, the deputies, and the senators, as well as at least 250,000 citizens with the right to vote (art. 73 (1)).

42. In accordance with its programme for governing approved by Parliament, the Government ensures the implementation of the domestic and foreign policy of the country and exercises the general management of the public administration (art. 101 (1)).

43. The Prime Minister directs the Government and coordinates the activity of its members, respecting the powers assigned to them (art. 106 (1)). The Government adopts decisions and rulings. Decisions are issued for the purpose of organizing the implementation of laws. Rulings are issued on the basis of a special enabling law, within the limits and under the conditions specified by the law (art. 107 (1), (2) and (3)).

44. The Government and the other organs of public administration, within the framework of the monitoring of their activity by Parliament, must provide the information and documents requested by the Chamber of Deputies, the Senate or the parliamentary commissions, through their chairmen. The members of the Government have access to the proceedings of Parliament; if their presence is requested, their attendance is mandatory (art. 110).

45. The President of Romania acts as a mediator between the powers of the State as well as between the State and society; the President represents the Romanian State and is the guarantor of the country's national independence, unity, and territorial integrity (art. 80). The term of the President is for four years and it begins on the day that he is sworn in (art. 83). No one can serve as President of Romania for more than two terms. These terms can be successive (art. 81 (4)).

C. Organization of the judicial power

1. General considerations

46. The fundamental principles for the organization and functioning of the judicial authority are established by the Constitution of Romania:

- The independence of judges (art. 123);
- The irremovability of judges (art. 124 (1));
- The incompatibility of the position of judge with any other public or private position, with the exception of teaching positions in higher education (art. 124 (2));
- The prohibition of the establishment of extraordinary courts (art. 125 (2));
- The role of the Prosecutor's Department, which represents the general interests of society and defends the legal order as well as the rights and freedoms of the citizens in judicial activities (art. 130);
- The status of the prosecutors who carry out their activities on the basis of the principles of legality, impartiality and hierarchical monitoring under the authority of the Minister of Justice (art. 131);
- The incompatibility of the position of judge and prosecutor with membership of a political party (art. 37 (3)).

Most of these principles were not included in the previous legislation and the respective provisions (arts. 124, 125 (2), 130, 131 and 37 (3)) have no counterpart in the Constitutions of the communist era.

47. Romania's system of judicial bodies is defined by the Constitution in general terms in article 125, which stipulates: “(1) Justice shall be administered by the Supreme Court of Justice and by the other courts established by law”. The Constituent Assembly entrusted Parliament with the

task of legislating further on the configuration of the judicial system and on the material and territorial jurisdiction of the judicial bodies. The Constitution sets only one condition in this respect, in paragraph 2 of the same article: "Courts of exception are prohibited".

48. Shortly after the adoption of the Constitution, the Act on the organization of the judicial system was debated and adopted by Parliament in August 1992. This is the first and most important component of the judicial reform in Romania. Subsequently, in 1993 Parliament also adopted the Act on the organization of military courts and prosecution services and the Act on the Supreme Court of Justice.

49. Again in 1993, two laws modifying and supplementing the Code of Penal Procedure and the Code of Civil Procedure were adopted, establishing the jurisdiction of the various categories of courts in penal, civil and commercial matters and in administrative litigation.

50. The principal objectives pursued and attained by the five laws mentioned above are as follows:

(a) The reorganization of the system of judicial bodies by:

(i) the increase in the number of judicial bodies located at the base of the judicial system, which is designed as a pyramid;

(ii) the re-establishment of the courts of appeal, which were abolished during the communist regime;

(b) Improvement of the system of judicial remedies against judicial decisions by:

(i) the re-introduction of the appeal as the general remedy for contesting judicial decisions of primary jurisdiction;

(iii) the creation of three degrees of jurisdiction as a general rule, except for certain categories of action, defined in express and limiting terms, that are not subject to appeal;

(iv) the abolition of special remedies against final judicial decisions;

(v) the establishment of annulment proceedings and of proceedings in the interest of the law as special remedies that may be utilized by the Procurator General, of his own motion or at the request of the Minister of Justice, in the situations and on the grounds expressly provided for by the law;

(c) Limitation of the material jurisdiction of military courts and prosecution services, through the transfer of certain criminal acts committed by civilians to the jurisdiction of the civilian courts and prosecution services.

