



*Permanent Representation of Romania
to the Council of Europe*

The Ambassador

No.496

Strasbourg, 20 February 2006

Dear Mr. Secretary General,

Following your letter dated 21 November 2005 concerning your request to the Romanian Government on the basis of the provisions of Article 52 of the European Convention of Human Rights, I have the honour to forward hereby attached the letter addressed to you by Mr. Mihai-Razvan UNGUREANU, Minister of Foreign Affairs of Romania as well as the response of the Romanian Government to the question upended to your letter.

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

Yours sincerely,



Gheorghe MAGHERU

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**ROMANIA • THE MINISTRY OF FOREIGN AFFAIRS**

Bucharest, February 15, 2006

Dear Mr. Secretary General,

I have the honour of addressing to you with reference to the issue of the alleged secret detention centers in Europe.

As you are aware, from the very beginning Romania has paid great attention to this problem and adopted an open and co-operative approach towards all the investigations that were initiated on these allegations, regardless of their nature.

With regard to the investigation unfolded in accordance with Your prerogatives as Secretary General of the Council of Europe, please find attached the clarifications requested in Your letter from November 21st, 2005. The response of the Romanian Government also includes an appendix with excerpts from the relevant laws.

I take this opportunity to reassure you that, as a member of the Western community of values, Romania is devoted to supporting the rule of law, democratic institutions, promoting and defending human rights.

In my capacity of Chairman of the Committee of Ministers of the Council of Europe, I will take the necessary steps to ensure that, depending on the results of Your investigation, the Committee of Ministers will decide in due time on the appropriate steps to be further taken.

Looking forward to receive the final result of your investigation, please accept, dear Mr. Secretary General, the assurances of my highest consideration.

Yours truly,

Mihail - Razvan UNGUREANU,

Mihail - Razvan Ungureanu
MINISTER OF FOREIGN AFFAIRS

H. E. Terry DAVIS
Secretary General
Council of Europe
Strasbourg

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

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

The Romanian internal legislation as well as the international conventions to which Romania is a party ensure proper control on the actions of foreign agencies on the Romanian territory. In accordance with article 20 (2) of the Romanian Constitution "where any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favorable provisions".

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Pursuant to article 20 of the Romanian Constitution, if any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favorable provisions.

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

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

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

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

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

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

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

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

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

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

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

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

1. Laws ratifying the International Conventions on Human Rights

Law 30 / 1994 – Law for ratification of the Convention for Protection of Human Rights and Fundamental Freedoms and the additional Protocols to this Convention.

Law 80 / 1994 – Law for ratification of the European Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Protocols 1 and 2

Law 79 / 1995 - Law for ratification of the 11th Protocol of the European Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Law 7 / 2003 – Law for ratification of the 13th Protocol of the Convention for Protection of Human Rights and Fundamental Freedoms

Law 39 / 2005 – Law for ratification of the 14th Protocol of the European Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. Romanian Constitution

International Treaties on Human Rights

Article 20

(1) Constitutional provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties Romania is a party to.

(2) Where any inconsistencies exist between the covenants and treaties on the fundamental human rights Romania is a party to, and the national laws, the international regulations shall take precedence, unless the Constitution or national laws comprise more favorable provisions.

Free Access to Justice

Article 21

(1) Every person is entitled to bring cases before the courts for the defense of his legitimate rights, liberties and interests.

(2) The exercise of this right shall not be restricted by any law.

(3) All parties shall be entitled to a fair trial and a solution of their cases within a reasonable term.

(4) Administrative special jurisdiction is optional and free of charge.

Right to Life, Physical and Mental Integrity

Article 22

(1) The right to life, as well as the right to physical and mental integrity of person are guaranteed.

(2) No one may be subjected to torture or to any kind of inhuman or degrading punishment or treatment.

(3) The death penalty is prohibited.

