



AMBASADA ROMÂNIEI
în Regatul Țărilor de Jos

Catsheuvel 55
2517 KA Haga

Tel.: 0031-70-3223613
Fax: 0031-70-3541587
E-mail: roembnl@xs4all.nl
www.haga.mae.ro

No. 2344

L'Ambassade de Roumanie au Royaume des Pays-Bas présente ses compliments au Secrétariat de l'Assemblée des États Parties et, se référant à la Note Verbale ICC-ASP/9/SP/PA/21 du 9 août 2010, a l'honneur de lui communiquer ci-joint les informations sollicitées, dont font état l'alinéa h) du paragraphe 6 du Plan d'action.

L'Ambassade de Roumanie saisit cette occasion pour renouveler au Secrétariat de l'Assemblée des États Parties l'expression de sa considération distinguée.

La Haye, 19 octobre 2010



**COUR PENALE INTERNATIONALE
SECRETARIAT DE L'ASSEMBLEE DES ETATS PARTIES**

Aspects généraux :

La Roumanie a ratifié le *Statut de Rome* par la Loi no. 111 du 28 mars 2002. Conformément à la Constitution de la Roumanie, les traités ratifiés par le Parlement font partie du droit interne.

La Roumanie a ratifié *l'Accord sur les privilèges et immunités de la Cour* par la loi no. 204 du 2005.

Questions constitutionnelles :

Au moment de la ratification du Statut, deux questions d'ordre constitutionnel ont été débattues :

- *l'immunité du chef d'Etat et des membres du Parlement* : la Roumanie interprète le texte constitutionnel relatif à l'immunité au sens que le chef d'Etat et les membres du Parlement jouissent de l'immunité pour l'exercice de leurs fonctions, or la commission des faits prévus par le Statut de Rome est dehors de ces fonctions. Par conséquent, il n'y a pas de contradiction entre la Constitution roumaine et les obligations assumées par la ratification du Statut de Rome ;
- *la remise des propres citoyens* : au moment de la ratification, la Roumanie a accepté la distinction entre « remise » et « extradition » telle que prévue par l'article 102 du Statut ; par conséquent, la Roumanie a considéré que l'interdiction constitutionnelle d'extradition des propres citoyens n'est pas applicable dans le cas de « remise » à la Cour pénale internationale. Au surplus, en 2003 la Constitution roumaine a été modifiée ; à présent, l'article 19 (2) de la Constitution permet expressément l'extradition des propres citoyens en base des conventions internationales auxquelles la Roumanie est partie.

Textes d'application du Statut de Rome :

Le *nouveau Code Pénal* de la Roumanie, publié en juillet 2009, reprend au Titre XII – « Crimes de génocide, contre l'humanité et de guerre », les provisions relevantes du Statut de Rome. La traduction en langue anglaise du Titre XII du nouveau Code Pénal est ci-jointe.

Le nouveau Code Pénal n'est pas encore entré en vigueur, vue l'ampleur des amendements qu'il apporte au système pénal roumain. Il est estimé que le Code entrera en vigueur dans la deuxième moitié du 2011.

En ce qui concerne les questions procédurales, la *Loi no. 302/2004 sur la coopération judiciaire internationale en matière pénale* est applicable. Son article 4 prévoit :

Article 4 – « Prééminence du droit international »

- (1) *Cette loi est fondé sur et met en application les normes concernant la coopération judiciaire en matière pénale prévus par les instruments*

juridiques internationaux auxquels la Roumanie est partie et que la loi complémente en cas non réglementés.

- (2) *La coopération avec un tribunal pénal international ou avec une organisation internationale publique, conformément aux dispositions relevantes des instruments internationaux spéciaux - tels que les statuts des tribunaux pénaux internationaux -, sera examinée par une procédure légale distincte ; cette loi sera applicable de manière adéquate et, au besoin, complémentaire.*

Au niveau interne, le Ministère de Justice a démarré un procès de consultation interinstitutionnelle pour la préparation d'un projet de loi spéciale concernant la coopération avec les cours et tribunaux pénaux internationaux. Jusqu'à l'entrée en vigueur de la loi spéciale, la *Loi no. 302/2004 sur la coopération judiciaire internationale en matière pénale* offre un cadre suffisant pour répondre aux éventuelles demandes de coopération de la part de la CPI.

Le *Ministère de Justice* a été désigné par la Loi de ratification du Statut de Rome en tant qu'autorité roumaine compétente à recevoir les demandes adressées par la Cour conformément à l'article 87 du Statut.

