



*Permanent Representation of Romania
to the Council of Europe*

The Ambassador

6 April 2006

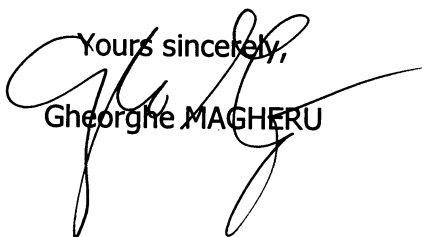
Dear Mrs. RUOTANEN,

I have the pleasure to send you, hereby attached, the letter addressed by my Minister to Mr. Terry DAVIS and the attached response of the Romanian Government on the second part of the investigation initiated by the Secretary General of the Council of Europe, in accordance with Article 52 of the European Convention on Human Rights.

I would be grateful if you brought the above mentioned to the attention of the Secretary General.

Please accept, dear Mrs. Ruotanen, the assurances of my high consideration.

Yours sincerely,


Gheorghe MAGHERU

**Mrs. Marja RUOTANEN
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**ROMANIA • THE MINISTRY OF FOREIGN AFFAIRS**

Bucharest, April 5, 2006

Dear Mr. Secretary General,

I have the honour of addressing to you once again with respect to the investigation unfolded in accordance with the Article 52 of the European Convention on Human Rights on the complex issue of the alleged secret detention centers in Europe.

With respect to your letter, dated March 7, 2006, on the above mentioned issue, please find attached the explanations requested.

I take this opportunity to reassure you that, in my capacity of Chairman of the Committee of Ministers of the Council of Europe, as well as in my national capacity, I will continue to pay due attention to this issue of great importance for all member states of the Council of Europe.

It is my sincere hope that the final conclusions of your investigation will allow the Committee of Ministers to undertake the appropriate measures against any possible violation of the fundamental rights and freedoms afforded by the European Convention on Human Rights.

Please accept, dear Mr. Secretary General, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'Mihai-Răzvan Ungureanu', with a long horizontal flourish extending to the right.

Mihai - Răzvan UNGUREANU

MINISTER OF FOREIGN AFFAIRS

H. E. Terry DAVIS
Secretary General
Council of Europe
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Response of the Romanian Government on the second part of the investigation initiated by the Secretary General of the Council of Europe, in accordance with Article 52 of the European Convention on Human Rights

1. Control mechanisms (administrative, judicial, parliamentary or other) in respect of activities of foreign intelligence services within the jurisdiction on your State, and whether they are conducted in co-operation with national agencies or not (please note that in this context, available control mechanisms regarding national agencies should be indicated, and whether they extend to foreign agencies)

The concept of "national security" is defined by article 1 of the Law 51 / 1991 as "the state of legality, equilibrium and social, economic and political stability necessary for the existence and development of the Romanian national state, as a sovereign, unitary, independent and indivisible state, for maintaining the rule of law and for ensuring the appropriate climate for the exercise of the fundamental rights, freedoms and duties of the citizens, in accordance with the democratic principles established by the Constitution".

The authorities having specific responsibilities in the field of national security are nominated in article 6 of the Law 51/1991: the Romanian Intelligence Service (RIS), the Foreign Intelligence Service (FIS), the Guarding and Protection Agency, as well as the Ministry of National Defence, the Ministry of Administration and Interior, and the Ministry of Justice, through their specialized structures.

Intelligence activity in connection with the national security is developed by the Romanian Intelligence Service, responsible with collecting intelligence within Romania, the Foreign Intelligence Service, responsible for collecting intelligence outside Romania, and the Guardian and Protection Agency, responsible with ensuring the protection of Romanian dignitaries and of foreign officials while visiting Romania.

Article 19 of the Law 51 / 1991 forbids the initiation, organization and establishment on the Romanian territory of intelligence structures that might affect national security, as well as any support granted to or the co-operation with such structures. Such deeds are incriminated and punished with imprisonment from 2 to 7 years.

The Romanian intelligence services may co-operate with foreign intelligence agency under the conditions provided by the law.