Individual Freedom

Article 23

- (1) Individual freedom and security of a person are inviolable.
- (2) Search, detainment, or arrest of a person shall be permitted only in the cases and under the procedure provided by law.
- (3) Detention shall not exceed twenty-four hours.
- (4) Preventive custody shall be ordered by a judge and only in the course of criminal proceedings.
- (5) During the criminal proceedings, the preventive custody may only be ordered for 30 days at the most and extended for 30 days at the most each, without the overall length exceeding a reasonable term, and no longer than 180 days.
- (6) After the lawsuit has begun, the court is bound, according to the law, to check, on a regular basis and no later than 60 days, the lawfulness and grounds of the preventive custody, and to order at once the release of the defendant if the grounds for the preventive custody have ceased to exist or if the court finds there are no new grounds justifying the continuance of the custody.
- (7) The decisions by a court of law on preventive custody may be subject to the legal proceedings stipulated by the law.
- (8) Any person detained or arrested shall be promptly informed, in a language he understands, of the grounds for his detention or arrest, and notified of the charges against him, as soon as practicable; the notification of the charges shall be made only in the presence of a lawyer of his own choosing or appointed ex officio.
- (9) The release of a detained or arrested person shall be mandatory if the reasons for such steps have ceased to exist, as well as under other circumstances stipulated by the law.
- (10) A person under preventive custody shall have the right to apply for provisional release, under judicial control or on bail.
- (11) Any person shall be presumed innocent till found guilty by a final decision of the court.
- (12) Penalties shall be established or applied only in accordance with and on the grounds of the law.
- (13) The freedom deprivation sanction can only be based on criminal grounds

Right to Defense

Article 24

- (1) The right to defense is guaranteed.
- (2) All throughout the trial, the parties shall have the right to be assisted by a lawyer of their own choosing or appointed ex officio

Courts of law

Article 126

- (1) Justice shall be administered by the High Court of Cassation and Justice, and the other courts of law set up by the law.

(2) The jurisdiction of the courts of law and the judging procedure shall only be stipulated by law.

(3) The High Court of Cassation and Justice shall provide a unitary interpretation and implementation of the law by the other courts of law, according to its competence.

(4) The composition of the High Court of Cassation and Justice, and the regulation for its functioning shall be set up in an organic law.

(5) It is prohibited to establish extraordinary courts of law. By means of an organic law, courts of law specialized in certain matters may be set up, allowing the participation, as the case may be, of persons outside the magistracy.

(6) The judicial control of administrative acts of the public authorities, by way of the contentious business falling within the competence of administrative courts, is guaranteed, except for those regarding relations with the Parliament, as well as the military command acts. The administrative courts, judging contentious business have jurisdiction to solve the applications filed by persons aggrieved by statutory orders or, as the case may be, by provisions in statutory orders declared unconstitutional

3. Criminal Code

Territorial Nature of Criminal Law

Article 3

(1) Criminal Law shall apply to offences committed on Romanian territory.

Jurisdiction Immunity

Article 8

Criminal law does not apply to offences committed by diplomatic representatives of foreign States or by other persons who, according to international conventions, are not subject to criminal jurisdiction in Romania.

Illegal deprivation of freedom

Article 189

(1) Illegal deprivation of freedom against a person shall be punished by imprisonment from 3 to 10 years.

(2) If the act is committed in one of the following circumstances - by simulating official qualities; by abduction; by a person who is armed; by two or more persons together; if in exchange for release a material or any other benefit is demanded; if the victim is a minor, or if the victim is subjected to suffering or his/her health or life is endangered, the penalty shall be imprisonment from 7 to 15 years.

(3) If the illegal deprivation of freedom is committed with the purpose of obliging the victim to practice prostitution, the penalty applied shall be imprisonment from 7 to 15 years.

(4) If for the person's release it is demanded, in any way, that the State, a natural or legal person, an international or intergovernmental organisation or a group of persons should accomplish or should not accomplish a certain act, the penalty shall be imprisonment from 15 to 20 years.

(5) If the deeds mentioned at paragraphs (1) – (4) are committed by a person belonging to an organized group, the penalty shall be imprisonment from 5 to 15 years, for paragraph (1), imprisonment from 7 to 18 years, for paragraph (2) and (3) and imprisonment from 10 to 20 years for paragraph (4)

(5) If the act resulted in the victim's death or suicide, the penalty shall be imprisonment from 15 to 25 years.

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Malfesance against persons' interest

Article 246

The act of a public servant, who, in the exercise of service prerogatives, knowingly fails to perform an act or performs it erroneously and by this infringes upon the legal interests of a person, shall be punished by imprisonment from 6 months to 3 years.

Malfesance by limitation of certain rights.

Article 247

The act committed by a public servant of limiting the use or exercise of the rights of any citizen or of creating for a citizen situations of inferiority based on nationality, race, gender or religion, shall be punished by imprisonment from 6 months to 5 years.

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Illegal arrest and abusive prosecution

Article 266

(1) The act of illegally confining or arresting, or subjecting a person to the execution of a penalty, safety or educatory measures, in other ways than those provided in the law, shall be punished by imprisonment from 6 months to 3 years.

(2) The use of promises, threats or violence against a person undergoing criminal investigation, prosecution or trial, in order to obtain statements, shall be punished by imprisonment from one to 5 years.

(3) The same penalty shall sanction also the use of promises, threats or violence upon a witness, an expert or interpreter.

