



Convention on the Rights of the Child

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Committee on the Rights of the Child

Report submitted by Romania under article 8 (1) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, due in 2003*

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* The present document is being issued without formal editing.



I. Introductory remarks

1. Pursuant to article 8, para. 1 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (hereinafter, the OPAC) and in accordance with the concluding observations of the Committee on the Rights of the Child, Romania presents to the Committee its initial report on the implementation of the OPAC.
2. The report was prepared by the National Authority for the Rights of the Persons with Disabilities, Children and Adoptions in cooperation with the Ministry of Defense and the Ministry of Foreign Affairs, and contains information regarding the protection of children from the involvement in armed conflict and the measures implemented by Romania in this respect.
3. The report also contains information on the legislative, judicial, administrative and other measures adopted by Romania since the ratification of the OPAC.

II. General measures of implementation

4. Romania ratified the OPAC, signed on September 6, 2000, through Law No. 567/2001, published in the Official Gazette No. 692 of October 31, 2001.
5. According to the Romanian Constitution adopted in 1991 (and revised in 2003), the treaties ratified by the Parliament become part of the national legislation (art. 11). If Romania is to become a party to a treaty that contains provisions contrary to the Constitution, the ratification of the treaty takes place only after the revision of the Constitution (art. 11). Moreover, according to art. 20 “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 the national laws comprise more favorable provisions”.
6. The Constitution also guarantees free access to justice (art. 21), as well as the protection and promotion of human rights; according to art. 16, citizens are equal before the law and public authorities, without any privilege or discrimination. Art. 4 of the Constitution also guarantees equality among citizens without any discrimination based on race, nationality, ethnic origin, language, religion, sex, opinion, political adherence, property or social origin.
7. Therefore, since the international instruments in the field of human rights are part of the domestic law, any interested person can complain before national courts of an alleged violation of such rights, based directly on the relevant international instrument.
8. Alternative mechanisms for the violations of children’s rights are also available: in 2018, following the recommendations of the Committee on the Rights of the Child, Romania created the Child’s Ombudsman, institution under the coordination of the People’s Ombudsman. The Child’s Ombudsman acts to promote and protect the rights of children under the age of 18, and supports and encourages the observance and the promotion of children’s rights. Among others, the Child’s Ombudsman fulfils the following duties:
 - (a) Solves the individual complaints of children or their representatives regarding the actions of the public institutions in the field of health, education, special protection of the child, or the institutions who apply custodial and non-custodial measures provided by the Law No. 286/2009 on the Criminal Code, with subsequent amendments and supplements, regarding the criminal liability of minors, or any other institution whose activity is related to the field of protection and promotion of the rights of the child;
 - (b) Solves any complaint related to the violation of one or more rights of the child;
 - (c) Cooperates with the formal structures of the children and, if he/she deems it necessary, may refer an issue to the competent authorities;
 - (d) Immediately notifies, ex officio or upon request, the criminal prosecution bodies when he/she finds criminal offenses committed against children;
 - (e) May file a lawsuit or a criminal complaint and may represent a minor before a domestic court when the child has been the victim of physical violence or psychological

abuse from parents, legal guardian or representative, abuse, violence and sexual exploitation, exploitation through labor, trafficking in human beings, neglect and exploitation, as well as any form of violence against the child, provided and sanctioned by the domestic and international legislation to which Romania is a party.

9. Law No. 272/2004 on the protection and promotion of the rights of the child, republished, with subsequent amendments and supplements, establishes the national legal framework for respecting, promoting and guaranteeing children's rights. The Law also contains provisions (chapter V) related to the protection of child refugees and the protection of children during armed conflicts and details the responsibilities of the public authorities.

III. Prevention (Arts. 1, 2 and 4 para. 2, and art. 6 para. 2)

10. Romania suspended compulsory military service on 23 October 2006.

11. According to art. 55, para. 3 of the Constitution, the Romanian citizens "may be conscripted from the age of 20 and up to the age of 35, except for volunteers, under the terms of the applicable organic law".

12. According to art. 3, para. 1 of the Law No. 446/2006 on preparing the population for defense, published in the Official Gazette No. 990/2006, the call up for military service is allowed for the Romanian citizens, women or men, aged 18, in all the forms provided by the law. Art. 3 para. 2 states that the military service is performed either active or in reserve.