The entire activity in the field of national security is coordinated by the Supreme Council of National Defence (SCND), a body created in 1990. The organization and functioning of the SCND is regulated by Law no. 415 / 2002.

The Supreme Council of National Defence is the organism ensuring the strategic co-ordination of the Romanian system of national security. Its members are: the President of Romania (president of the Council), the Prime Minister of the Romanian Government (vice-president of the Council), the ministers of justice, of national defence, of administration and interior, of foreign affairs, of economy and foreign trade, of public finances, the presidential adviser for national security, the directors of RIS and FIS and the Chief of the General Staff of the Army.

SCND is the central body in charge with the supervision and co-ordination of the implementation of national security strategies. Its activity aims at ensuring the legitimacy,

coherence and efficiency of the institutional system involved in providing national security. SCND is the competent body that approves the co-operation of Romanian intelligence services with foreign partners.

The activity of the SCND is supervised by the Romanian Parliament. The SCND is obliged to present, annually or whenever requested by the Parliament, reports on its activity.

The major documents endorsed by the SCND – national security strategy, structure of the national defence system, declaration of the state of war or on the suspension of the hostilities – have to be approved by the Parliament.

The activity of the Romanian intelligence services is controlled, on a permanent basis, by special Parliamentary Committees. The members of these Committees are elected with majority by the members of the Parliament. While undertaking their duties, the members of the Committees have to undertake an oath that they were not member of the former communist security services and that they do not belong to the personnel of any intelligence service.

The Parliamentary Committees verify the legality of the activities performed by the Romanian intelligence agencies and investigate any complaints related to possible breaches of the Romanian law and Constitution. Such complaints may be forwarded to the Committees by any person that considers that his / her fundamental rights and freedoms were affected in connection with intelligence activity. Following the investigation, the Committees decide the measures necessary to re-establish the legality.

The Parliament appoints the directors of the Romanian Intelligence Services and of the Foreign Intelligence Service, in joint plenary session of the two Chambers, following the proposal of the President of Romania, (who is also President of the SCND). The relegation of the directors is also made in joint plenary session of the Parliament, at the President's proposal or at the initiative of at least one third of the total number of senators or deputies.

These mechanisms of control do not affect the right of every person to bring cases before the courts of law for the defense of his / her legitimate rights, liberties and interests (article 21 of the Constitution).

As the mechanisms of control mentioned above aim mainly at verifying the constitutionality and legality of the activity of the Romanian intelligence agencies, the conclusion is that the activities developed on the Romanian territory in cooperation with similar foreign bodies cannot breach the national legislation.

Details on the control mechanisms applicable to the activities of the Romanian Intelligence Service and the Foreign Intelligence Service are presented bellow.

A. Mechanisms for controlling the activity of the Romanian Intelligence Service

The organization and functioning of the Romanian Intelligence Service is regulated by Law 14 / 1992.

The intelligence activity performed by RIS might imply the restrictions of certain fundamental rights and freedoms (e.g. right to respect the correspondence). These restrictions are regulated by law and are accompanied by guarantees ensuring their necessity and their proportionality. RIS cannot perform criminal investigation activities, cannot detain persons and does not have in its administration detention facilities.

The Romanian Constitution, as well as the Law 14 / 1992, provides for the exercise of a civilian control on the activity of the RIS.

From a functional perspective, the democratic control of the activity of the RIS is realized on several dimensions, as follows:

- *parliamentary control*, by the Joint Permanent Committee of the Senate and Chamber of Deputies for exerting parliamentary control on the activity of the Romanian Intelligence Service;
- *strategic co-ordination of the activity*, made by the SCND;
- *approval and legality control* on the activities implying temporary restriction of some fundamental rights, made by the judiciary.

1. Parliamentary control

In 1993, the Joint Permanent Committee of the Chamber of Deputies and the Senate for the parliamentary control of the activity of the RIS was created through the Decision 30 / 1993 of the Romanian Parliament.