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Subjection to ill treatment

Article 267

Subjection to ill treatment of a person in a state of detainment, detention or executing a security or educatory measure, shall be punished by strict imprisonment from one to 5 years.

Torture

Article 267¹

(1) An act deliberately causing a person pain or intense suffering, either physically or mentally, in order to obtain from that person or from a third party information or confessions, to punish him/her for an act committed by him/her or a third party or that he/she or a third party is suspected to have committed, to intimidate or exercise pressure on him/her or on a third party, or for any other reason based on a form of discrimination, regardless of its nature, when such pain or suffering is applied by an agent of public authority or by any other person acting in official capacity or upon instigation or with the express or tacit consent of such persons shall be punished by imprisonment from 2 to 7 years.

(2) If the act in para. 1) resulted in any of the consequences in Art.181or Art.182 the penalty shall be imprisonment from 3 to 10 years.

(3) Torture that resulted in the victim's death shall be punished by life detention or by imprisonment from 15 to 25 years.

(4) Tentative is punished.

(5) No exceptional circumstance, whatever its nature may be, regardless of whether it is a state of war or of war threats, internal political instability or any other exceptional state, can be invoked to justify torture; also, the order of the law or command of legitimate authority cannot be invoked either.

(6) Acts in para.(1) shall not be offences of torture if the pain or suffering are the exclusive result of legal sanctions and are inherent to these sanctions or caused by them

Unjust Repression

Article 268

The act of initiating the criminal action against, of ordaining the arrest, of sending to justice or of convicting a person, while aware that he/she is not guilty, shall be punished by imprisonment from 2 to 7 years.

4. Criminal Procedure Code

The guarantee of the person's liberty

Article 5

(1) The person's liberty is guaranteed all throughout the criminal trial.

(2) No person may be retained, arrested or deprived of liberty in any way or subjected to any form of liberty restraint, except for the cases and circumstances stipulated by the law.

(3) If the person subjected to preventive arrest or hospitalization or any measure of liberty restraint considers such measures illegal, he/she has the right, during the trial, to bring the matter to the attention of the competent court, under the law.

(4) Any person who was, during the criminal trial, deprived of liberty, or whose liberty was restrained, illegally or unjustly, is entitled to reparation of the damages, in the conditions stipulated by the law.

(5) During the criminal trial, the accused person or the defendant who is preventively arrested may require temporary release, under judicial supervision or on bail.

The respect of human dignity

Article 5¹

Any person subjected to criminal investigation or to criminal trial must be treated with respect for human dignity. Torture and cruel, inhuman or degrading treatment are punished under the law.

Presumption of innocence

Article 5²

Any person shall be presumed innocent till found guilty by a final decision of the court.

The guarantee of the right to defense

Article 6

(1) The right to defense is guaranteed to the accused person, to the defendant and to the other parties all throughout the criminal trial.

(2) During the criminal trial, the judicial bodies must ensure the parties' full exertion of their procedural rights, under the circumstances stipulated by the law and must administrate the evidence necessary for defense.

(3) The judicial bodies must inform the accused person or the defendant, immediately and before hearing, of the deed of which he is held responsible and of its judicial status, and must ensure the preparation and exertion of his/ her defense.

(4) Any party is entitled to assistance by defender during the criminal trial.

(5) The judicial bodies must inform the accused person or the defendant, before his/ her first statement, on his/ her right to be assisted by a defender; this will be recorded in the official report of the hearing. Under the circumstances and in the cases stipulated by the law, the judicial bodies must provide judicial assistance for the defendant, if the latter has not chosen a defender.

The lawful cessation of preventive measures

Article 140

(1) The preventive measures lawfully stop in the following cases:

a) expiration of the due times stipulated by the law or settled by the judicial bodies;

b) exemption from investigation, cessation of criminal investigation, closing of the criminal trial or acquittal.

(2) The preventive arrest measure lawfully ceases when, before passing a conviction decision in first instance, the duration of the arrest has reached half of the maximum punishment stipulated by the law for the respective offence, without exceeding, during criminal investigation, the maxim provided at art. 159 par. 13, as well as in the other cases especially stipulated by the law.

(3) In the cases shown at paragraph 1 and 2, the court, ex officio or upon notification from the prosecutor, or the prosecutor, in the case of confinement, ex officio or, as a result of informing the investigation body, must order the immediate release of the person held or arrested. Also, they must send to the administration of the detention place a copy of the ordinance or disposition, or an extract including the following specifications: the data necessary to identify the accused person or defendant, the number of the arrest warrant, the number and date of the ordinance, of the closing or decision by which the release was ordered, as well as the legal justification for release.

