

---

# Romania

## **Constitution, article 30**

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

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

## **Criminal Code, art. 166 Propaganda in favour of totalitarian State**

Systematic dissemination, by any means whatsoever, of ideas, conceptions or doctrines advocating the creation of a totalitarian state, including incitement to murder people considered to belong to an inferior race. Imprisonment from 6 month up to 5 years and disqualification from the exercise of certain rights.

---

**Criminal Code, art. 317 Chauvinistic nationalis propaganda and incitement to racial or national hatred** Imprisonment from 6 month up to 5 years

**Criminal Code, art. 324 Public incitement to commit criminal offences; defence of persons who have committed offences or of offences themselves**

**Law n°48 16 January 2002 for approval of Government Ordinance n.137/2000 regarding the prevention and punishment of every form of discrimination, article 17**

Article 19 –

*“According to this ordinance, it is a minor offence, unless the deed falls under the criminality of the criminal law, any conduct displayed in public, with a character of nationalist-chauvinist propaganda, of investigation to racial or national hatred, or that type of behaviour with the purpose or aiming for affecting the dignity or creating an atmosphere of intimidation, hostile, degrading, humiliating or outrageous, directed against a person, a group of people or a community and connected with their affiliation to a certain race, nationality, ethnic group, religion, social or non-favoured category or their beliefs, sex or sexual orientation .”*

**Emergency ordinance n.31 from 13 march 2002 regarding the ban of the organisations and symbols with fascist, racist or xenophobe character and of the promotion of the religion of the people guilty of committing crimes against peace and humanity.**

Article 1 - For the prevention and control of the incitement to national, racial, or religious hatred, to discrimination and the perpetration of crimes against peace and humanity, the present ordinance regulates the ban of the of the organisations and symbols with fascist, racist or xenophobe character and of the promotion of the religion of the people guilty of committing crimes against peace and humanity.

It allows the disseminating, selling or manufacturing (or depositing for the purpose of disseminating) of the mentioned symbols, as well as their public use only if these are for the purpose of art, science, research or education.

**Law on Radio and Television Broadcasting (N°48 /1992),**

**Art. 2:**

(1) Prohibits broadcasts that are prejudicial to an individual’s “dignity, honour, private life or public image.” (2) Prohibits “defamation of the country and of the nation, instigation to a war of aggression, national, racial, class or religious hatred, incitement to discrimination, territorial separatism, or public violence.”

Art. 5

Advertising and teleshopping shall not among others incite to violence, to national, racial, class or religious hatred or to discrimination on ground of sex, race or nationality

---

(Decision No. 65 of 23.05.2000 of the National Audiovisual Council concerning compulsory norms for advertising, teleshopping and sponsorship in the audiovisual field).

Art. 39: Violations of Art. 2 (1) are punishable by up to five years imprisonment and of Article 2(2) by up to seven years imprisonment.

**Law concerning advertising, n°148/2000**

An advertising which discriminates on grounds of race, language, origin, social origins, ethnic identity or nationality or constitutes an assault upon religious or political conviction is forbidden.

**Audiovisual Law n°504 of 11 July 2002, Art. 17 and art. 29**

The national Broadcasting Council which is established by the Law shall be among others authorize to nondiscriminatory policies with respect to race, sex, nationality, religion, political belief, and sexual orientation.

Publicity, including self-promotion, and teleshopping shall comply with following guidelines:

Shall not impair the physical and moral development of minor; shall not damage human dignity; shall not discriminate on the basis of race, religion, nationality, sex or sexual orientation; shall not offend the religious or political beliefs of viewers and listeners.

---

# Case Law

---

# Romania

Constitutional Court: <http://www.ccr.ro/>

Court of Cassation: <http://www.scj.ro/>

---

# Public Policies

---

## onsiliul national pentru combaterea discriminarii



CONSILIUL NAȚIONAL PENTRU COMBATAREA DISCRIMINĂRII

este autoritatea de stat autonoma, sub control parlamentar, care isi desfasoara activitatea in domeniul discriminarii.

Este garant al respectarii si aplicarii principiului nediscriminarii, in conformitate cu legislatia interna in vigoare si cu documentele internationale la care Romania este parte.