In accordance with article 5 of the Decision of the Parliament 30 / 2003, the Committee exercises the permanent control on the activity of the Romanian Intelligence Service and has the following main attributions:

- a. to verify if, while exercising its attributions, RIS respects the provisions of the Romanian Constitution and of all internal Laws;
- b. to examine the cases in which violations of the provisions Constitution or of other internal laws have been reported and to decide on the measures needed to restore the legality;
- c. to analyze and investigate, at the request of any Permanent Commission for defense, public order and national safety of the two Chambers of the Parliament, the complaints of citizens who consider that their fundamental rights and freedoms were infringed by the methods used for obtaining the information concerning the national safety; to examine and solve all complaints regarding allegations of law infringements committed by RIS;
- d. to examine all reports presented, according to the law, by the director of the RIS and to present its own report to the Permanent Bureaus of both Chambers of the Parliament.

In exercising its attributions, the Committee may request the RIS to present reports, written explanations, documents, information and data, and may hear any person. SIR is obliged to transmit to the Committee all information requested and to facilitate the hearing of any persons. With the approval of the Committee, RIS is not obliged to present data on on-going intelligence activities, and on concrete methods and means used in the intelligence activity that are in accordance with the Romanian Constitution and the national legislation.

Annually or whenever decided by the Parliament, the director of the RIS presents reports to the Parliament on the exercise of its attributions established by law.

The functioning of the control mechanism allowed the members of the Control Parliamentary Committee to express objective opinions on:

- the whole picture of the internal regulations on the functioning of RIS, as far as their legality is concerned;
- the conformity with the relevant legal provisions of the activities performed by the RIS that imply temporary restrictions on some fundamental rights and freedoms

- the way in which the archive of the institution, the rules regarding the access, consultation and documentation and the measures to deposit, preserve and protect the archive funds are organized;

- the execution of the budget, in accordance with the legal provisions.

The conclusions drawn by the successive controls made by the Committee proved that the activity of the RIS is based exclusively on respecting the principles of the Constitution and of the domestic laws.

The parliamentary control has become an instrument of establishing and adjusting the activities of the Romanian Intelligence Service and a guide in the process of reconsidering the activity of internal control.

The relation with the Romanian Parliament has evolved, especially in the recent years, the management of the institution considering with interest and co-operation the questions formulated by the parliamentarians as regards the activity of the Service, the collaboration with the different committees of the Parliament (other than the Control Committee, mainly the committees for defence, public order and national security), as well as the debates on some draft laws with relevance for the national security.

2. Strategic co-ordination

In the relation with the RIS, the SNDC:

- decides / approves the strategic guidelines of the RIS, according to the national security strategy and the evolutions in the operational context;

- approves the internal norms regulating the functioning of the RIS;

- approves the protocols of co-operation with other Romanian institutions belonging to the system of national security, as well as the co-operation with foreign intelligence services;

- analyzes and approves, individually or in co-operation with other institutions of the system of national security, all essential aspects regarding the objectives of the institution and the way in which the institution is functioning;

- assesses the outcome of the activity of the RIS;

- approves the structural and organizational changes, as well as the appointments of the institution's management.

3. Judicial control

Judiciary authorities have also a certain control on the activity of RIS.

According to the legal provisions, if the RIS discovers evidence of a possible breach of the Law on national security, all relevant information is forwarded to the competent judiciary authorities (the Prosecutor and the specialized structures of the Ministry of Administration and Interior) for further investigation. As mentioned above, the RIS cannot perform criminal investigation activities, cannot detain persons and does not have in its administration detention facilities.

In case of suspicions of threats to the national security, the RIS may be authorized by a judge¹ to perform surveillance activities, in order to collect information, while respecting the

¹ Article 13 of the Law 51 / 1991 on the national security of Romania and article 10 of the Law 14/ 1992 on the organization and functioning of the Romanian Intelligence Service stipulate that the authorization is afforded by the prosecutor, in accordance with the provisions of the Criminal Procedure Code. Subsequently,

provisions of the Code of Criminal Procedure. The authorization is afforded after analyzing the information and data obtained by RIS, certifying a suspicion of threats to the national security.

