



N° 681

The Permanent Mission of Romania to the United Nations Office at Geneva and the International Organizations in Switzerland presents its compliments to the Special Procedures Branch and, referring to the joint communication AL ROU 2/2021 of 26 January 2021, has the honor to present herewith the official response of the Romanian authorities.

The Permanent Mission of Romania would appreciate a confirmation of receipt of the above mentioned document.

The Permanent Mission of Romania to the United Nations Office at Geneva and the International Organizations in Switzerland avails itself of this opportunity to renew to the Special Procedures Branch the assurances of its highest consideration.



Geneva, 22 March 2021

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Răspunsul României la comunicarea comună privind situația cetățenilor români din taberele de refugiați Al-Hol și Roj

Following the receipt of the joint communication, letter no. AL ROU 2/2021, regarding the alleged registration and verification operation of Romanian citizens held in Al-Hol and Roj camps from northeastern Syria in May and June 2020, the Ministry of Foreign Affairs of Romania presents its reply to the Special Procedures mandate holders.

Romania is fully committed to promote and protect human rights and fundamental freedoms in all fields of life and seeks to fully apply in good faith its obligations and responsibilities under international law, international human rights law and international humanitarian law.

The Romanian authorities acknowledge the importance of the aspects raised in the joint communication and the role of the United Nation's Special Rapporteurs and experts in monitoring the observance of the human rights and fundamental freedoms enshrined in the United Nations conventions.

Hence, as to the particular situation brought to our attention, we hope that the following answer will help you better assess the situation.

The Ministry of Foreign Affairs of Romania had no prior knowledge of the alleged operation of registration and verification of individuals held Al-Hol and Roj camps from northeastern Syria. We have no other information related to this campaign, to the transfers of populations among camps and the legal basis of these transfers or related to any change of the material conditions of deprivation of liberty of the alleged Romanian citizens living in Al-Hol and Roj camps.

Romania was not involved in any manner in the alleged registration and verification procedure. The results of this procedure, including the data collected, have not been conveyed to the Romanian authorities. In this regard, with the view to further assess the situation on the ground, we would appreciate receiving any other supplemental information the Special Procedures mandate holders may have regarding the process, as well as any other information related to the transfers of third-country citizens between camps.

Currently, the Ministry of Foreign Affairs of Romania has no information regarding the presence of any Romanian citizen in the Al-Hol and Roj refugee camps.

Furthermore, no requests for consular assistance from Romanian nationals living in the aforementioned camps were registered in 2020.

Identifying Romanian citizens in need of assistance or in special situations is a constant priority for the Romanian authorities, who spare no effort in reaching and protecting its citizens abroad, including in conflict zones. In this regard, we would like to remind that Romania decided to keep its Embassy in Damascus open for ensuring consular protection and assistance to the Romanian citizens still on the territory of Syria. Ever since, the Embassy has permanently kept in touch with the Romanian citizens, providing the necessary support, depending on their specific circumstances, especially in terms of repatriation.

At the same time, the repatriation of Romanian nationals, victims of trafficking in persons, regardless of their circumstances and location, represents a top priority of the coordinated institutional response of the Romanian authorities. A permanent dialogue and co-operation is maintained with the states of destination, international organizations and other partners, as this is a key element to ensuring a successful end. The Ministry of Foreign Affairs provides consular assistance to the victims seeking repatriation, and a specific set of tools is employed during the process: from the issue of travel documents, to facilitating transportation back to Romania and liaising with local authorities on legal and procedural matters.

All victims of trafficking in persons, regardless of their gender or age, enjoy unconditional, safe, confidential and non-discriminatory protection and access to specialized support services upon identification. All cases are reviewed on an individual basis, following guidance provided by the National Referral and Identification Mechanism.

In the light of the above, we would highly appreciate receiving any other relevant details regarding the source of the reports pointing out the presence of Romanian citizens in the Al-Hol and Roj refugee camps, as well as regarding the results of the registration and verification process in what concerns their names and number and/or identification documents.

While, given the factual clarifications, Romania is not in a position to provide additional information as requested by the Special Procedures mandate holders, we would also like to underline the following general elements characterizing the Romanian human rights based position and action.

Based on the situation described in the joint communication, we consider that, if confirmed, the manner in which the process took place raises serious concerns in terms of purpose and respect for basic human rights, including human dignity.

The interdiction for humanitarian actors to enter the camps during the procedure, despite their primary role in safeguarding the rights and well-being of those in vulnerable situations, and providing essential assistance, including medical assistance, is distressing. The refusal to hold a two weeks humanitarian pause as requested by the United Nations High Commissioner for Refugees is equally disturbing.