The configuration of the system of judicial bodies and their jurisdiction are therefore as presented in the following sections.

2. Structure and jurisdiction of the various judicial bodies

(a) Civilian bodies

(i) Courts of first instance

51. The number of such courts has been fixed by law at 179, including 81 newly created courts, in order to facilitate access to justice by reducing the distance between the place of residence of the citizen and the place where the court of first instance has its seat.

52. The jurisdiction of the courts of first instance is as follows:

(a) Criminal offences: they exercise primary jurisdiction over all actions and petitions, except for those which by law come within the jurisdiction of other bodies.

(b) Civil offences:

(i) they exercise primary jurisdiction over all actions and petitions, except for those which by law come within the jurisdiction of other bodies;

(ii) they hear complaints lodged against the decisions of the public administration authorities having jurisdictional function and of other bodies with similar competence.

(ii) Departmental courts

53. There are 41 of these courts, which have their seat in the chief town of each department of the country and in the city of Bucharest.

54. The jurisdiction of the departmental courts is as follows:

(a) Criminal offences:

(i) they exercise primary jurisdiction over certain serious offences (listed in the Code of Penal Procedure, art. 27, para. 1);

(ii) they hear appeals lodged against decisions of primary jurisdiction in criminal cases;

(iii) they hear applications for remedy against decisions of primary jurisdiction in criminal cases concerning offences for which the law does not provide for the appeal procedure.

(b) Civil and commercial offences:

(i) they exercise primary jurisdiction over actions and petitions whose scope exceeds certain material limits (laid down in article 2, paragraph 1 of the Code of Civil

Procedure) together with actions presenting a certain degree of difficulty (concerning industrial property law, acts of expropriation, adoptions);

(ii) they hear appeals lodged against the decisions of primary jurisdiction in civil cases taken by the courts of first instance;

(iii) they hear applications for remedy against decisions taken by the courts of first instance in cases where there is no provision for the appeal procedure.

(c) Administrative litigation: the departmental courts exercise primary jurisdiction over all actions and petitions, except for those that come within the jurisdiction of the courts of appeal.

(iii) Courts of appeal

55. These courts are 15 in number and they carry out their functions in a number of departments.

56. The jurisdiction of the courts of appeal is as follows:

(a) Criminal offences:

(i) they exercise primary jurisdiction over the most serious offences (set out in art. 23, para.1 of the Code of Penal Procedure), together with offences committed by the judges of courts of first instance and of the departmental courts and by the prosecutors of the prosecution services attached to those courts;

(ii) they hear appeals lodged against decisions of primary jurisdiction taken in criminal cases;

(iii) they hear applications for remedy against decisions taken in criminal cases by the courts on appeal.

(b) Civil and commercial offences:

(i) they hear appeals lodged against decisions of primary jurisdiction;

(ii) they hear applications for remedy against decisions taken by the courts on appeal.

(c) Administrative litigation: they exercise primary jurisdiction over actions and petitions concerning acts by the authorities of the central public administration, prefectures and ministries.

(iv) Supreme Court of Justice

57. The Supreme Court operates in accordance with Act No. 56/1993 and has its seat in Bucharest.

58. Its organization and its jurisdiction are as follows:

(a) Criminal Division:

(i) it exercises primary jurisdiction over offences committed by senators and deputies, by members of the Government, by judges of the Constitutional Court, by judges of the Supreme Court and the courts of appeal, by the prosecutors of the prosecution services attached to those courts, by members of the Legislative Council, by heads of religious denominations;

(ii) it hears applications for general remedy against decisions of primary jurisdiction taken in penal proceedings by the courts of appeal, together with applications for remedy against judgements delivered by the same courts in their capacity as appeal courts;

(iii) it hears applications for annulment brought by the Prosecutor-General, of his own motion or at the request of the Minister of Justice, against final decisions taken by the courts of first instance, by the departmental courts and by the courts of appeal in the cases set out in the Code of Penal Procedure (art. 410).