13. The active military duty can be performed as professional military, in-term-military, pupil or student at military schools or volunteer soldier. If mobilization, state of war or state of siege are declared, fulfilling the duties corresponding to the in-term military service becomes compulsory for all men with ages between 20 and 35 years old, who comply with the criteria for performing the military service (art. 3, para. 5).

14. At the same time, when mobilization or state of war or siege are declared, the reservists are mobilized/concentrated according to the needs of the institutions with competencies in the field of national defense and security (art. 17).

15. According to the Law No. 446/2006, a pre-military training is organized on a voluntary basis with young persons who are medically fit and are at least 15 years old. The Ministry of Defense and the Ministry of Internal Affairs, in cooperation with the Ministry of Education, other public authorities, as well as NGOs, organize the pre-military training (arts. 58–59).

16. The Order of the Minister of Defense No. 217/2019 for approving the conditions and recruitment criteria as well as the instructions for the setting up and functioning of the recruiting, selection and initial professional training system for the candidates to the military profession establishes the enrollment criteria for the military personnel.

17. The age is one of the most important criteria for the recruiting process. Therefore, Order No. 217/2019 sets the maximum thresholds as following: 26 years (24 for aviation) for officers' university admission; 28 years for NCOs' post-secondary courses; 45 years for officers' and NCOs' initial training; 16 years for military high school; 45 years for enlisted personnel.

18. Law No. 384/2006 on the status of soldiers and professional militaries also contains provisions related to the age criteria: "soldiers and other military professionals with ages between 18 and 45 years old who fulfill the norms and criteria established by the Order of the Minister of Defense might be recruited and hired" (art. 2).

19. Art. 2 of the Order No. 217/2019 sets forth other specific requirements such as:

(a) Not being convicted for any crime against humanity, the state or the authority, for corruption, work-related crimes, which impede the administration of justice, forgery or an offense committed intentionally, which would render the candidate incompatible with the exercise of the military profession or for following the classes of a military high school. The

provisions do not apply in case of rehabilitation, post-conviction amnesty or decriminalization of the act;

(b) Not being a member of parties, groups or political organizations. If member, the candidate must declare, in written, that he/she will relinquish membership upon admittance at the unity/military education institution or in a military training program;

(c) Not belonging to organizations forbidden by the Romanian law or organizations incompatible with the rules, activities and specific attributions of the military profession.

IV. Prohibition and related matters (Arts. 1, 2 and 4, paras. 1 and 2)

20. The Criminal Code incriminates a number of acts and situations related to the state of war. Concerning children, pursuant to art. 440 on war crimes against persons, recruiting minors under the age of 15 years old in the armed forces or in armed groups, as well as determining them, by any means, to actively participate in hostilities, is punishable with life imprisonment or incarceration from 15 to 25 years.

21. Art. 440 para. 4 also classifies as war crimes against persons the illegal detention or unjustified delay in the repatriation of one or more persons protected by international humanitarian law, as well as the act of constraining, through violence or threat, one or more persons protected by international humanitarian law¹ to serve in the army of the enemy.

22. According to art. 7 para. 3 of the Law No. 346/2006 on the organization and functioning of the Ministry of National Defense, all the structures with competencies in investigating crimes and offences committed by the military personnel are directly subordinated to the minister of national defense.

23. The Military Prosecutor's Office attached to the Military Court of Appeal, the Military Prosecutor's Offices attached to the High Court of Cassation and Justice and the Service for prosecuting crimes committed by military personnel within the National Anticorruption Department are assimilated to the central structures of the Ministry of National Defense. Their personnel is subordinated to the minister of national defense only for issues of administrative nature, established through the Common Order of the minister of national defense, the General Prosecutor from the Prosecutor's Office attached to the High Court of Cassation and Justice and the Chief Prosecutor of the National Anticorruption Department, with the approval of the Superior Council of Magistrates.

24. Art. 2, let. (e) of the Law No. 304/2004, republished, with subsequent amendments and supplements, on the organization of the justice system, rules that justice can be administered through military courts. According to art. 56, para (1) of Chapter III of the Law No. 304/2004 "Military Courts are: the Military Tribunals and the Military Court of Appeal of Bucharest". Based on the provision of the same law, the military courts perform their duties at their headquarters.