With the approval of the judge, and in order to collect information regarding Romania's national security, the intelligence officers have the right to proceed to acts which involve the restriction of the exercise of some fundamental rights and freedoms, such as the right to respect one's family and private life, the right to the inviolability of the domicile, the right to respect one's correspondence, the right of property.

These activities might consist in intercepting communications, collecting information, documents and other written forms, activities which need the access to specific places, objects, the opening of a specific object, the examination of documents, to extract information, recording, copying or providing excerpts by any kind of procedure, as well as installing, maintaining and removing these objects from the places where they were deposited.

All these activities may be performed only within the conditions provided by the mandate granted by the judge, which confers to the entitled persons the right to use the adequate means to put into practice the authorized acts, without any kind of physical or moral constraint. The means of collecting the necessary information to protect national security must not affect the rights and freedoms of the citizens, their private life, dignity and reputation, any person being protected by law against any of such interference.

Those guilty of initiating, transmitting or implementing such measures, without legal basis, as well as of abusive implementation of the measures of preventing, discovering or counteracting the threats to the national security are subject to criminal, administrative or civil penalties (Art. 16 (2), Law 51/1991).

Art. 16 (3) of Law 51/1991 stipulates that any persons who considers that his / her legitimate rights, freedoms or interests were affected by the use of means for collecting the necessary information to protect national security, may appeal to any of the permanent parliamentary committees for defending national security and public order.

B. Mechanisms for controlling the activity of the Foreign Intelligence Service

The Foreign Intelligence Service is the competent authority in the field of foreign intelligence that regards Romania's national security. The organization and functioning of the FIS is regulated by Law 1 / 1998.

In accordance with article 9 (1) of Law 1 / 1998, FIS performs its activity in accordance with the Romanian Constitution, the national legislation, the decisions of the SCND, and with military regulations.

The FIS is authorized, under the conditions provided by the law, to use different methods, to create and to dispose of adequate means for obtaining, verifying, evaluating and collecting data and information on national security. Article 10 (3) of the Law 1 / 1998 stipulates that the methods used to collect, to verify and to use these data and information shall not affect in any way the fundamental rights and freedoms, the private life, the honour and reputation of the citizens and will not subject them to illegal restrictions.

The democratic control of the activity of the FIS is realized on several dimensions, as follows:

the Parliament adopted Law no. 281 / 2003 for the amendment of the Criminal procedure Code, which provides that the authorization has to be issued by a judge.

- *parliamentary control*, by the Special Parliamentary Committee for the control on the activity of the Foreign Intelligence Service;
- *strategic co-ordination of the activity*, made by the SCND

1. Parliamentary control

The Decision 44/ 1998 of the Parliament established the Special Parliamentary Committee for the control on the activity of the Foreign Intelligence Service.

The Parliamentary Committee has the following attributions:

- a. to analyze and verify the respect of the Romanian Constitution and legislation by FIS;
- b. to verify if the internal norms and acts, issued by the management of FIS, are in conformity with the Romanian Constitution and the domestic legislation, with the decisions of the Supreme Council of National Defense and with the Government's decisions regarding the implementation of the SCND decisions;
- c. to examine the cases in which violations of the provisions Constitution or of other internal laws have been reported and to decide over the measures needed to restore the legality;
- d. to analyze, verify and resolve the complaints of the citizens who consider that their rights and freedoms were affected by the methods used for obtaining the information concerning the national security and the defense of the interests of the Romanian state; to examine and solve all complaints regarding allegations of law infringements committed by FIS;
- e. to verify the way FIS promotes the interests of Romania and the manner in which the activity of FIS is mainly oriented towards identifying, analyzing, maintaining under control and eliminating the risks to national security;
- f. to verify the way in which FIS is collaborating and the degree of interoperability between FIS and other institutions with responsibilities in the field of national security;
- g. to verify the way FIS cooperates with similar foreign agencies.