(b) Civil Division and Commercial Division:

(i) they hear applications for general remedy against decisions taken by the courts of appeal;

(ii) they hear applications for annulment brought by the Prosecutor-General, of his own motion or at the request of the Minister of Justice, against final decisions taken by the courts of first instance, by the departmental courts and the courts of appeal in the situations provided for by the Code of Civil Procedure (art. 330: when the court has exceeded its judicial powers or when it has been proved that the judges have committed offences associated with the decision against which remedy is sought).

(c) Administrative Litigation Division:

(i) it hears applications for remedy against the decisions taken in this domain by the departmental courts and the courts of appeal;

(ii) it hears applications for annulment brought by the Prosecutor-General against decisions taken by the departmental courts or by the courts of appeal in matters of administrative litigation, in the above-mentioned situations provided for by article 330 of the Code of Civil Procedure.

(d) Military Division:

(i) it exercises primary jurisdiction, on the one hand over offences committed by field marshals, admirals and generals, and on the other hand over offences committed by judges of the Military Court of Appeal and of the Military Division of the Supreme Court or by the military prosecutors of the prosecution services attached to those courts;

(ii) it hears applications for general remedy against decisions taken by the Military Court of Appeal;

(iii) it hears applications for annulment brought by the Prosecutor-General for the reasons specified in the Code of Penal Procedure (art. 410) against final decisions taken by the military courts;

(e) United divisions of the Supreme Court:

(i) they hear applications for general remedy against decisions of primary jurisdiction taken by the Criminal Division and the Military Division of the Supreme Court;

(ii) they hear applications for annulment in respect of suits in which the final decisions have been taken by one of the divisions of the Supreme Court (Criminal, Civil, Commercial, Administrative Litigation and Military);

(iii) they hear all applications for remedy in the interest of the law that are brought directly by the Prosecutor-General or by the Minister of Justice through the intermediary of the Prosecutor-General, for the purpose of clarifying certain questions of law that have been settled in different ways by the judicial bodies; the decision of the Supreme Court does not affect the decisions considered or the situation of the parties in the trial (in accordance with art. 414^2 of the Code of Penal Procedure and art. 329 of the Code of Civil Procedure);

(iv) they report to the Constitutional Court on the monitoring of the constitutionality of laws submitted for promulgation.

(b) Military bodies

(i) Military courts

59. They operate in the four main cities of the country and have the following jurisdiction: they exercise primary jurisdiction over:

(a) offences committed by military personnel up to and including the rank of captain, except for those which by law come within the jurisdiction of other military bodies;

(b) certain offences committed by civilians, in particular, failure to attend for military enlistment, recruitment and military rallies and refusal to perform military service; offences against goods that are owned, administered or used by military units and which, by their nature and purpose, have a military character or are linked to the defence capability; and offences committed by civilian employees of military units in connection with the performance of their assigned tasks, except for those which by law come within the jurisdiction of other military bodies.

(ii) Territorial military courts

60. The jurisdiction of these military courts is as follows:

(a) They exercise primary jurisdiction:

(i) over offences committed by senior officers, except for offences that come under the jurisdiction of other higher military bodies;

(ii) over more serious offences (intentional homicide, kidnapping, rape, banditry, embezzlement, breach of trust, misconduct on duty, passive and active corruption) committed by military personnel up to and including the rank of captain or committed by civilian employees of military units in connection with their assigned tasks.

(b) They hear appeals against decisions of the military courts that are not subject to the appeal procedure.

(iii) Military Court of Appeal

61. The jurisdiction of this court is as follows:

(a) It exercises primary jurisdiction:

(i) over offences against national security (treason, espionage) and offences against peace and humanity (propaganda in favour of war, genocide) committed by military personnel or committed in connection with their assigned tasks by civilian employees of military units;

(ii) over offences committed by judges of military courts and of the territorial military court and by the prosecutors of the military prosecution services attached to those courts.

(b) It hears appeals entered against decisions of primary jurisdiction taken by the territorial military court;

(c) It hears applications for remedy against decisions delivered on appeal by the territorial military court.