25. Art. 57 para. 2 states that the "Military courts may judge, on the territory of other states, Romanian members of a multinational task force, if, based on the provisions of an international convention, the Romanian jurisdiction may be exercised on the host state's territory."

¹ Under the provisions of art. 440, para 5, "persons protected by international humanitarian law" are:

- (a) In an international armed conflict: persons protected by the Geneva Conventions of 1949 and the Additional Protocol I adopted on from June 8th 1977;
- (b) In an armed conflict without international character: wounded, sick, shipwrecked and persons taking no active part in the hostilities and under the control of the enemy;
- (c) In an international armed conflict or an armed conflict without international character: members of the armed forces and enemy combatants who have laid down their arms or who, for any other cause, can no longer defend themselves and who are not under the enemy's power.

26. According to art. 100 para. 2, the “Military Prosecutor’s Office carries on criminal prosecution for the criminal offences committed by Romanian militaries deployed on the territory of other states within multinational task forces, if, based on the provision of an international convention, the Romanian jurisdiction may be exercised on the host state’s territory.”

27. Art. 101 para. 1 stipulates that when the person investigated is an active military personnel, the criminal investigation is carried out by the military prosecutor, irrespective of the military rank of the person under investigation.

28. Also, according to art. 122 of the Law No. 304/2004, military courts have units of military police at their disposal, functioning under the Ministry of National Defense. The military police personnel serving in military courts is subordinated to the Presidents or the First Prosecutors of the respective courts.

29. Romania is a party to a number of international conventions that enable the authorities to cooperate effectively with other states in the field of legal assistance and extradition. The main international instruments in the field of judicial cooperation treaties to which Romania is a party are:

- (a) European Convention on Extradition (Paris, 13.XII.1957);
- (b) Additional Protocol to the European Convention on Extradition (Strasbourg, 15.X.1975);
- (c) Second Additional Protocol to the European Convention on Extradition (Strasbourg, 17.III.1978);
- (d) Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 8.XI.2001);
- (e) European Convention on the International Validity of Criminal Judgments (the Hague, 28.V.1970).

30. At the same time, Romania is a party to the following international treaties, without any declaration or reservation:

- (a) The Rome Statute of the International Criminal Court (1998);
- (b) The International Labor Organization Convention No.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (1999).

V. Protection, recovery and reintegration (Art. 6, para. 3)

31. Law No. 272/2004 on protection and promotion of children rights, with subsequent amendments and supplements, contains important provisions related to the protection of children in case of armed conflict:

- (a) According to art. 80 para. 2, in case of armed conflict, the authorities must carry out all necessary actions for developing special mechanisms aimed at monitoring the measures adopted for protecting the rights of the child;
- (b) Art. 81 forbids the use of the child as “a spy, guide or courier during armed conflicts”;
- (c) Arts. 82 and 83 detail the responsibilities of the authorities in case of armed conflicts. Thus, according to art. 82 para. 1 “the Ministry of Labor and Social Protection, together with the Ministry of Internal Affairs and the Ministry of National Defense, as well as with other institutions with specific competences, have the obligation to develop and implement strategies and programs, including at family and community levels, to ensure the demobilization of child soldiers and to remediate the physical and psychological effects of the conflict on the child, in order to promote his/her social reintegration;”

(d) Pursuant to art. 81 para. 2, the public authorities mentioned at para. 1, together with the National Agency for Employment and the Ministry of Education, must promote measures aimed at providing education in the spirit of understanding, solidarity and peace and at educating demobilized children towards an active and responsible social life;

(e) According to art. 83 para. 1, within 24 hours from the beginning of an armed conflict, the president of the each County Council or the mayor of each district of Bucharest have the obligation to submit a complete list of all children found on the respective territory to the General Directorates for Social Assistance and Child Protection (GDSACP)², in order to monitor their situation;

(f) In evaluations carried out after an armed conflict, children are granted priority. The GDSACP, in cooperation with the Civil Protection, will take all necessary measures to ensure the oversight of all the children evacuated by persons who can assume the responsibility of their care and safety. In every possible situation, members of the same family will be accommodated together (art. 83 para. 3);

(g) Moreover, art. 83 para. 2 forbids the use of “the infrastructure for protection and promoting children rights” for military purposes.