In conclusion, the Committee ensures the legality and constitutionality of FIS activity, examines complaints referring to potential misconduct of FIS and decides the appropriate measures needed in such cases. It also verifies the way FIS cooperates with similar foreign bodies. The Committee is entitled to request FIS documents, data and information, and to have hearings with regard to the matters analyzed. FIS is required to answer timely to the requests of the Committee and to ensure the hearings of the persons nominated by the Commission. The FIS may not transmit information on on-going or planned intelligence activities related to national security, appreciated as such by the Committee, following the recommendation of the SCND. The same exception applied to the information that might uncover intelligence officers, identify information sources, or reveal the concrete methods and means used in the intelligence activity, that are in accordance with the Romanian Constitution and the national legislation.

At the request of the standing bureaus of the two chambers of the Parliament or whenever it considers necessary, the Committee elaborates and presents reports regarding its conclusions resulted from overseeing the activity of FIS.

2. Strategic co-ordination

Based on the approval of SCND and according to the law regarding its internal organization, FIS may establish relations with similar bodies from abroad and, in certain precisely determined cases, it can cooperate with partner agencies from abroad.

FIS is obliged to present to SCND periodical reports with respect to the fulfilment of its duties and responsibilities.

2. Control mechanisms regarding transiting aircraft which may be used for rendition purposes by foreign agencies and whether and to what extent your authorities may exercise jurisdiction over such aircraft

A. Relevant provisions of international law

Aerial navigation is, presently, codified in three main international documents, to which Romania is a party:

- A) *Convention on Aerial Navigation (Paris, 1919)*
- B) *Convention on International Civil Aviation (Chicago, 1944)*
- C) *Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo, 1963)*

Out of the three Conventions only the Paris Convention covers the military aircrafts, the other two explicitly excluding from their scope the state aircrafts² (Art. 3 of the Chicago Convention and Art. 1(4) of the Tokyo Convention).

The nationality of the aircraft, either military or civil, is that of the State of registration³, and usually the State of registration exercises the jurisdiction on the offences and acts committed on board aircrafts⁴. Consequently, as stated in article 4 of the Tokyo Convention, the criminal jurisdiction of a State cannot be exercised over an offence committed on board a foreign aircraft, except in those situations explicitly mentioned in the text of the Convention⁵.

The situation is complex in the case of State aircrafts enjoying immunity of jurisdiction, if authorized to use the airspace of a third State. The immunity covers, as well, the aircraft personnel for acts committed on board the aircrafts and for those committed on the territory of the State where the aircraft made a stop⁶.

² According to article 30 of the Paris Convention, *the following shall be deemed to be State aircraft: military aircraft and aircraft exclusively employed in State service, such as Posts, Customs, Police.*

³ Art. 6, *Paris Convention*

⁴ Art. 3, *Tokyo Convention*

⁵ Art. 4 - *A Contracting State which is not the State of registration may not interfere with an aircraft in flight in order to exercise its criminal jurisdiction over an offence committed on board except in the following cases:*

(a) *the offence has effect on the territory of such State;*
 (b) *the offence has been committed by or against a national or permanent resident of such State;*
 (c) *the offence is against the security of such State;*
 (d) *the offence consists of a breach of any rules or regulations relating to the flight or manoeuvre of aircraft in force in such State;*
 (e) *the exercise of jurisdiction is necessary to ensure the observance of any obligation of such State under a multilateral international agreement.*

⁶ Ian Brownlie - *Principles of Public International Law*, 3rd Edition, Calderon Press - Oxford, 1979, p. 366

A foreign aircraft should be fully authorized in order to legally enter and transit the airspace of a third State, otherwise being in breach of the sovereignty of the latter⁷.

B. Relevant provisions of the Romanian domestic law

One of the principles applicable within the Romanian criminal law is the principle of territoriality, according to which the law applies to all criminal offences committed on Romanian territory, including those committed on board the aircrafts during their transit through Romania.

1. Civil flights

The Romanian Civil Aerial Code (Law 130/2000 with following amendments and completions) and the other legal documents in the field regulate the civil aeronautical activities on the territory and in the national aerial space.