D. Respect for human rights in the administration of justice

62. This principle is guaranteed by the Constitution in the following terms:

(a) Equality of rights: “Citizens are equal before the law and before public authorities, with no privileges and with no discrimination” (art. 16 (1));

(b) The supremacy of the law: “No one is above the law” (art. 16 (2));

(c) Free access to justice: “Any person may appeal to the organs of justice for the protection of his legitimate rights, freedoms and interests” (art. 21 (1));

(d) A person's right to life and to physical and mental well-being are guaranteed: “No one shall be subjected to torture or to any kind of inhuman or degrading punishment or treatment. Capital punishment is prohibited” (art. 22 (1-3));

(e) Individual freedom: “Individual freedom and personal security are inviolable”. “The searching, detention or arrest of a person is allowed only in cases specified by law and according to the procedure specified by law” (art. 23 (1) and (7));

(f) The presumption of innocence (art. 23 (8));

(g) The right to defence by a counsel chosen by him or appointed by the court is guaranteed for everyone (arts. 24 and 23 (5));

(h) The right to an interpreter, for citizens belonging to national minorities as well as persons who do not understand or speak the Romanian language (art. 127);

(i) The public nature of court sessions (art. 126);

(j) The right to contest court decisions (art. 128);

(k) The right of a person who has suffered damage at the hands of a public authority to compensation and the material responsibility of the State for the damages caused by judicial errors occurring in criminal trials (art. 48).

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

A. Judicial, administrative or other authorities with jurisdiction over human rights issues

1. Criminal offences

63. All the judicial bodies (civilian and military) mentioned above in section C.2 of Chapter II, together with the prosecution services attached to those bodies (civilian and military) which perform directly or monitor criminal prosecutions instituted by the specialized police forces.

2. Civil offences and administrative litigation

64. The judicial bodies mentioned in subsection C.2 (a) of Chapter II.

3. Special courts

65. There are no special courts dealing with administrative or fiscal matters or breaches of regulations, for labour disputes or for minors:

(a) There are administrative litigation divisions within the departmental courts, the courts of appeal and the Supreme Court;

(b) Cases in which the offenders are minors are heard by specially appointed judges.

4. Constitutional Court

66. The Constitutional Court, established by Act No. 47/1992, has jurisdiction to consider the constitutionality of laws before their promulgation and to decide on exceptions brought before the courts in regard to the unconstitutionality of certain laws and government rulings. Consequently, the Constitutional Court has jurisdiction to pronounce on the extent to which the law or ruling in question respects the fundamental rights and freedoms guaranteed by the Constitution and to enforce the application of article 20 of the Constitution, which stipulates that:

> "(1) Constitutional provisions on the rights and freedoms of citizens shall be interpreted and applied in accordance with the Universal Declaration of Human Rights, and with the other covenants and treaties to which Romania is a party."
>
> "(2) Should there be lack of conformity between the human rights covenants and treaties to which Romania is a party and domestic law, the international legislation shall have priority."

5. The Ombudsman

67. Under article 55 of the Constitution, the institution of ombudsman is being created in order to guarantee the protection of the rights and freedoms of citizens. The bill on the organization and operation of this institution has been submitted to Parliament and it is anticipated that it will be debated in May or June 1996.

B. Remedies available to an individual who claims that his rights have been violated and systems of compensation and rehabilitation available to victims

68. If the injurious act constitutes an offence, the victim may:

(a) file a suit with the criminal prosecution body by lodging a complaint in person or by proxy, in writing or orally, with the police or prosecution service (Code of Penal Procedure, art. 222);

(b) bring criminal indemnification proceedings to establish the civil liability of the accused and/or of the party that bears civil liability (art. 14).

69. If the act is a breach of regulations, the person whose rights have been infringed may:

(a) report the breach formally to the appropriate administrative body and, if he fails to obtain satisfaction from the body's decision, bring a suit against it through administrative litigation proceedings. It should be added, however, that in regard to complaints lodged by persons claiming that their rights have been violated by an administrative act, such persons may lodge a complaint “with the administrative litigation division of the court or court of appeal, as the case may be, in order to obtain recognition of the right, to have the administrative act quashed and to obtain redress for the injury suffered”.

(b) bring a civil action to compel the offender to make good the damage.

70. Civil liability arising from an offence may be determined and damages granted for the violation of a right, through the civil courts (pursuant to art. 998 et seq. of the Civil Code) directly without their being subject to any criminal proceedings or to proceedings to determine and punish the breach of regulations.