Consiliul isi exercita atributiile in urmatoarele domenii:

- **Prevenirea faptelor de discriminare** prin realizarea de campanii de informare, de constientizare privind drepturile omului, efectele discriminarii, principiul egalitatii, cursuri de formare, de informare, proiecte si programe la nivel local, regional si national, realizarea de studii, rapoarte etc
- **Medierea faptelor de discriminare** a partilor implicate in cazul de discriminare, in prezenta reprezentantilor Consiliului National pentru Combaterea Discriminarii. Consiliul National pentru Combaterea Discriminarii urmareste reducerea si eliminarea faptelor de discriminare si nicidecum sa aplice amenzi.
- **Investigarea, constatarea si sanctionarea faptelor de discriminare.** Pentru analizarea cat mai corecta a cazurilor si pentru luarea deciziilor in cazul petitiilor primite sau autosesizarilor, Colegiul Director dispune de masuri pentru a investiga cazurile, in urma carora acesta constata existenta sau nu a faptei de discriminare si dupa caz, sanctionarea acesteia.
- **Monitorizarea cazurilor de discriminare** in urma constatarii unor cazuri de discriminare de catre CNCD, prin supravegherea ulterioara a partilor implicate.
- **Acordarea de asistenta de specialitate victimelor discriminarii** prin explicarea legislatiei celor interesati de catre consilierii juridici ai CNCD, prin indrumarea asistata in ceea ce priveste activitatea de depunere a petitiei si informatii suplimentare ce decurg din aceasta procedura.

### outati

#### Rezultatele sondajului de opinie "Fenomenul discriminarii in Romania" in anul 2010

10.12.2010

Aici puteti vizualiza rezultatele sondajului de opinie „Fenomenul discriminarii in Romania”, realizat de catre compania TOTEM Communication, in perioada octombrie – noiembrie 2010, la solicitarea institutiei noastre. Pentru a descarca fisierele, accesati acest link.

#### Lansarea sondajului de opinie "Fenomenul discriminarii in Romania"

08.12.2010

Consiliul National pentru Combaterea Discriminarii are placerea de a va invita la conferinta de presa organizata cu ocazia lansarii sondajului de opinie „Fenomenul discriminarii in Romania”, realizat de catre TOTEM Communication, in perioada octombrie – noiembrie 2010, la solicitarea institutiei noastre. Evenimentul va avea loc in [...]

#### Hotarari de constatare a discriminarii adoptate in luna octombrie 2010

03.12.2010

In aceasta sectiune puteti consulta extrase din hotararile de constatare a discriminarii adoptate de catre Colegiul director al CNCD in luna octombrie 2010. Pentru a deschide fisierul accesati link-ul de mai jos.

toate noutatile ...



# Third report on Romania

Adopted on 24 June 2005

Strasbourg, 21 February 2006



COUNCIL OF EUROPE    CONSEIL DE L'EUROPE



to lodge any appeal against a negative decision.

93. ECRI emphasises the importance of fully and equitably applying the legislation on asylum seekers and refugees. On this point, it urges the Romanian authorities to ensure that persons who have received refugee or “humanitarian” status or status as a “tolerated” person fully enjoy the rights granted to them by Law No. 176. ECRI therefore recommends that they provide these persons with free Romanian language courses and set up programmes to integrate them into the labour market, give them access to public services, etc.
94. ECRI urges the Romanian authorities to abandon the idea of building detention centres for asylum seekers. It also urges them to close the centre for unaccompanied minors recently built at Bucharest airport without delay. Pending the closure of this centre, ECRI recommends that the Romanian authorities receive minors there in full compliance with the Geneva Convention and the UN Convention on the Rights of the Child, and allow the UNHCR and the Red Cross unrestricted access to the centre.
95. ECRI recommends that the authorities continue to provide the border police and all public officials required to deal with asylum seekers and refugees with training courses on the 1951 Geneva Convention and the relevant legislation. It also recommends that they provide the National Office for Refugees with the necessary funds and staffing to carry out its tasks.
96. ECRI urges the Romanian authorities to repeal the legal provisions authorising detention for an indeterminate period for persons who are the subject of a deportation order or have been declared *persona non grata*.