Complaint against the ordinance of the prosecutor or criminal investigation body regarding the measure of confinement

Article 140¹

(1) Complaint may be made against the ordinance of preventive arrest issued by the criminal investigation body, before the expiry of the 24 hours from taking the measure, at the prosecutor who supervises the criminal investigation. Complaint may be made against the ordinance issued by prosecutor for taking this measure, before the expiry of 24 hours, at the prime-prosecutor of the prosecutor's office or, according to the case, to the hierarchically superior prosecutor, in the conditions of art. 278 par. 1 and 2.

(2) The prosecutor decides through ordinance before the expiry of the 24 hours from taking the measure of confinement.

(3) If he/she considers the measure of confinement illegal or not justified, the prosecutor orders its revocation.

Complaint against prosecutor ordinance regarding preventive measures provided at art. 136 let. b) and c)

Article 140²

(1) Complaint may be made against the prosecutor ordinance disposing, the measure of interdiction to leave the locality or the measure of interdiction to leave the country, by the accused person or defendant, within 3 days from taking the measure, at the court that would have the competence to try the case at first instance.

(2) The complaint will be examined in the council room.

(3) The summoning of the accused person or defendant is obligatory. His/her absence does impede on the complaint judgment.

(4) The prosecutor's attendance to the complaint judgment is obligatory.

(5) The record of the case will be sent to the court, within 24 hours, and the complaint is solved in 3 days due time.

(6) The court decides on the same day, through closing.

(7) When the court considers the preventive measure illegal or unjustified, it orders its revocation.

(8) The execution of the accused person or defendant's complaint against the prosecutor ordinance, disposing the preventive measure, may not be suspended.

(9) The record is returned to the prosecutor within 24 hours from the solution of the complaint.

Confinement conditions

Article 143

- (1) The confinement measure may be taken by the criminal investigation body against the accused person if there are pieces of evidence or strong signs that he/she committed a deed stipulated by the criminal law. The criminal investigation body must immediately inform the prosecutor about taking the measure of confinement.
- (2) The criminal investigation body will inform the accused person of his right to appoint a defender. Also, he/she is informed of his/her right not to make any statement, and on the fact that anything he/she declares may be used against him/her as well.
- (3) The confinement measure may be taken also by the prosecutor, in the conditions of par. 1 and 1¹, in which case the head of the prosecutor's office where he/she functions is informed.
- (4) The confinement measure is taken in the cases stipulated by art. 148, regardless of the limits of the imprisonment punishment stipulated by the law for the deed committed.
- (5) The existence of strong signs means that the data on the case lead to the presupposition that the person criminally investigated committed the deed.

Arrest of the accused person during criminal investigation

Article 146

- (1) The prosecutor, ex officio or solicited by the criminal investigation body, when the conditions stipulated in art. 143 are met and there is evidence from which results one of the cases provided at art. 148, if he considers the accused person's arrest to be in the interest of the criminal investigation, and only after hearing the latter in the presence of his/her defender, presents the case file, with the motivated proposal to take the measure of preventive arrest of the accused person, to the president of the court or to the judge delegated by the latter.
- (2) The file is presented to the president of the court that would be competent to judge the case at first instance, or of the corresponding court in whose jurisdiction the detention place is, or to the judge delegated by the court president.
- (3) At the presentation of the file by the prosecutor, the court president or the delegated judge settle the day and hour for the solution of the proposal for preventive arrest, before the expiry of the 24 hours, in case the accused person is held. The day and the hour are communicated both to the chosen or appointed ex officio defender and to the prosecutor, the latter being obliged to ensure the presence in front of the judge of the accused person confined.
- (4) The proposal for preventive arrest is solved in the council room by only one judge, regardless of the nature of the offence.
- (5) The accused person is brought in front of the judge and will be assisted by a defender.
- (6) The provisions of art. 149¹ par. 6 and of art. 150 are applied accordingly.
- (7) The prosecutor's attendance is obligatory.
- (8) After hearing the accused person, the judge immediately admits or rejects the proposal of preventive arrest, through motivated closing.

(9) If the conditions provided at par. 1 are met, the judge orders, by closing, the preventive arrest of the accused person, showing the reasons justifying the preventive arrest and settling its duration, which may not exceed 10 days.

(10) At the same time, the judge, after admitting the proposal, urgently issues an arrest warrant for the accused person. The warrant includes the corresponding specifications mentioned in art. 151 par. 3 letters a) - c), e) and j), as well as the accused person's name and surname and the duration of the preventive arrest.