71. If a person considers that any of his legally recognized rights have been infringed by an administrative act or by an unjustified refusal by an administrative body to consider his application relating to one of his legally recognized rights, he may bring a suit through the administrative litigation division of the appropriate departmental court to obtain recognition of the right, to have the administrative act in question quashed and/or to obtain redress for the injury suffered.

72. If a person's rights have been infringed by acts or measures relating to criminal proceedings, he may file a complaint with the prosecutor. The prosecutor is required to settle the complaint within 20 days of its submission, and to inform the person of his decision, as well as of the means by which the complaint has been settled (Code of Penal Procedure, arts. 275-277).

73. In accordance with the amendments made to the Code of Penal Procedure by Act No. 32/1990, if an arrested person contests the lawfulness of the measures taken against him (by which he has been arrested or his freedom has been restricted), he may lodge a complaint with the judge. If the competent court finds that the act is unlawful, the person who has been arbitrarily arrested is entitled to redress for the injury suffered (Code of Penal Procedure, art. 5).

74. In the case of a judicial error, anyone who has been finally convicted shall be entitled to compensation from the State for the damages sustained, if, following the re-trial of the case, it is established under a final

decision that the person has not committed the act attributed to him or that the act in question was non-existent (Code of Penal Procedure, art. 504 (1)). In order to obtain redress for the damages sustained, the person concerned must bring proceedings before the departmental court of his place of residence and the State shall appear as a defendant in the case (art. 506).

75. In all cases, the amount of compensation for the injury shall be decided in accordance with the law. Accordingly, even if the criminal indemnity action is decided in a criminal case, financial compensation may be awarded, including compensation for "loss of earnings" (Code of Penal Procedure, art. 14, last para.). The category of damages sustained for which persons are entitled to compensation also includes the cost of treatment to restore health and capacity for work.

76. Regardless of the right to financial compensation, anyone who at the time of his arrest was in employment is also entitled to have the period of his arrest counted as part of his period of continuous employment (Code of Penal Procedure, art. 504 (4)); this is extremely important, particularly for the calculation of certain salary entitlements, sickness benefits and pensions, under the present social security system.

C. Protection of the rights referred to in the various human rights instruments and possible derogations from them

77. The human rights covered by the International Covenant on Civil and Political Rights, as well as by the other United Nations conventions to which Romania is a party, and by the documents relating to the human dimension of the Conference on Security and Cooperation in Europe, which have been accepted by Romania, and by the Convention for the Protection of Human Rights and Fundamental Freedoms (to which Romania wishes to accede as soon as possible) are specifically regulated by the new Romanian Constitution. They are set out in Title II, Chapter II, which is devoted entirely to fundamental rights and freedoms (arts. 22-48).

78. Such derogations as are provided for by the Constitution are the same as those referred to by the international instruments; possible restrictions on the exercise of certain rights or freedoms are specified in article 49, which reads:

> "1. The exercise of certain rights or freedoms may be restricted only by law and only if this is necessary depending on the circumstances, in order to defend national security, public order, health or public morals, the rights and freedoms of citizens; to investigate a crime; to prevent the consequences of a natural disaster or a particularly severe catastrophe.
>
> 2. The restriction must be in proportion to the situation that caused it and it may not impinge on the existence of the right or freedom."

D. Way in which human rights instruments are made part of the national legal system

79. The relationship between international and national law is governed by article 11 of the Constitution:

> "1. The Romanian State undertakes to discharge, fully and in good faith, its obligations under the treaties to which it is a party.
>
> 2. The treaties ratified by Parliament, in accordance with the law, are part of domestic law."

The provision contained in paragraph 2 is new and is intended to solve the dilemma that arose in the past over the hierarchy of national or international sources of law.

80. As far as the international instruments relating to human rights are concerned, the Constitution establishes the principle of their primacy whenever there is non-conformity between the covenants and treaties to which Romania is a party and its domestic law. Accordingly, article 20 states:

> "1. Constitutional provisions on the rights and freedoms of citizens shall be interpreted and applied in accordance with the Universal Declaration of Human Rights, and with the other covenants and treaties to which Romania is a party.
>
> 2. In the case of non-conformity between the human rights covenants and treaties to which Romania is a party and domestic law, the international legislation shall have primacy."

