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**OPEN-ENDED INTERGOVERNMENTAL EXPERT GROUP  
ON THE STANDARD MINIMUM RULES FOR THE  
TREATMENT OF PRISONERS  
VIENNA, AUSTRIA, 25 – 28 March 2014**

**RESPONSE OF THE GOVERNMENT OF ROMANIA<sup>1</sup>  
TO NOTE VERBALE CU 2013/129/DO/JS**

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<sup>1</sup> This document is reproduced in the form and language in which it was received.



Open-Ended Intergovernmental Expert Group on the Standard Minimum Rules of Prisoners

28-31 January 2013, Brasilia

**Romania's comments with regard to the proposal on the amendment of the Standard Minimum Rules for the Treatment of Prisoners<sup>1</sup>**

***Area (a): Respect for prisoners' inherent dignity and value as human beings (rules 6, paragraph 1; 57-59; and 60, paragraph 11)***

It is necessary to examine the opportunity to supplement the general principles with the ones already reflected in other international (regional) instruments – the Council of Europe Recommendation on the European Prison Rules no. Rec (2006)2 of 11 January 2006 (further referred to as E.P.R.)

Another topic that could be reflected upon refers to the need to supplement the Standards with a provision including the principle according to which the lack of financial resources in a State does not represent a justified reason to infringe upon the human dignity, as often mentioned in the case law of the European Court of Human Rights.

***Area (b): Medical and health services (rules 22-26; 52; 62; and 71, paragraph 2)***

Referring to the medical and health services for prisoners, our proposal is to add the following provisions to the Standards:

- to ensure at all times that a qualified medical practitioner is available without delay in cases of urgency (similar to paragraph 41.2 of the E.P.R.);
- to monitor the general conditions which may have consequences on the health of the prison population: preparation and serving of food and water; control of the water sources, hygiene, heating, lighting and ventilation of the prison facility (similar to paragraph 44 of the E.P.R.);
- to add separate, special provisions for the observation and treatment of prisoners suffering from mental disorder or abnormality (similar to paragraph 47 of the E.P.R.);

**Area (c) Disciplinary action and punishment, including the role of medical staff, solitary confinement and reduction of diet,**

<sup>1</sup> The response comprises the opinions and proposals of the National Administration of Penitentiary as well as the Directorate Drafting Normative Acts within the Romanian Ministry of Justice





With special reference to paragraphs d) and e), we believe that the amendment of the current rules must meet the general and special needs of the prisoners, including the action of keeping a satisfactory contact with the outside environment. To this aim, we believe that the current proposals are satisfactory.

Currently, the Romanian legal framework forbids solitary confinement when applied to minors. The intimate visit represents a conditional right, as granting this right is conditioned by meeting certain requirements according to the law.

According to the new legal provisions which will enter into force on 01.02.2014, the disciplinary actions which may be applied to prisoners are:

- *Warning;*
- *Suspension of the right to attend cultural, artistic and sports activities, for a period of up to one month;*
- *Suspension of the right to work, for a period of up to one month;*
- *Suspension of the right to receive and to buy goods, except for those necessary for personal hygiene or exercise of the rights to defence or to petition, correspondence and medical care, for a period of up to two months;*
- *Suspension of the right to receive visits, for a period of up to 3 months;*
- *Solitary confinement for up to 10 days,*

and those applied to juveniles, are:

- *Warning;*
- *Suspension of the right to attend cultural, artistic and sports activities, for a period of up to one month;*
- *Suspension of the right to work, for a period of up to one month;*
- *Suspension of the right to receive and to buy goods, except for those necessary for personal hygiene or exercise of the rights to defence or to petition, correspondence and medical care, for a period of up to two months;*
- *Separation from the group, for up to 4 hours per day, without exceeding 5 consecutive days.*

We believe that the new legal framework would correspond to the current proposal to amend the rules. We agree with the proposal that prolonged and indefinite solitary confinement should be forbidden as a coercion measure during the executing of punishment.

With reference to Area (c) **Disciplinary action and punishment**, including the role of medical staff, solitary confinement and reduction of diet, paragraph (g), namely the deletion in rule 32 of the reference to the medical officer examining prisoners and





certifying them fit for punishment, one opinion may be that provisions of the current section 3 in Article 32 should be maintained at least, taking into account that it refers to the medical supervision of the prisoners already executing a disciplinary action and deleting the obligation of the medical personnel to monitor the health condition of these individuals may lead to the impossibility of interrupting the action if their health condition deteriorates.

Also, simple deletion in rule 32 of the possibility to reduce the diet as a punishment, as well as the deletion of the provision that the medical officer examine the prisoners and certify them fit for solitary confinement, does not solve the problem entirely. We believe that in such a sensitive environment, in what concerns the diet and health of the prisoners, a specific rule is required to be added in the Standards.

***Area (d): Investigations of all deaths in custody, as well as of any signs or allegations of torture or inhuman or degrading treatment or punishment of prisoners (rules 7, 44 bis and 54 bis)***

Our proposal is to add a new rule 44 bis with the following contents: *the obligation of prison administrations to initiate and facilitate prompt to the competent State authorities the performance of thorough and impartial investigations of [all incidents of death in custody] [incidents of unnatural, violent or unknown death], or shortly following release, including with independent forensic or post-mortem examinations, as appropriate.* It is strengthened the idea *that* the prison administration does not have the duty to make independent forensic examinations, as this activity is ensured by other appropriate authorities.

**Referring to Area (e) Protection and special needs of vulnerable groups deprived of their liberty**, taking into consideration countries in difficult circumstances (rules 6 and 7) to add a paragraph to rule 6 addressing prisoners with special needs, we believe that the proposal could be supported in the proposed form.

***Area (f): The right of access to legal representation (rules 30; 35, paragraph 1; 37; and 93)***

In what concerns the proposal to add in rule 93 (*"To replicate, in rule 93, the language of more recent international standards and norms addressing the access of detainees to legal advice, including to be granted such right without delay, interception and in full confidentiality, subject to suspension or restriction only in exceptional circumstances to be specified by law or lawful regulations, when it is considered indispensable in order to maintain security and good order"*), details and clarifications are required with reference





to the terms concerning the access of detainees to legal advice, without the possibility to intercept (phone calls) and in compliance with the standards of confidentiality – “*interception and in full confidentiality*”.

**Area (g): Complaints and independent inspection (rules 36 and 55)**

In what concerns the proposal to add in rule 39 (“*To extend, in rule 36, paragraph 3, the right to make complaints to the prisoner’s legal counsel, and, in case neither the prisoner nor his or her legal counsel are able to exercise this right, to a member of the prisoner’s family or any other person who has knowledge of the case in equal conditions before the law*”), the re-examination of the amendment proposal is required, as it is not clear who has the right to make complaints on behalf of the prisoner, apart from his/her family, taking into consideration that the terms are wide and not very precise.