Romania unequivocally supports and commends all humanitarian assistance provided in different parts of the world. For example, last December, Romania tabled, together with other states, an UNGA Resolution (A/RES/75/125) calling upon all Governments and parties in complex humanitarian emergencies, in particular in armed conflicts and in post-conflict situations, to ensure the safe and unhindered access of humanitarian personnel and the delivery of supplies and equipment, in order to allow them to perform efficiently their task of assisting the affected civilian population, including refugees and internally displaced persons.

At the same time, respecting the right to life is of paramount importance for Romania, and, as such, it promotes the abolition of the death penalty. As well, the prohibition of torture and other inhuman and degrading treatment is enshrined in our Constitution and such behavior is criminally punishable; Romania is firm in upholding this imperative international rule.

Additionally, we would like to mention that in January 2021, Romania joined the launch of an international Declaration against the use of arbitrary detention in state-to-state relations, thus reaffirming its commitment to place human rights at the center of all its actions and in particular to the respect of the prohibition of arbitrary deprivation of liberty.

Hence, given its clear stance, Romania concurs with the Special Procedures' joint allegation letter that prolonged denial of access to vital services for persons in confinement or caught in blockades can, in certain circumstances, amount to a violation of the right to life.

The limited information at our disposal, as presented in the joint communication, makes it considerably difficult to assess fully and accurately the manner in which the collection of personal and biometrical data has been compliant with human rights and fundamental freedoms, with the medical ethics or in full respect with the principle of confidentiality of and the principle of consent.

While being able to understand security concerns related to radicalization and criminal activities as a matter of principle, we believe that such concerns must be addressed in full respect with human rights and fundamental freedoms, in a non-discriminatory and unbiased manner, and on a fair, concrete and transparent legal basis.

In this particular case, where the procedure was planned and carried out by non-state actors, apparently without a prior information of third-country authorities and in the alleged presence of military corps, we share the same concerns with the Special Procedures mandate holders regarding the manner in which the operation was conducted, its scope and the final beneficiary of the data which has been collected.

In our view, data collection activities should always be conducted in accordance with the overriding human rights principle of *doing no harm*. They should not create or reinforce existing discrimination, bias or stereotypes, and should not be interpreted as an endorsement of any initiative or practice that seeks to discriminate against population groups and expose them to risks of serious human rights violations. Furthermore, such activities must be appropriate, strictly proportionate to the intended purpose, limited to what is strictly necessary and should be subject to adequate safeguards and means of protection.

In what concerns the Romanian legal framework governing the protection of personal data, the following regulations and laws are in place:

- Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);
- Law no. 102/2005 on the set up, organization and functioning of the National Supervisory Authority for Personal Data Processing, republished;
- Law no. 129/2018 for amending and supplementing Law no. 102/2005 on the set up, organization and functioning of the National Supervisory Authority for Personal Data Processing, as well as for repealing Law no. 677/2001 on the protection of individuals with regard to the processing of personal data and the free movement of such data;
- Law no. 190/2018 on implementing measures to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation).

Regarding the legality of the data processing, Regulation (EU) 2016/679 establishes that the processing of personal data is carried out with the consent of the data subject or under

the other legal conditions provided by Article 6¹, Article 9² and Article 10³, depending on the nature of the data and the categories of the data collected and processed.

At the same time, pursuant to Article 3 of Law no. 190/2018:

“(1) The processing of genetic data, of biometric data or of health data for the purpose of automated decision-making or profiling is permitted with the explicit consent of the data subject or if the processing is carried out under explicit legal provisions, with appropriate measures protecting the rights, freedoms and legitimate interests of the data subject.

(2) The processing of health data for the purpose of ensuring public health, as defined in Regulation (EC) no. 1338/2008 of the European Parliament and of the Council of 16 December 2008 on Community statistics on public health and health and safety at work, published in the Official Journal of EU, series L, no. 354/70 of 31st of December 2008, cannot be subsequently performed for other purposes by third entities.”

In this sense, we emphasize that the provisions of Article 3 paragraph (1) of Law no. 190/2018 are applicable when the processing of biometric data is performed in order to achieve an automated decision-making process or to create profiles. Otherwise, the provisions of Article 9 of Regulation (EU) 2016/679 become applicable.