81. Depending on the area of the international legislation, it may also be incorporated in domestic law by means of a special act. This solution was adopted by the Romanian Parliament in 1990, after Romania's accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in New York on 10 December 1984. The fact that at the time the Constitution had not yet been adopted was not the only reason. Consideration was also given to the question of punishment for acts which, under the Convention, constitute torture. It was felt that there was a need to prescribe heavier sentences in accordance with the objectives of the Convention. Accordingly, Act No. 20 of 9 November 1990 introduced into the Penal Code the offence of torture, which carries a sentence of from two to seven years or even life imprisonment if the torture has caused the death of the victim.

82. In accordance with the provisions of the Convention on the Rights of the Child, to which Romania acceded on 27 October 1990, Romanian legislation will be supplemented by measures to implement the rights recognized by articles 12 to 19 of the Convention.

83. Similarly, pursuant to Act No. 46 of 4 July 1991 concerning Romania's accession to the Convention relating to the Status of Refugees and its Protocol, a bill on the regulation of the procedure for granting refugee status and for issuing identity documents to refugees lawfully on Romanian territory has been brought before Parliament.

E. Can the provisions of the human rights instruments be invoked directly or must they be transformed into internal laws in order to be enforced by the authorities concerned?

84. The terms of article 11 (2) of the Constitution, pursuant to which "The treaties ratified by Parliament, according to the law, are part of domestic law" mean that the provisions of those international instruments to which Romania is a party may be invoked directly before the courts and administrative authorities. However, domestic law must be taken into account whenever the treaty itself refers to domestic law or whenever the provisions of the treaty do not establish the procedures for its implementation (see para. 79 above).

F. Institutions or national machinery with responsibility for overseeing the implementation of human rights

85. The replies to the foregoing questions show that the Constitution designates several categories of national institutions and public authorities as having responsibility for overseeing the implementation of human rights:

(a) The Constitutional Court, in connection with monitoring the constitutionality of laws;

(b) The Ombudsman, whose responsibilities relate exclusively to the protection of human rights;

(c) The Prosecutor's Department, whose role is to represent the general interest of society and to defend the rights and freedoms of citizens before the courts so that anyone guilty of an offence which violates another person's rights is punished;

(d) There are also numerous national non-governmental organizations including the League of Human Rights, the Association for the Defence of Human Rights, the Romanian Helsinki Committee and the Romanian Amnesty International Committee.

G. New regulations governing the professions of advocate and notary

86. In 1995 the Romanian Parliament adopted the Act on the organization and practice of the profession of advocate, under the terms of which:

(a) The profession of advocate is free and independent;

(b) The advocate is independent and is subject solely to the law, to the regulations and to the rules of professional ethics;

(c) The advocate acts to promote and defend human rights and freedoms; everyone has the right to choose his advocate freely;

(d) The advocate has the right and duty to insist on the implementation of the right to free access to justice and the right to a fair trial.

87. The Act also contains provisions governing: conditions of entry to the profession of advocate; cessation and suspension of the status of advocate; the rights and duties of advocates; the disciplinary responsibility of advocates; and the organization and practice of the profession of advocate, based on the principle of autonomy, within the framework of bar associations that have artificial personality, assets and a budget, together with their own decision-making bodies (general assembly, council and dean of the bar association).

88. Advocates registered with the bar associations are members of the Union of Advocates of Romania, which also has its own artificial personality, assets and budget. Its decision-making bodies are: the Congress of Advocates, the Council, the Standing Committee and the President of the Union. In pursuance of Act No. 51/1995 on the organization and practice of the profession of advocate, the Union of Advocates of Romania adopted the "Regulations on the profession of advocate" (published, together with the respective Act, in the Monitoral Oficial of Romania).

89. In 1995 the Act on notaries public and notarial activities was also adopted, under the terms of which:

(a) The former system of organization of State notaries was abandoned;

(b) Notaries public are granted the right to establish individual notarial offices and to enter into partnership with other notaries public;

(c) The conditions that must be fulfilled to become a notary public are laid down, together with the cases in which the status of notary public ceases or may be suspended.

90. Act No. 36/1995 also lays down the powers of the Ministry of Justice, which ensures that the offices of notaries public are easily recognized and determines the number of notaries public within the judicial district of each court of first instance. The Ministry of Justice is responsible for appointing notaries public, on the proposal of the Council of the National Union of Notaries Public.

