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CONTRIBUTION FROM

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Mechanisms for Treatment of Human Rights Issues in National Parliaments

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Contribution by Mr. Constatin Sava,
Secretary General of the Senate of Romania
to the General Debate on Mechanisms
for Treatment of Human Rights Issues
in National Parliaments

I. According to the Constitution of Romania, the Parliament-The Senate and The Chamber of Deputies- is the supreme representative body of the Romanian people and the sole legislative authority of the State. As such, **the Senate** is an expression of the national will and among its most important functions is the **legislative one**, representing a real framework for the promotion of human rights principles.

1. The legislative function is mainly performed as follows:

- for each draft law or legislative proposal, the initiator has the duty to present proper paper on the necessity and opportunity of such a normative act and on the social implications implied, including the process of becoming part of the Romanian Legislation. *
- during the legislative processes the Parliament studies, debates and advises the legislative proposals and draft laws;
- the debates may lead to the adoption of some amendments which, very often, change and substantially enrich the content of the normative acts;
- due to the complexity of the ongoing political, economic and social process, after adoption, often the Parliament often decides to review and complete the legislation

All these aspects reveal the dynamism of the legislative process,

*However, the initiator –any senator, group of senators, citizens or Government – is not bound by the law to present a study on the impact of the legislation on human rights issue.

which obviously, have to take into account the challenges, the requests of promotion of some rules, in one and another stage of development.

In the Senate, some specialized Committees are playing an important role in promoting and ensuring the respect for the human rights:

a. Standing Committees :

• **The Committee for Human Rights and Minorities.** Apart of its main task to analyse the legislation, and to elaborate reports and advises, the Committee has also the role of supervising the way the ministries and other state bodies of the public administration respect human and minorities rights.

Nevertheless the Committee does not necessarily analyse the impact of the legislation on human rights.

The Committee for inquiry of abuses, corruption and petitions, been mainly called upon to examining the petitions addressed in written form by the citizens. After considering the urgency of solving them, the Commission shall send the petition to the competent public authorities which are bound by the law to inform about its solution Senate, within a delay of 30 days.

b. Other Committees :

• **Special Committees** which are set up upon the proposal by Standing Bureau of the Senate, to advice on specific draft laws, to draw up relevant legislative proposals, or to examine some particular issues, which, obviously, may concern the respect of human rights too.

• **Investigation Committees** which are set up upon the request of one third of the members of the Senate, in order to investigate a special fact or event.

2. Alongside the legislative function, the Senate carries out, together with the Chamber of Deputies, another important function, not less important for the respect of the human rights and for the promotion of the democratic values: **the function of Parliamentary Control** over the actions of the Government and other agencies of Public Administration. The need of this function emerges directly out from the general principle of the separation of

powers of the state and also from the general principle of the social responsibility of the parliamentarians. The parliamentary control is performed through the followings forms and proceedings: motions, questions, interpellations, reports, programs presented to the Parliament, setting up of special committees, the right to ask for and to receive necessary information, solving the petitions received from the citizens.

In this regard, the Constitution of Romania stipulates that in the case the Members of the Government are requested to attend the proceedings of Parliament, their participation shall be compulsory in order to answer to the problems raised by the senators through the **questions or interpellations**. Within the function of parliamentary control the Senate or each senator may request the Government, the public authorities of the local administration or decentralised public services in their constituencies to provide documents, files and anyother information useful for his parliamentary activity.

At the same time, the **political declarations** made by the senators in the plenum of the Senate, each Monday afternoon, represent the strong signal focussing on the priorities and the issues of utmost importance for their electors. The meeting of the Senate dedicated to the presentation of the political declarations is usually broadcasted. Here, it is also very important to mention that citizens may address petitions asking for assistance to solve a particular situation or problem which may refer to certain abuses or violation of the human rights.

Other bodies charged, among their other attributions, to observe the respect and to scrutinise legislation on human rights are:

II. The Legislative Council, a specialised consultative body of the Parliament, which has among his duties:

- to analyse and to advice on the draft laws and legislative proposals in the regard of the respect of human rights;
- to elaborate, upon the request of the Senate, of the Chamber of Deputies, or on its own initiative, studies for the systematization, unification and co-ordination of the legislation

and, on that basis, to formulate motions to the Parliament and to the Government.

III. The Institution of the Advocate of the People ** is designed to protect the rights and freedoms of the citizens in their relations with the public authorities (according to Law No. 35/1997). Public authorities must communicate or make available to the Advocate of the People, within the terms of the law, any information, documents and papers they have in their possession which may have relevance to the complaints lodged with the Advocate of the People, while providing him support for exercising its. Annually or anytime at the request of the two Chambers of the Parliament, the Advocate of the People submits reports on its activity and, if necessary, recommendations regarding the amending of the legislation or other measures for safeguarding the citizens' rights and freedoms.

IV. The Romanian Institute for Human Rights**, which is functioning according to the Law. no 9/1991, represents an independent body having, among other attributions, the one to analyze different aspects of the promotion and respect for the human rights in Romania and internationally. Since the institute has a documentation and research profile, it has the competence of making consistent analysis on the impact of the legislation on human rights.