(11) The provisions of art. 152 par. 1 are applied accordingly.

(12) Recourse may be introduced against the closing, within 24 hours from the passing, for those present, and from the communication, for those absent.

Conditions and cases in which the arrest of the defendant is disposed

Article 148

(1) The arrest measure may be taken against the defendant if the conditions stipulated in art. 143 are met and only in one of the following cases:

a) the defendant's identity or domicile cannot be clarified without the necessary data;

b) the offence is flagrant, and imprisonment punishment stipulated by the law is longer than one year;

c) the defendant has run away or hidden himself with the purpose of escaping the investigation or the trial, or has made preparations to do so, as well as if during the trial, there are signs that the defendant wants to escape the execution of punishment;

d) there are sufficient data that the defendant has tried to impede the revealing of the truth, by influencing a witness or an expert, by destroying or altering the material means of evidence or by other such acts;

e) the defendant has committed a new offence or there are data that justify the fear that he might commit other offences;

f) the defendant is recidivist;

g) abrogated;

h) the defendant has committed an offence for which the law stipulates imprisonment for life alternatively with a imprisonment punishment or imprisonment for more than 4 years and there is clear evidence that the release would be too great a danger for the public order;

i) there are sufficient data or signs which motivate the fear that the defendant will exert pressure on the injured person or will attempt to make an illegal agreement with the latter.

(2) In the cases stipulated at par. 1 letters c)-f) and i), the arrest measure may be taken against the defendant only if the punishment stipulated by the law is imprisonment for life or imprisonment for more than 2 years.

Duration of the defendant's arrest

Article 149

(1) The duration of the defendant's arrest during criminal investigation may not exceed 30 days, except for the case when it is extended under the law. The due time is calculated from the date when the warrant was issued, when the arrest was ordered after hearing the defendant, and in case the arrest was ordered in the defendant's absence, the due time is calculated from the date of execution of the arrest warrant.

(2) When a case is moved in the course of criminal investigation from one investigation body to another, the arrest warrant previously issued remains valid. The duration of the arrest is calculated according to the provisions of the previous paragraph.

Arrest of the defendant during criminal investigation

Article 149¹

(1) The prosecutor, ex officio or solicited by the criminal investigation body, when the conditions stipulated in art. 143 are met and there is evidence from which results one of the cases provided at art. 148, if he considers the defendant's arrest to be in the interest of the criminal investigation, and only after hearing the latter in the presence of his/her defender, presents the case file, with the motivated proposal to take the measure of preventive arrest of the defendant, to the president of the court or to the judge delegated by the latter.

(2) The file is presented to the president of the court that would be competent to judge the case at first instance, or of the corresponding court in whose jurisdiction the detention place is, or to the judge delegated by the court president.

(3) At the presentation of the file by the prosecutor, the court president or the delegated judge settle the day and hour for the solution of the proposal for preventive arrest, before the expiry of the preventive arrest warrant of the accused person which became defendant or, in case the defendant is held, until the expiry of the 24 hours of confinement. The day and the hour are communicated both to the chosen or appointed ex officio defender and to the prosecutor, the latter being obliged to ensure the presence in front of the judge of the confined or arrested defendant.

(4) The proposal for preventive arrest is solved in the council room by only one judge, regardless of the nature of the offence.

(5) The defendant is brought in front of the judge and will be assisted by a defender.

(6) In case the defendant is in a state of confinement or arrest according to art. 146 and because of the state of his/her health or because of emergency reasons or necessity he/she cannot appear in court, the arrest proposal will be examined in the absence of the defendant, but in the presence of the defender who is allowed to pass conclusions.

(7) The provisions of art. 150 are applied accordingly.

(8) The prosecutor's attendance is obligatory.

(9) The judge admits or rejects the proposal of preventive arrest, through motivated closing.

(10) If the conditions provided at par. 1 are met, the judge orders, by closing, the preventive arrest of the defendant, showing the reasons justifying the preventive arrest and settling its duration, which may not exceed 30 days.

(11) The defendant's arrest may be disposed only for the days left after subtracting from 30 days the period when he/she was previously held or arrested. The preventive arrest of the defendant is ordered before the expiry of the duration of the accused person's arrest.

(12) The provisions of art. 146 par. 10 and of art. 152 par. 1 are applied accordingly.

(13) Recourse may be introduced against the closing, within 24 hours from the passing, for those present, and from the communication, for those absent.

(14) The provisions of previous paragraphs are applied also for the case when the prosecutor initiates the criminal action before the expiry of the duration of the accused person's arrest warrant. The accused person's arrest warrant ceases at the date when the defendant's arrest warrant is issued.