### **Vulnerable groups**

97. As regards the Roma, see the part below entitled “Specific issues”.

### **Antisemitism**

98. About 6,000 Jews currently live in Romania. NGOs have informed ECRI that one of the major problems facing the Jewish community at present is the existence of some neo-Nazi organisations which continue to deny that the Holocaust took place in Romania or to minimise its importance. As stated above, one of these organisations, modelled on the Iron Guard, a fiercely antisemitic organisation which went on the rampage in Romania during the Second World War, is pursuing its activities without being punished by the authorities. Its antisemitic or negationist publications and texts are openly sold by some bookshops in the country’s large towns. This organisation has also attempted to give a less negative image of the Iron Guard by using the freedom of expression argument. ECRI therefore notes that although the authorities have recently made efforts to improve public knowledge of this dark period in Romanian history, they are not yet forceful enough in applying the legislation intended to punish advocates of revisionist or antisemitic views.
99. As stated earlier, there are still streets in Cluj and Targu Mures which bear the name of Ion Antonescu, who played an active part in the Holocaust in Romania. Statues of this man have also been put up in the courtyards of some churches, which refuse to remove them on the pretext that he helped finance the building of these churches. On the other hand, ECRI notes that very few monuments

commemorating the victims of the Holocaust have been built in Romania. Moreover, it would appear that two of Ion Antonescu's main associates, who played a key role in the deportation of Jews during the Second World War, are still covered by the rehabilitation granted to them in 1997-1998.

#### ***Recommendations:***

100. ECRI urges the authorities to effectively punish organisations and individuals who promote revisionist or antisemitic views in order to deny or minimise the existence of the Holocaust in Romania. It encourages them to continue informing and educating the public about this period of Romanian history.
101. ECRI also urges the Romanian authorities to apply the law to all those who continue to foster the cult of persons who took an active part in the Holocaust, and to waive the immunity granted to those who are still alive so that they may be tried.

#### **Conduct of law enforcement officials**

102. In its second report, ECRI noted that serious problems persisted throughout the country as regards police attitudes and behaviour towards members of the Roma community. In particular, ECRI deplored the fact that cases of police violence against members of the Roma community, including the use of firearms, continued to occur and had led to serious and sometimes lethal injuries. ECRI therefore advocated an independent investigative mechanism to look into police abuses, with power to take action where necessary.
103. ECRI welcomes the fact that since the publication of its second report, Romanian police have been demilitarized. This renders civilian courts competent to examine complaints concerning police abuses. ECRI moreover notes that the Romanian General Police Inspectorate drafted and circulated Provision No. 379830/01.03.2004 on measures taken by heads of units in, amongst others, the area of discrimination. Moreover, a code of professional conduct for police officers has been adopted in Romania. Article 2 e) of the code provides that police officers must comply with the principles of impartiality and non-discrimination in the performance of their duties. Article 7 further provides that police officers have a duty to develop good relations between society and the institution they represent, without any form of discrimination. In addition, Law No. 7/2004 on the Code of Conduct of Public Officials, referred to earlier, requires them to comply with the principles of equality and non-discrimination. However, the Romanian authorities themselves acknowledge that police officers and law enforcement officials need training on the subject of discrimination and that an institution responsible for ensuring compliance with the Code of Conduct and with Law No.7/2004 still needs to be set up. For the time being, the Human Rights Committee within the Ministry of the Interior itself gathers information on non-discrimination and monitors the application of the legislation.
104. As regards the existence of a body responsible for looking into complaints made against police officers or law enforcement officials, the Romanian authorities have told ECRI that a procedure has been set in motion for that purpose within the Ministry of the Interior itself. Thus, a body placed under the sole authority of the Ministry of the Interior is empowered to investigate all violations of the Code of Conduct and of criminal law. Two different investigative and punitive procedures are carried out depending on the nature of the offence. However, although the

Romanian authorities have acknowledged that large numbers of police officers have been arrested for wrongful behaviour, they have provided no information on the victims. Furthermore, ECRI notes with concern that despite the existence of these procedures, the Romanian authorities have stated that no complaints have been recorded against police officers or law enforcement officials for discriminatory acts. It therefore wonders whether this does not reflect a lack of confidence among the general public in the authorities' capacity to punish the perpetrators of such acts.

