



ROMANIA * THE MINISTRY OF FOREIGN AFFAIRS

Directorate General for Legal Affairs

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Dear Madam,

I would like to refer to your facsimile sent on 8 September 2008 submitting to the attention and for consideration of States the second revised version of the draft General Comment nr. 33 – CCPR/C/GC/33/CRP.3 on the obligations of States Parties under the Optional Protocol to the International Covenant on Civil and political Rights and enclose herewith the following observations:

Romania is a party to the International Covenant on Civil and Political Rights since 1974, to the Optional Protocol since 1993 and to the second Optional Protocol since 1991.

By becoming a party to the Optional Protocol, Romania recognizes the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by Romania of any of the rights set forth in the Covenant.

Romania assumed, thus, the obligations set forth under the provisions of the Optional Protocol and committed itself to give full consideration to them.

The general mandate of the Human Rights Committee was initially set forth in the International Covenant on Civil and Political Rights (ICCPR), the international document which lies at the foundation of the Human Rights Committee.

The Human Rights Committee, according to the statutory provisions and those of the optional protocols, receives progress reports from the States on the implementation of the provisions of the ICCPR, communications, under some conditions, from States parties claiming that other States parties are not fulfilling their obligations under the ICCPR, and, communications, under the established conditions, from individuals who claim to be victims of a violations by a State Party of any of the rights set forth in the Covenant. The second Optional Protocol extends the mandate of the Human Rights Committee to cover the death penalty issues as well.

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Ms. Nathalie Prouvez
Secretary
UN Human Rights Committee

There is no provision within the mentioned international documents that would assimilate the Human Rights Committee to a judicial body, or its views to judicial decisions. The letter and the spirit of the international documents are clearly reflecting that the intention of the negotiators was to create a mechanism that would capably monitor the application of the ICCPR and promote valuable interpretations to help the better understanding and implementation at state level of the ICCPR provisions.

Moreover, it could be difficult to understand for what reasons the role of Human Rights Committee would be more significant and constrictive under the Optional Protocol than under the ICCPR itself.

This is how Romania viewed the role of the Human Rights Committee when it became a party to the mentioned international documents, and, especially to the Optional Protocol.

In the understanding of the Romanian authorities, the Human Rights Committee has only the ability to acknowledge breaches of the obligations under the ICCPR, both in inter-State procedures and in the individual communication procedures, and make recommendations accordingly.

On the other hand, States parties must perform in good faith the conventional obligations assumed, this including, as well, giving full considerations to the recommendations of the conventional bodies, as is the case with the Human Rights Committee.

As stated in the draft General Comment nr. 33, "the declared attitude of States parties (...) is that, although the views of the Committee are not regarded as formally binding in law, they are to be considered in good faith and fully respected by all state organs". This is, in fact, how the role of the Committee is perceived on the basis of the relevant conventional provisions, which must be interpreted in accordance with the Vienna Convention on the Law of the Treaties.

Therefore, the Romanian authorities critically regard the approach undertaken in the draft General Comment as far as the nature of the views of the Human Rights Committee is concerned, in the sense that, in their opinion, these are not legally binding, but are part of the general commitment of States to fully comply with the obligations assumed when becoming parties to ICCPR and its optional protocols.

This is without prejudice to the high value Romania attaches to the work of the Human Rights Committee, both in the field of inter-state and individual communications, with which it was faced along the years, and in the field of interpretation of the substance of the fundamental rights protected under the ICCPR. This work has proven extremely helpful to States, in general, and to Romania, in particular, in their efforts to substantively implement the provisions of the ICCPR.

Romania remains committed to the full compliance with its assumed international obligations in the field of human rights and will dully consider, as it has until now, the views and the activity of the Human Rights Committee.

Yours sincerely,


Cosmin Dinescu
Director General