Provisions of the Criminal Code of Romania implementing the Rome Statute of the International Criminal Court

Title XII – The Crime of genocide, crimes against humanity and war crimes

Article 438 - Genocide

- (1) Committing any of the following acts with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group:
- killing members of the group;
 - causing seriously bodily or mental harm to members of the group;
 - deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - imposing measures intended to prevent births within the group;
 - forcibly transferring children of the group to another group;
- shall be punished by life imprisonment or imprisonment from 15 to 25 years and the deprivation of certain rights.
- (2) If the acts referred to in paragraph (1) are accomplished in times of war, the penalty applied shall be life imprisonment.
- (3) The understanding for the purpose of acts qualified as genocide shall be punished by imprisonment from 5 to 10 years and the deprivation of certain rights.
- (4) The incitement in order to commit crimes of genocide, directly and in public, shall be punished by imprisonment from 2 to 7 years and the deprivation of certain rights.

Article 439 - Crimes against humanity

- (1) Committing any of the following acts, as part of a widespread or systematic attack, directed against any civilian population:
- murder;
 - deliberately inflicting on the population, or a part of it, conditions of life calculated to bring about its physical destruction in whole or in part;
 - enslavement or traffic of human beings, especially women or children;
 - deportation or forcible transfer of population, through forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
 - torture upon a person in the custody or under any kind of control of the accused, inflicting pain or suffering, whether physical or mental, exceeding the consequences of sanctions permitted by international law;
 - rape or sexual aggression, enforced prostitution, enforced sterilization or illegal detention of a woman forcibly left pregnant, in order to modify the ethnical composition of a population;
 - causing serious bodily or mental harm to various persons;
 - enforced disappearance of a person, through arrest, detention or abduction by, or with the authorization, support or acquiescence of, a State or a political organisation, followed by the refusal to acknowledge that deprivation of freedom or to immediately issue, upon request, real information on the fate or whereabouts of these persons, with the intention of removing them from the protection of the law, for a prolonged period of time;

- i) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- j) persecution against any identifiable group or collectivity, with the deprivation of fundamental human rights or the severe restriction of the exercise of these rights, on political, racial, national, ethnical, cultural, religious, sexual or other grounds universally recognized as impermissible under international law;
- k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health;

shall be punished by life imprisonment or imprisonment from 15 to 25 years and the deprivation of certain rights.

(2) The same penalty shall be applied for the acts referred to in paragraph (1), committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any racial group and committed with the intention of maintaining that regime.

Article 440 - War crimes against persons

(1) Committing any of the following acts, during an armed conflict, with or without intention, against a person or various persons protected by the international humanitarian law:

- a) murder;
- b) taking of hostages;
- c) wilfully causing great physical or mental suffering, or serious injury, through the use of cruel or inhuman treatments, especially through torture and mutilation;
- d) rape or sexual aggression, enforced prostitution, enforced sterilization or illegal detention of a woman forcibly left pregnant, in order to modify the ethnical composition of a population;
- e) deportation or forcible transfer of population, through forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- f) application or execution of a severe penalty, especially the death penalty or imprisonment, against a person not lawfully and impartially judged, within the grounds of the international law;
- g) exposure of a person to a deadly situation or to a severe infliction of health through:
 - 1. subjecting them to biological experiments, without their prior and express consent, or experiments which are unnecessary for their health or interest;
 - 2. collecting tissues or organs for transplant, except blood or skin samples for therapeutic reasons, complying with general acknowledged medical principles and with the prior and express consent of the person;
 - 3. submission to methods of treatment not generally acknowledged, without these being necessary for the person's health and without their prior and express consent;
- h) subjecting a person to a degrading treatment;

shall be punished by life imprisonment or imprisonment from 15 to 25 years and the deprivation of certain rights.

(2) The same penalty shall be applied for conscripting or enlisting children under the age of fifteen years into the national armed forces or determining them through any means to participate actively in hostilities.

(3) Wounding, of a member belonging to the enemy's armed forces or a combatant of the hostile party, during an international armed conflict or an armed conflict without an

international character, after they have surrendered without objections or they were removed in any way from battle, shall be punished by imprisonment from 5 to 12 years and the deprivation of certain rights.

