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ROMANIA

Penal Code reform: a step back

Amnesty International is concerned that the proposal of the Romanian Government to amend the Penal Code blatantly fails to ensure that some fundamental rights of the people in Romania are protected in a manner which would be consistent with international human rights standards.

Over the years Amnesty International has repeatedly urged the Romanian Government to amend a number of the provisions of the Penal Code. These concern Article 200, paragraph 1, of the Penal Code which prohibits homosexual relations between consenting adults “if the act was committed in public or has produced public scandal”. Paragraph 5 of the same law makes it an offence, punishable by sentence of one to five years’ imprisonment, “to entice or seduce a person to practise same-sex acts, as well as to form propaganda associations, or to engage in other forms of proselytizing with the same aim”. Amnesty International is concerned that these provisions lead not only to the continued imprisonment of adults solely for engaging in consensual homosexual relations in private, but that they can also lead to the imprisonment of individuals solely for having exercised their rights to freedom of expression and to freedom of assembly and association.

Several other provisions of the Penal Code also impose excessive restrictions on the right to freedom of expression. Article 168 prohibits “communication or dissemination, by any possible means, of false news, facts or information or forged documents, if committed with the intent to impair the security of the Romanian state or its international relations”. Article 236 considers as a criminal offence “public acts committed with the obvious intention to defame the state or a nation”. Amnesty International believes that the formulation of these provisions is vague and ambiguous and that their implementation could result in the prosecution of persons solely for having exercised their universally recognized right to freedom of expression. Articles 205 and 206 which provide for imprisonment of those who are convicted of insult or libel, have frequently been enforced to prosecute journalists who had expressed legitimate criticism of public officials. Other provisions which particularly affect the right of the journalists in Romania to impart information and ideas without interference by public authority, as well as the right of Romanians to receive such information and ideas, concern Article 238, paragraph 1, and Article 239, paragraph 1, which criminalize defamation of public officials, and also lead to infringements of the right to freedom of expression. Amnesty International believes that a public official who considers her/himself defamed can resort to civil actions which anyone, regardless of status or function, can resort to in order to protect her or his reputation. Such actions, however, should not be used to stifle criticism of state authorities or to intimidate those who voice legitimate concerns about the actions or practices of state authorities.

In September 1999 the Romanian government proposed a broad package of legal reforms including a revision of the Penal Code. This draft included the abolition of Article 200 of the Penal Code. The proposed changes to Articles 205, 206, and 238 governing freedom of expression were not entirely adequate. The crime of “offence to authority” would be abolished and the penalty for “insult” would be reduced from a prison sentence to a fine. The penalty of a fine or a prison sentence, albeit reduced from the previous maximum of three years, would be retained for libel offences. The UN Human Rights Committee which in July 1999 considered Romania’s fourth periodic report on its fulfilment of obligations under the International Covenant on Civil and Political Rights (ICCPR) called for the repeal or modification of all three articles. The proposed draft was adopted by the Chamber of Deputies, the lower house of the Romanian Parliament, on 28 June 2000. However, the Romanian Senate failed to consider the draft bill before the general elections which took place in November 2000, thus postponing indefinitely the revision of the Penal Code.

Amnesty International has been informed that the Romanian government is about to introduce a new draft for the revision of the Penal Code. The new proposal maintains Article 200, incriminating sexual relations with minors and homosexual rape. An amendment is proposed for Article 202 which prohibits “sexual corruption” to include: “Sexual relations between persons of the same sex, or sexual acts, committed in public, will be punished with one to five years’ imprisonment.” This is very similar to Article 200, paragraph 1, which is in force. Amnesty International is concerned that because of the ambiguous interpretation of “sexual acts” and acts which are “committed in public” the enforcement of this provision could lead to the imprisonment of persons who would be considered by the organization to be prisoners of conscience.

Neither the draft already adopted by the Chamber of Deputies nor the new government proposal touches on Articles 168 (“communication of false news”) and 236 (“defamation of the state or nation”) . With regard to Articles 205 (“insult”) and 206 (“libel”) the government rejects the draft already adopted by the Chamber of Deputies stating that “the judicial practice does not require modification of the existing text”. With regard to Article 238, paragraph 1, (“offence against the authorities”) the new proposal is opposed to its abrogation (contained in the draft already adopted) and modifies the text in force (which concerns public officials in general terms) with “the President of Romania, the Parliament, the Constitutional Court, the Government, the Supreme Court, the Ombudsperson, or any member of these institutions”. The proposed change therefore would be only cosmetic. Article 239, paragraph 1, prohibiting insult or libel of public officials, will also remain in force according to the new government proposal. The government claims that this provision “protects the authority of the state, which includes the respect for the public official who is exercising the functions of the state”.

Amnesty International is concerned that if adopted the proposed revision of the Penal Code would be a blatant breach of Romania’s commitments under international human rights standards. This would also be in violation of Romania’s commitments to the Council of Europe, entered into upon admission into the organization in October 1993. In April 1997 the Parliamentary Assembly of the Council of Europe remarked on a number of still outstanding concerns and made specific request to the Romanian authorities, noting “that certain provisions of the Penal Code now in force are unacceptable and seriously imperil the exercise of fundamental freedoms, especially Article 200 on homosexual acts and Articles 205, 206, 238 and 239 relating to insult and defamation, which interfere with the freedom of the press”. Should Romania yet again fail to adequately revise its Penal Code this might jeopardize Romania’s efforts to accede to the European Union which requires all new member states to ensure the highest possible respect for human rights and fundamental freedoms.