The Romanian Institute for Human Rights was established in order to ensure a better acknowledgement by the public institutions, non-governmental associations and the Romanian citizens, of the human rights issues, of the way the human rights are guaranteed in other countries, especially in the member states of the OSCE. Taking into account that the Romanian legislation does not yet regulate the lobbying activities, the purpose of the institute is also, to inform the foreign public opinion, the international bodies, on the practical ways the human rights are ensured and respected in Romania.

The institute has the legal duty to draw up annual reports, which

** The Advocate of the People is a newly created institution in Romania by the 1991 Constitution, being equivalent to the Ombudsman in other countries

include the survey of the activity and of the functioning of the institute, taking particularly into consideration, the opinions of those who have used its services, reports addressed to the Parliament for information. The expenses of the institute are covered from the budget of the Chamber of Deputies.

The Institute is led by a General Council, composed of representatives of the parliamentary groups, members of Committee for Human rights and minorities of the Senate, members of the Chamber of Deputies, Committee on human rights, cults and national minorities affairs, as well as scientists, representatives of the NGO's in the human rights field, designated by the Standing Bureaus of the two Chambers and validated by them.

V. The Institute for the Study on Issues of National Minorities is a public institution having judicial personality, subordinated to the Government and co-ordinated by the Department for the Protection of National Minorities, established by the Governmental Order No 121/2000 and approved with some amendments, by the Law No 396/2001. The Institute's main attribution, is to elaboration of studies and to investigate different aspects of the preservation, development and expression of the ethnical, cultural, linguistic and religious identity of the national minorities. The personnel of the Romanian Institute for Human Rights, as well as People's Advocate and the Legislative Council are graduated in the field of law and international relations and specialized in different related domains.

VI. Another important aspect related to the legislation on human rights is the **relation between the internal and international regulations regarding international treaties on human rights.** The basic provision that governs this issue is Art. 11 of the Constitution, which states that Romania is committed to respect and fulfil as such and in good faith, its obligations subsequent to the treaties it is party to and that the treaties ratified by Parliament, according to the law, are part of national law. Therefore, in the Romanian legislation there is no need incorporate the international regulations into the internal law, being sufficient

for the direct application into the internal law, to fulfil the rightful procedures of negotiation, signing and ratification of the treaties. According to the Art. 20, the constitutional provisions regarding the citizens rights and liberties shall be interpreted and enforced according to the Universal Declaration of Human Rights, to the pacts and other treaties to which Romania is a party to. Where any inconstancies exist between these pacts and treaties on fundamental human rights, Romania is a party to, and internal laws, the international regulation shall take precedence. It worth to be mentioned here that the Constitution stipulates the priority of the international regulations over the internal regulations, but only in what concerns the human rights.

VII. Referring to the role of the courts in enforcing human rights I would like to underline that:

1. The judicial courts do not have the ability to reconsider the legislation. The interpretation and appliance of the law, made by the court through a final ruling are casual, meaning they belong to each case. This legal nature, according to the principles that govern our legal system, does not allow the courts to rule but for the cases with which they have been intimated in substance, and they are not permitted to make considerations on the principles of the legislation. The mechanisms which are to reconcile the rights with respective legislative provisions do not function in regard to the courts of justice, but they operate at the internal legislative level and especially at the international level. The courts, may, at most, monitor the jurisprudence from this point of view and they can make proposals *de lege ferenda*, which are to be considered by the persons to which belong the right to submit the legislative proposals.

2. At the same time, the judicial liability of the state, established by the decision of an international court whose jurisdiction is accepted by the Romanian state, is an international liability, established on the grounds of an international treaty, according to the ruling of an international jurisdiction. As a general rule, the international liability belongs to the state and not to the domestic subjects, except the international criminal responsibility.

The execution of the sentences of the European Court for Human Rights belongs to the state under the supervision of the Council of

Ministers of the Council of Europe, which is the executive body of the court. The decision of the court, regarding the amount of money that constitutes the rightful reparation and the other expenses, as well as the amicable settlement of the case constitutes executory title. The payment is made on the basis of the written order by the Minister of Justice. The state has the right of regress against the persons who, by their activity, guilt fully, determined its obligation to pay the amounts established by the court order or by amicable settlement.

The issue of an eventual recuperation of the losses suffered by the state, from the execution of the international obligations established by rulings of the European Court, or by the amicable settlement of the cases, is exclusively a matter of internal law, at the level of national competence. The legal framework of this regress is provided by the Government Order No 94/1999 regarding the participation of Romania in the procedures of the European Court for Human Rights and in the Council of the Ministries of the European Council and the exercising of the state's right of regress as a result of the decisions and amicable settlements, approved with amendments by the Reg. No. 87/2001. Regarding the liability, the ordinance includes regulations that refer to the common civil law liability, specific to each category (common law for regress and civil liability).

In conclusion, observing the legislation adopted over the last period we could notice the obvious acceleration of the process of harmonisation of the legislation regarding human rights with the requirements of the international organisations Romania is a part to - as the European Council, or is in the process of integration - as the European Union. In this regard we can mention: changes of the legislation concerning the right of propriety, child protection, minorities protection, freedom of the press, etc. At last but not least, the recent developments in the Romanian politics, social or technology field determined normative changes in order to regulate the new realities of the political and economic life of the country. The future integration in the European and Euro -Atlantic structures, the achievement of structural reforms in economic and social field called for the revision of certain articles of the of a new Constitution. The Draft of the revised Constitution of Romania was recently adopted by the Parliament.