32. Law No. 272/2004 also contains special provisions on the protection of refugee children:

(a) According to art. 76 para. 1, “children who apply for the refugee status as well as those who already received this status benefit of protection and appropriate humanitarian assistance for the realization of their rights”; these children benefit of one of the forms of protection provided by Law no.122/2006 on asylum, with subsequent amendments and supplements (art. 76 para. 2);

(b) In line with the provisions of art. 77, the GDSACP are tasked with offering support to unaccompanied children who apply for the refugee status, by designating a person (with superior studies in law or social assistance), from their own staff of a private entity, to uphold the rights of the child and accompany him/her during the procedure. The authorities must give priority to applications submitted by unaccompanied children;

(c) Moreover, if the designated representative does not fulfill his/her duties accordingly or shows ill intentions, the General Inspectorate for Immigrations can ask the GDSACP for a replacement;

(d) Article 78 details the steps that must be taken in case of a definitive and irrevocable decision of rejection of a request for refugee status. Thus, the GDSACP notifies the General Inspectorate for Immigrations and requests the court to establish a special protection measure. The measure lasts until the child is returned to his/her country of origin or until the authorities identify other family members willing to take the child.

VI. International assistance and cooperation (Art. 7, para. 1)

33. The Ministry of National Defense has continued the efforts to implement the provisions of the UN Security Council’s resolutions on combating abuse and sexual exploitation, on the protection of civilians and on children and armed conflicts, as well as to improve the training processes of the armed forces in this respect. Hence, the Ministry of National Defense took the lead in promoting and implementing the Women, Peace and Security Agenda at national level, by creating a dedicated structure in this field, namely the Gender Management Office.

34. The chief of the Gender Management Office, also nominated as a National Focal Point, chairs the National Implementation Group, which includes representatives from the

² The General Directorates of Social Assistance and Child Protection are public institutions with competencies in the field of protecting and promoting children’s rights at county level. These are subordinated to the County Councils and, respectively, to the Local Councils of Bucharest.

following institutions: Ministry of National Defense, Ministry of Foreign Affairs, Ministry of Internal Affairs, Romanian Intelligence Service, Special Telecommunication Service, Protection and Guard Service, National Agency for Equal Opportunities between women and men. The Group has worked together with representatives and experts of the specialized commissions of the Parliament of Romania, as well as with representatives of the civil society and of the academia, related to the field.

35. In this context, through the Government Decision No. 561/2020, published in the Official Gazette No. 667 of July 28, 2020, Romania has adopted the National Strategy and National Action Plan on the implementation of the UN Security Council Resolution 1325 (2000) on Women, Peace and Security, for 2020–2023.

36. The National Action Plan contains a set of objectives that the governmental institutions must achieve by the end of 2023. In this regard, the most notable measures that will be implemented are:

- (a) Elaborating of departmental legislation regarding the internal implementation of the National Action Plan and a Gender Code of Conduct;
- (b) Assigning a gender advisor/focal point for all institutions;
- (c) Conducting periodic training on the gender perspective with the view of preventing and combating all forms of gender based discrimination, harassment and sexual violence;
- (d) Providing specific training prior to deployment to peacekeeping missions.

37. The National Implementation Group monitors the implementation of the National Action Plan.

38. At the UN Peacekeeping Defense Ministerial conference (Vancouver, November 2017), Romania reaffirmed its commitment to strengthening peace operations under the UN. At the same time, commitments were made towards the strengthening of the Vancouver principles on children in armed conflicts – recruitment and use of “child soldiers”. Thus, Romania joined the Global Military Gender Champion Network, whose main purpose is the implementation of the UN Security Council Resolution No. 1325 on Women, Peace and Security, with all other subsequent resolutions.³

39. Throughout the reporting period, no cases concerning to the aspects referred to, into the Optional Protocol, were registered, within the evidences of the authorities responsible with children rights.

40. Romania, as a UN, OSCE and EU member state, has aligned its legislation with the relevant international documents regarding the illicit proliferation of small arms and light weapons. As a preventive measure to protect children, the Law No. 295/2004 regarding the regime of weapons, essential components and ammunition requires, as an essential condition for granting the authorization to purchase lethal weapons, that applicants must be at least 18 years of age.

³ <https://www.mapn.ro/rapoarte/index.php>.