- (4) Committing, in an armed conflict with an international character, any of the following acts:
- a) maintaining one or more persons from those in paragraph (5) letter a), in illegal detention or unjustifiably delaying repatriation;
 - b) the transfer, directly or indirectly, by an agent of the Occupying Power of parts of its own civilian population into the territory occupied;
 - c) compelling, through violence or threat, of one or more persons from those in paragraph (5) letter a) to serve operations of war of the enemy;
 - d) compelling the nationals of the hostile party to take part in the operations of war against their own country,
- shall be punished by imprisonment from 3 to 10 years and the deprivation of certain rights.

- (5) Persons protected by the international humanitarian law are:
- a) in case of an armed conflict with international character: the persons protected within the grounds of the Geneva Conventions of 12 August 1949 and of the Additional Protocol I of 8 June 1977, especially the injured, the sick people, the shipwrecked, war prisoners and civilians;
 - b) in case of an armed conflict without international character: the injured, the sick, the shipwrecked, prisoners of war and individual civilians not taking direct part in hostilities and under the domination of the enemy;
 - c) in case of an armed conflict with or without an international character: members of the armed forces and combatants of the enemy party, who have seized fire or whom, for whatever reason, are unable to defend themselves and are not under the domination of the enemy.

Art. 441 - War crimes against property and other rights

(1) The act of a person who, in an armed conflict, with or without international character, robs or, in violation of international law and without being justified by military necessity, destroys, appropriates or seizes property of the enemy party, found under the power of the party to which the perpetrator belongs, shall be punished by imprisonment from 3 to 10 years and deprivation of certain rights.

(2) In an armed conflict with international character, declaring all enemy party rights and actions, or a substantial part thereof, as being seized, suspended or inadmissible shall be punished by imprisonment from 3 to 10 years and deprivation of certain rights.

Art. 442 - War crimes against humanitarian operations and emblems

(1) The act of a person who, during an armed conflict with or without international character:

- a) triggers an attack against personnel, installations, materials, units or vehicles involved in a humanitarian aid mission or a peacekeeping mission, under United Nations Charter and which enjoy the protection, international humanitarian law guarantees civilians or private assets.
- b) triggers an attack against personnel, buildings, medical units or medical vehicles which use distinctive signs, provided by the Geneva Conventions, in accordance with the provisions of international humanitarian law, shall be punished by imprisonment from 7 to 15 years and deprivation of certain rights.

(2) The act of a person who, during an armed conflict with or without international character, uses without any right, distinctive signs as provided by the Geneva Conventions, the flag of

truce, the flag, military insignia or the uniform of the enemy or the United Nations, causing death or bodily injury to one or more persons, shall be punished by imprisonment from 7 to 15 years and deprivation of certain rights.

Art. 443 - The use of prohibited methods in combat operations

- (1) The act of a person who, during an armed conflict with or without international character:
- a) triggers an attack by military means against the civilian population or civilians not participating in hostilities;
 - b) triggers an attack by military means against civil assets protected by international humanitarian law, especially buildings dedicated to religious worship, education, art, science, charity, historical monuments, hospitals, places where the sick and wounded are gathered, as well as against unprotected cities, villages, houses or buildings, or demilitarized zones, or against facilities or equipment which contain dangerous substances, in the extent that they are not used as military objectives;
 - c) carries out an attack by military means, knowing that it will cause loss of life among the civil population, injuries to civilians, destruction of civilian goods, that would be manifestly disproportionate to the overall anticipated concrete and direct, military advantage;
 - d) uses a person protected by the provisions of international humanitarian law to avoid certain points, areas or military forces from becoming a target of military operations of the enemy side.
 - e) by breaching the provisions of international humanitarian law uses the deliberate starvation of civilians, depriving them of goods essential for survival or preventing them from receiving aid, as a means of conducting war;
 - f) states or orders that there will be no mercy for the fallen;
 - g) kills or injures, through cunning methods, a member of the enemy armed forces or an enemy combatant

shall be punished by imprisonment from 7 to 15 years and prohibiting deprivation of certain rights.

(2) Carrying out an attack by military means, during an armed conflict with international character, knowing that it will cause extensive, lengthy and serious environmental damage, which would be manifestly disproportionate to the overall anticipated concrete and direct, military advantage, shall be punished by imprisonment from 3 to 10 years and deprivation of certain rights.

Art. 444 - Use of prohibited means in combat operations

The act of a person who, during an armed conflict with or without international character:

- a) uses poison or weapons with poisonous substances;
 - b) uses asphyxiating, toxic or similar gases and any liquids, materials or similar processes;
 - c) uses weapons that cause unnecessary physical suffering
- shall be punished by imprisonment from 7 to 15 years and interdiction of certain rights.