105. ECRI also notes that despite a decrease in the level of police violence against members of the Roma community since the publication of its second report, there are still some urban and forest wardens who commit abuses against them. For example, ECRI has been informed that many instances of wrongful behaviour towards members of the Roma community have been reported at Buhuse. It is also concerned at reports that in the Moldavian region of Romania, during a raid on a Roma community by about 70 police officers and members of the special forces, two people, including a 13-year-old minor suffered gunshot wounds. ECRI therefore notes that as the prosecutor decided not to prosecute the alleged offenders, an NGO took the case to court with a claim for damages. ECRI hopes that this case will reach a successful conclusion, partly in order to send a clear message to police officers and law enforcement officials that this kind of behaviour is unacceptable. ECRI also notes that the Romanian authorities have said that very few Roma apply for recruitment to the police force.

#### ***Recommendations:***

106. ECRI urges the Romanian authorities to provide police officers and law enforcement officials with regular training in the legislation on discrimination.
107. ECRI also recommends that the Romanian authorities set up an institution responsible for ensuring compliance with the principles of non-discrimination included in the Code of Professional Conduct for police officers and in Law No. 7/2004 on the Code of Conduct for Public Officials. It recommends that they conduct enquiries to establish why no complaints of discrimination have been lodged against police officers or law enforcement officials.
108. ECRI recommends that the Romanian authorities frame a policy for recruiting members of the Roma community into the police force in order to, inter alia, facilitate mutual communication and relations.

#### **Media**

109. In its second report, ECRI noted the media's tendency to refer to the Roma minority in derogatory terms or carry discriminatory advertisements. It stressed the importance of ensuring that the legislation in force to combat media excesses was consistently and rigorously implemented. It also encouraged the media professions to make full use of self-regulatory mechanisms, such as codes of conduct, and to promote and support reporting which presents issues relating to minority groups in a balanced and non-discriminatory fashion.
110. ECRI notes that in the national press there has been a certain decrease in the number of derogatory articles about Roma. This improvement is due to several factors: NGOs and supervisory bodies have increased their vigilance, journalists have received training courses on discrimination issues and the law has been

amended. ECRI must nevertheless note that, as previously stated, the National Council for Combating Discrimination has imposed many penalties on the media for articles and opinions it considers discriminatory. This body has been criticised in this respect, since some consider that it has infringed the principle of freedom of expression. ECRI notes that the principle of freedom of expression is still all too often invoked to justify the failure to apply the law to media that publish racist articles. ECRI also notes that local media still publish racist articles and opinions about Roma. Several studies on the subject have demonstrated that the Roma are still mentioned chiefly in the context of criminal behaviour and that the majority population have a negative image of them. For example, 78% of the majority population do not wish to have Roma neighbours.

111. ECRI also notes that although the Centre for Independent Journalism and a number of NGOs and journalists have drawn up a code of conduct, it is not applied. The Romanian Press Club has also adopted a code of conduct, but no penalties have been imposed under this code.

***Recommendations:***

112. ECRI recommends that the Romanian authorities continue to offer the national and local media training courses on combating discrimination.
113. ECRI also recommends that the Romanian authorities ensure that Article 358 of the Criminal Code, which prohibits incitement to hatred, is applied more forcefully when the media publish discriminatory articles.

**Monitoring the situation**

114. As regards the collection of ethnic data for the purpose of assessing the situation of national minorities, ECRI notes that there is no real practice of the kind in Romania. It has been informed that this data is collected solely with a view to applying certain positive measures, particularly in the sphere of education.

***Recommendations:***

115. ECRI recommends that the Romanian authorities consider ways of setting up a consistent and comprehensive data collection system to assess the situation of the different minority groups living in Romania and the scale of manifestations of racism and racial discrimination. A data collection system of this kind must comply with national legislation, with European regulations and with the recommendations on data protection and protection of privacy as set out in ECRI's General Policy Recommendation Policy No.1 on combating racism, xenophobia, antisemitism and intolerance. The Romanian authorities must ensure that data is collected in a spirit of full respect for the anonymity and dignity of the persons questioned and in compliance with the principle of unreserved consent. In addition, the system for collecting data on racism and racial discrimination must take account of gender aspects, especially in terms of the possibility of double or multiple discrimination. Generally speaking, collecting data classified by ethnic origin will make it easier to identify the areas of life in which there may be direct or indirect racial discrimination and to determine the best ways of combating this type of discrimination.