91. Within the National Union of Notaries Public, which is constituted by all the notaries in office, there are several chambers of notaries public, made up of the notaries practising their profession within the judicial district of each court of appeal. These chambers, together with the Union, have artificial personality and their own decision-making bodies:

(a) The Chamber of Notaries Public is headed by a governing board made up of a president, a vice-president and three to five members;

(b) The National Union of Notaries Public is headed by the Council of the Union, consisting of a representative of each chamber.

92. Act No. 36/1995 regulates in detail the procedure for the drafting of notarial instruments and the rights, duties and responsibilities of notaries public.

IV. INFORMATION AND PUBLICITY

93. In order to familiarize both the general public and the authorities responsible for their implementation with the rights contained in the various human rights instruments, the international covenants and conventions, as well as domestic legislation are published and distributed.

94. The following have been published in the Monitoral Oficial of Romania:

(a) The Convention against Torture (a translation of the full text), ratified by Act No. 19 of 19 October 1990;

(b) Act No. 20 of 9 October 1990, establishing the offence of torture in the Romanian Penal Code;

(c) Act No. 32 of 16 November 1990, amending and supplementing the Code of Penal Procedure (specifically relating to the guarantee of individual freedom and the right to a defence);

(d) The Convention on the Rights of the Child, which entered into force in Romania on 28 October 1990;

(e) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of capital punishment, ratified by Act No. 7 of 25 January 1991;

(f) The Convention and Protocol relating to the Status of Refugees, to which Romania acceded by Act No. 46 of 4 July 1991;

(g) The Charter of Paris for a New Europe and the 1991 Vienna Document;

(h) The Statutes of the Hague Conference on Private International Law, accepted by Romania in Act No. 25 of 6 March 1991;

(i) The Convention on the Recovery Abroad of Maintenance, to which Romania acceded through Act No. 26 of 6 March 1991.

95. The Constitution was published in draft form and submitted for public debate in the press, on radio and on television. After its adoption by the Constituent Assembly it was published in the Monitoral Oficial of 21 November 1991 and as a brochure in order to enable the entire population to participate in the referendum organized on 8 December 1991 in an informed manner.

96. It should also be mentioned that the Romanian Human Rights Institute was established at the beginning of 1991 in order to foster a better awareness on the part of Romanian public bodies, non-governmental organizations and private citizens of human rights problems, as well as of the manner in which human rights are guaranteed in other countries (Act No. 9 of 29 January 1991, art. 2).

97. It has also been decided to publish a human rights bulletin, which would be widely distributed. However, the rise in the price of paper and printing costs are factors inhibiting its publication.

98. On 1 October 1991, the Government of Romania decided to establish the Centre for European Studies of Ethnic Problems (CEEPE) as an institute of the Romanian Academy. Pursuant to its constituent instrument, CEEPE's objective is to study various issues relating to Europe's ethnic, linguistic or religious groups, their evolution and communications between them, as well as to promote common standards relating to the rights of persons belonging to ethnic, religious or linguistic minorities and the preservation of their identity.

99. It has been proposed that the Monitoral Oficial should publish the United Nations instruments to which Romania acceded almost 20 years ago, such as the International Covenant on Civil and Political Rights or the International Convention on the Elimination of All Forms of Racial Discrimination, the details of which are not familiar to the Romanian public.

100. Similar efforts are also being made by the press, which has published a number of extracts from the Universal Declaration of Human Rights.

101. The periodic reports on the implementation of international covenants and conventions are drafted by groups of experts from the human rights units and divisions set up in 1991 within the Ministry of Foreign Affairs, the Ministry of the Interior and the Ministry of Justice, assisted by specialists from the research and documentation departments of the Supreme Court and the prosecution service. As a rule, these agencies do not encounter obstacles in collecting the information required from throughout Romania.

102. During the 1990-1991 period, the transmission of reports to the Centre for Human Rights in Geneva was held up in order to enable comprehensive documents based on the new Constitution to be prepared. When the reports have been finalized, they will be issued to the national bodies to which they are of interest and public debates will be organized through the press, in meetings of experts, symposia and lectures in Bucharest and other towns.