At the same time, according to the supervisory authority, any data processing must comply with the principles set out in Article 5 of Regulation (EU) 2016/679. These include those referring to personal data:

- processed lawfully, fairly and in a transparent manner in relation to the data subject (lawfulness, fairness and transparency);
- adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (‘data minimization’)
- collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes (purpose limitation);
- processed in a manner that ensures appropriate security of the personal data, including protection against unauthorized or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organizational measures (‘integrity and confidentiality’).

¹ On the lawfulness of processing.

² Regulating the processing of special categories of personal data, including biometric data.

³ According to which the ”processing of personal data relating to criminal convictions and offences based on Article 6(1) shall be carried out only under the control of official authority or when the processing is authorized by Union or Member State law providing for appropriate safeguards for the rights and freedoms of data subjects. Any comprehensive register of criminal convictions shall be kept only under the control of official authority.”

At the same time, Article 5 of Regulation (EU) 2016/679 provides that the controller is responsible for complying with these principles and must be able to demonstrate this compliance (accountability principle).

Concerning women and children, we would like to point out that Romania is party to the main international legal instruments in the field of combating discrimination against women and of combating violence against women and domestic violence, as well as regarding the rights of the child: the UN Convention on the Elimination of Discrimination against Women; the Council of Europe Convention on preventing and combating violence against women and domestic violence; the Convention on the Rights of the Child; the Optional Protocol on the sale of children, child prostitution and child pornography; the Optional Protocol referring to children in armed conflicts and the Convention on Worst Forms of Child Labor.

The protection and the promotion of women rights is one of the international community's main concerns and one of Romania's key priorities in the field of human rights. At national level, Romania has taken important steps in promoting equal opportunities, non-discrimination and for combating any form of violence against women and girls, both as human rights objectives and premises for social justice, development and peace. At the same time, significant efforts continue to be made for protecting and ensuring the respect for the rights of the child. Thus, over time, the national legal framework has been amended with the view of reflecting the principles and obligations arising from the ratified conventional instruments on children rights, including in respect to those referring to children in armed conflicts.

Related to the access to justice, we would like to underline that Romania remains committed to the respect of the rule of law and of the safeguards to a fair trial. Both its international obligations and its fundamental domestic norms stipulate the independent judicial scrutiny in case of pre-trial detention and recognize the fundamental right of the person deprived of his or her liberty to bring proceedings before a court in order to challenge the legality of the detention, irrespective of its nature (administrative, for safety reasons, preventive measure).

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). Moreover, whenever the provisions of the international instruments in the field of human rights are more favorable, they take precedence over the national legislation (art. 20).

Therefore, since the international instruments in the field of human rights form 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.

Alternative mechanisms are also available to citizens. The Constitution grants the citizens the right to petition public authorities, while obliging public authorities to answer within the deadlines prescribed by law. Citizens can also address petitions to the Romanian Parliament, to the Romanian Ombudsman, on matters relating to the violation of their rights and freedoms, including by acts of public authorities or, in case of children, to the Child's Ombudsman, whose main function is to receive any complaint a child may submit about institutions failing to fulfil their legal responsibilities.

Regarding the safeguards of a fair criminal procedure, these include the judicial evaluation of the legality of evidence, and the new Code of criminal procedure, including as interpreted and verified by the Constitutional Court, is respectful of the rights of the accused to access, challenge and propose evidence and in line with the ECtHR case-law.

In the Romanian law, the principle of non-punishment, which is laid down in several legal instruments (art. 20 of Law no. 678/2001 on Preventing and combating trafficking in human beings; art. 18, 23-25 of the Criminal Code), protects the victims of trafficking in persons who have committed crimes because of their victimization.

The special clause of non-punishment is limited only to the acts mentioned by the law. However, if a victim of trafficking in persons commits other unlawful acts, an individual assessment follows and, if a direct causal connection is established between the unlawful acts, the victim status of the person and the coercion exercised by the trafficker/exploiter, the general provisions of the Criminal Code regulating the justifying causes and the clause of non-imputability shall apply.

Moreover, pursuant to the provisions of the Romanian Criminal Code, minors under the age of 14 do not have criminal liability.

In conclusion, given Romania's commitments towards protecting its citizens abroad, we hope that the above mentioned information have been sufficiently clarifying.

Furthermore, we would like to reassure you that we are following closely the situation of the Romanian people abroad, including in conflict zones. Taking into consideration the situation at hand, we are interested in continuing the dialogue with the Special Procedure mandate holders on the issue, as this channel of communication may enable the Romanian authorities to identify Romanian citizens in need of assistance in Syria.