## II. SPECIFIC ISSUES

### Situation of the Roma community in Romania

#### - *Strategy for Improving the Situation of the Roma*

116. In its second report, ECRI emphasised that the Roma community in Romania was particularly vulnerable to discrimination and disadvantage in many fields of life. It was therefore pleased to learn that a draft governmental National Strategy for Improving the Situation of the Roma had been drawn up, and it strongly encouraged the Romanian authorities to build upon the momentum and goodwill generated by the adoption of this strategy to ensure that the necessary resources and political support were made available in order to implement the range of measures planned.
117. ECRI notes with concern that the situation of the Roma in Romania remains disturbing. Members of the Roma community are still discriminated against in areas such as employment, education and access to public places, housing and health care services. The Strategy for Improving the Situation of the Roma (the "Strategy"), which was adopted in April 2001, is the first initiative taken by the Romanian Government to remedy this situation in a systematic manner. The Strategy is supposed to improve the situation of the Roma in terms of: 1) government agencies, 2) social security, 3) health care, 4) the economic situation, 5) justice, 6) child welfare, 7) education, 8) culture, 9) communication and 10) citizen participation. This Strategy is designed to span 10 years (the first 4 years being devoted to a general plan for the measures set out in it), and a joint committee comprising ministers of state from the ministries that are involved in this work, Roma experts and members of Roma organisations has been instructed to ensure its application and monitor the process.
118. Order No. 37/01.02.2002 set up the County Offices on the Roma, whose primary task is to assess the situation of Roma communities, identify solutions to their problems and maintain permanent liaison with local authorities. The National Agency for the Roma was set up by Emergency Order No.78/2004; its tasks include implementing the Strategy, framing strategies and managing the funds for the programmes set up for the Roma, and monitoring and assessing the activities carried out by the public authorities at local and national level<sup>23</sup>.
119. ECRI notes that the above-mentioned bodies lack funds and that the authorities do not appear to have the necessary political will to ensure the success of the Strategy. Four years after it was framed, this Strategy is far from having achieved its goals. Until 2003, only the European Union was financing projects under the Strategy. In spite of this, the authorities now consider that many of the measures included in the Strategy have been carried out, although no overall appraisal of the Strategy has yet been carried out. NGOs also point out the lack of consistency in applying the Strategy at local level and the fact that in some areas of activity it has quite simply not been applied. The Strategy is also criticised for its tendency to treat all the Roma communities in the same way, whereas their needs vary according to the problems they face. For example, many Roma communities still live below the poverty level and therefore have more pressing and urgent needs

<sup>23</sup> For further information on the work of this body, see below the part of the report entitled "National Office for the Roma".

such as access to health centres, to drinking water, to programmes against malnourishment, to decent housing, etc.

***Recommendations:***

120. ECRI urges the Romanian authorities to allocate the necessary funds to the bodies and programmes responsible for implementing the Strategy for Improving the Situation of the Roma. It recommends that they adapt the implementation of the Strategy to the different needs of the Roma communities, assigning priority to the most deprived.
121. ECRI urges the Romanian authorities to conduct an appraisal of the Strategy for Improving the Situation of the Roma as soon as possible in order to establish the results of the Strategy and redefine its parameters where necessary. This appraisal should be made public and transmitted to the NGOs concerned so that they may contribute to any redesigning of this Strategy.
122. ECRI stresses that a clear and consistent policy is vital to ensure the success of the Strategy for Improving the Situation of the Roma. It therefore calls on the Romanian authorities to show the necessary political will for the success of this Strategy.