The Romanian Aerial Code applies to civil aeronautical activities and to physical and legal persons that deploy these activities in the national aerial space or on the territory of Romania, as well as to those who, through their activities, could jeopardize the flight safety and the aeronautical security.

The Romanian Aerial Code stipulates that the Ministry of Transport, Constructions and Tourism ensures, directly or through competency delegation, the designation of technical specialized bodies – public institutions or economical operators – the creation and the implementation of specific regulations, monitoring the flight safety, certificating the civil aeronautical agents, the civil aeronautical staff and the aeronautical techniques, sanctioning the activities done in areas under civil aeronautical servitudes, flight safety inspection, technical investigation of incidents and accidents in civil aviation, as well as the inspection and the aeronautical safety control.

In accordance with article 12 (1) of the Romanian Aerial Code, „every flight within the national aerial space shall be authorized”.

The Romanian Air Force Staff has the role to monitor the national airspace both for state or civil aircrafts, with or without permission to land on the Romanian airports /airdromes. According to the Government Decision no. 1172/ 2003, all flight authorization for general aviation flights, landing or transiting the Romanian territory, is granted by the Romanian Civil Aeronautic Authority, in full respect of the internal and international norms.

Regular and charter flights applying for permission are requested to specify the day and the hour of the flight, the departure point to / from Romania, the entrance and the exit points, the flight matriculation number, the operator, the nature of the charge and the purpose of the flight. No passenger list is requested by Romanian authorities. Still, such list may be obtained from the operator, upon special request.

As for non – commercial flights and private flights, the operator is requested to provide only the flight plan, in full compliance with the applicable standards. No further request containing flight details (such as the flight purpose, the nature of the charge, passengers on board, etc.) is required.

⁷ *Territory* means the state territory of Romania, including its territorial sea and air space above the territory and the territorial sea over which Romania exercises sovereignty, as well as the contiguous zone and the continental shelf and the exclusive economic zone over which Romania exercises, in accordance with its legislation and with the rules and principles of international law, sovereign rights and jurisdiction;

In accordance with article 107 of the Romanian Aerial Code, the illegal use of any device, weapon or substance, in order to produce a violence act against a person at the airport who serves the civil aviation is punished with imprisonment from 2 to 7 years. Committing any act of physical or psychic violence against a person on board of or preparing to fly civil aircraft is punished with imprisonment from 10 to 20 years and the prohibition of several rights.

2. Military flights

Under the provisions of the Romanian Government Decision no. 1172 / 2003, for the approval of legal procedures for diplomatic clearances issued for the flights of civil and state owned aircraft through Romanian air space, the Ministry of National Defense issues diplomatic clearances for the following aeronautical activities:

- the over flight of the airspace over Bucharest, bellow the altitude of 3000 meters, of the state owned or civil aircraft, registered in Romania or in foreign countries;
- the over flight of Romanian territory, by state owned aircraft registered in Romania or in foreign countries, with / without landing on Romanian airports, which carry troops, armament, ammunitions, explosive devices, radioactive materials and other dangerous materials;
- aero-fotogrammetric flights, flights with the purpose of aerial filming, aerial topographic surveys, made by state owned aircraft registered in Romania or in foreign countries;
- the over flight and landing on /taking off from Romanian military airbases of foreign state owned or civil aircraft.

Military aircrafts operating in the national air space under civil jurisdiction are requested to obtain, before getting the civil authorisation, the permission from the military authorities for the respective flight. No special regulations, obligations or restrictions apply for military flights except for those regulating civil flights.

If any military transport is operated by civil aircrafts, it is subject to the same procedure as mentioned before for civil flights.

According to the documents issued to clear the flights of US aircrafts which operated / flew on the basis of diplomatic clearances issued following specific requests of the US Embassy in Bucharest, the Ministry of National Defense authorized only flights using military call signs. There were no situations where civil US aircraft requested to operate on military airfields.

There are neither transfer centers, nor detention centers on the Romanian Air Force Bases.

The Ministry of National Defense does not monitor or manage the flights or the stop - over of aircrafts under the civil aeronautical jurisdiction and who operates with civil call sign on international airports in Romania.