**- *National Office for the Roma***

123. As stated above, the National Office for the Roma (the "Office") is responsible among other things for implementing the Strategy for Improving the Situation of the Roma. The Office has informed ECRI that it tried to revive the various institutions responsible for implementing the Strategy. However, it was not until the end of April 2005 that one of these institutions was to meet in order to adopt a general plan for the measures relating to this Strategy. The Office also said that it had written to the ministries and local authorities to find out about the problems confronting them. It found that although each ministry was supposed to resolve the problems falling within its remit, nothing had been done and it was left to the Office to take over the ministries' responsibilities.
124. ECRI notes that the National Office for the Roma does not have the necessary funds or staff to carry out its tasks efficiently. Although it is supposed to have 52 posts, the Office currently has only five staff members, who provide a basic service in terms of accounting, human resources and legal, administrative and secretarial services. ECRI also notes that the other bodies likewise tasked with applying the Strategy for Improving the Situation of the Roma at all levels and in all areas of life have not yet started work.
125. The National Office for the Roma has informed ECRI that a "Decade for the Inclusion of the Roma" was launched in February 2005 to narrow the gap between the Roma and the rest of the population in the areas of: 1) health care, 2) education, 3) employment and 4) housing. The Office said that the World Bank is supposed to fund the project and visited Romania in February 2005, when it met the ministries concerned and the Ministry of Finance, which will be distributing the funds. ECRI considers that this project must be carried out and must receive the funds it needs in order to achieve its objectives. It also wishes the various institutions responsible for implementing the Strategy for Improving the Situation of the Roma to be involved in the work on the Decade for the Inclusion of the Roma so as to avoid possible overlapping.



**General Assembly**

Distr.  
GENERAL

A/HRC/WG.6/2/ROM/1  
2 May 2008

Original: ENGLISH

---

HUMAN RIGHTS COUNCIL  
Working Group on the Universal Periodic Review  
Second session  
Geneva, 5-16 May 2008

NATIONAL REPORT SUBMITTED IN ACCORDANCE WITH PARAGRAPH 15(A) OF THE  
ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1\*

**Romania**

---

\* The present document was not edited before being sent to the United Nations translation services.

to translate into practice this principle, the legislator created, by Law no. 554/2004, the system of administrative litigation. The State bears patrimony liability for any prejudice caused as a result of judicial errors. The State liability shall be assessed according to the law and shall not eliminate the liability of the magistrates having exercised their mandate in ill will or grave negligence.

43. Previous provisions in the Criminal Procedure Code and the Civil Procedure Code (art. 409-414, art. 330-330<sup>3</sup> respectively) defined the institution of annulment proceedings exercised by the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, against final judicial decisions, in cases stipulated by the law in a limitative manner. The inappropriate use of these legal remedies, especially in civil matters, was repeatedly sanctioned by the European Court of Human Rights, which criticized their impact on the stability of the judicial decisions. Consequently, those provisions were abrogated in 2003 and 2004, respectively.

44. One of the main deficiencies of our judicial system is the inconsistent practice by the courts of law. To address this problem, the Public Ministry promoted annulment proceedings in the interest of the law, an institution regulated by the two Codes mentioned above. The High Court of Cassation and Justice issued decisions of unitary interpretation of the law which are obligatory for the courts (in 2007, the High Court was seized by the General Prosecutor with 87 such cases, in comparison with 37 cases in 2006). Also, measures have been taken to improve the access of the magistrates to the jurisprudence and the Official Gazette. Starting with 2006, the Superior Council of Magistracy organizes regular meeting with the presidents of the courts of appeal, with the participation of representatives of the High Court of Cassation and Justice and the Office of the Prosecutor General. Similar coordination meetings are held at the level of each court of law.

45. Problems regarding the length of the judicial proceedings continue to be reported. However, statistically, in 2007, 85.5 per cent of the criminal trials and 83.5 per cent of the civil trials were concluded in less than six months (the recommended timelines). Starting with 2005, the inspectors of the Superior Council of Magistracy monitor, on a regular basis, the courts' activities from the point of view of compliance with the recommended timelines for civil and criminal trials and, where needed, disciplinary sanctions have been applied.

46. According to article 23 of the Constitution, individual freedom and security of a person are inviolable. Search, detainment or arrest of a person is permitted only in cases and under the procedure provided by the law. There are time limits for detainment and preventive custody. Any person detained or arrested is promptly informed, in a language he/she understands, of the grounds for his/her detention or arrest, and notified of the charges against him/her, as soon as practicable; the notification of the charges shall be made only in the presence of a lawyer of his/her own choosing or appointed *ex officio*. A person under preventive custody has the right to apply for provisional release, under judicial control or on bail. Any person is presumed innocent till found guilty by a final decision of the court. Penalties are established or applied only in accordance with and on the grounds of the law. The freedom deprivation sanction can only be based on criminal grounds (*nullum crimen sine lege*). The defendant is entitled to the benefit of a lesser punishment enacted by the law (*mitior lex*). The right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person is also guaranteed by the Romanian Criminal Procedure Code (art.5<sup>1</sup>). The law provides for the possibility of temporary release during the trial or before the completion of the term. Special provisions refer to persons responsible with a childcare, dependant or an elderly/ill person.

#### **4. Freedom of opinion and expression**

47. In accordance with article 30 of the Constitution, freedom of expression of thoughts, opinions, or belief, and freedom of any creations, by words, in writing, in pictures, by sounds or other means of communication in public are inviolable. Any censorship is prohibited. Freedom of the press also involves the free setting up of publications. No publication may be suppressed. The



law may impose upon the mass media the obligation to make public their financing source. The Government never initiated a law regulating this aspect, but a group of non-governmental organizations drafted a legislative proposal which has been, recently, endorsed by some members of the Parliament. Freedom of expression undergoes certain limitations, contained in the Constitution and the Criminal Code. In particular, Governmental Ordinance no. 137/2000 incriminates any public behavior with a nationalistic-chauvinist character, any incitement to racial or national hatred or any behavior aiming to prejudice a person's dignity or to create an intimidating, hostile, degrading, humiliating or offending atmosphere against a person, a group of persons or a community on grounds of race, nationality, ethnic origin, religion, social category or underprivileged category, beliefs, gender or sexual orientation is sanctioned as a contravention, unless the act fall under the incidence of criminal law. There are cases in the jurisprudence of the National Council for Combating Discrimination of sanctions applied to journalists for articles inciting to racial hatred or notices issued to various newspapers for discriminatory advertisements (e.g. in particular with regard to the Roma minority).

48. The Romanian legislation does not make any distinction between the acts committed by any natural or legal persons and the acts committed by the journalists. Therefore, the Romanian journalists have advocated, for a long time, against the offences of insult and libel as infringements upon the liberty of the press. In 2006, the crimes of insult (art.205) and libel (art.206) under the Chapter "offences against human dignity" have been repealed following amendments brought to the Criminal Code. The Constitutional Court concluded in 2007 that the abrogation of the respective legal provisions was contrary to article 1 (3) of the Romanian Constitution, which protects values such as dignity, reputation and honour of the person. However, the Parliament did not to act upon the decision of the Constitutional Court by adopting new legislation and, therefore, the two offences remain outside the Criminal Code.

49. Insofar as Romania's mass-media is concerned, it has evolved as one of the most dynamic in the geographical region. According to the National Council of Audio-Visual (see para.11), currently there are 623 radio stations (out of which three nation-wide frequencies) and 261 TV stations (out of which two national frequencies, a third one being divided among several operators). The number of print outlets (newspapers, weeklies, monthlies, magazines) is evaluated at about 1500 titles, out of which 15 national dailies. Romania has a high penetration of cable TV (76.6 per cent in 2006) and a smaller one for the satellite TV (3.7 per cent in 2006). In 2007, the Internet reached a penetration of 25 per cent of the households.

## **5. Freedom of conscience and religion**

50. The great majority of the Romanian population declares itself as belonging to the Romanian Orthodox Church (ROC), that is 86.7 per cent of the whole population distributed on the whole territory of Romania. The orthodox population also includes Ukrainian, Bulgarian, Greek and Lippovan Russian ethnics. Catholicism represents nowadays the second religion in Romania, with 1,028,401 members (4.7 per cent). Among the other Christian communities, the Calvinist Church is the most important, with 698,550 members (3.2 per cent). The number of members of other Christian communities varies between 2,000 and 300,000. The Religious Association "The Witnesses of Jehovah" was recognized in 2003 by the Order of the Ministry of Culture and Religious Affairs. Therefore, there are currently 18 legally recognized religious denominations in Romania. There is also a Jewish community (of Mosaic religion) with 6,179 members (0.02 per cent), as well as a Muslim community (of Islamic religion) of 67,566 members (0.31 per cent).

51. The effort to redress the great injustices done to the Greek-Catholic Church (GCC) during the Communist regime raises some specific challenge. In 1948, this Church was proscribed by the Decree No. 358/1948 and a part of its clergy was arrested. However, its activity continued underground. The Church and other parish houses were confiscated and given to the Orthodox Church. Other properties of the Greek-Catholic communities were also confiscated and became