1. Demographic issues

1.1 Romania is located in the southeastern part of Central Europe. It is situated inside and outside the Carpathians Arch, on the lower course of the river Danube, and has exit to the Black Sea. The form of government is republic, the capital is Bucharest, and the national currency is "leu".

According to the Romanian Statistical Yearbook published in 2000, the total number of inhabitants on July 1, 1999 was 22,458,022. The structure of population according to sex is 10,984,529 male and 11,473,493 female.

1.2 The Penal Code contains in its General Part a title dedicated to minors. According to the first article of this title, article 99, a person under fourteen (14) years of age is not subject to criminal liability. A minor aged between fourteen (14) and sixteen (16) is subject to criminal liability only if it can be proven that the act was committed intentionally.

1.3 According to the same article 99 of the Romanian Penal Code, a person older than sixteen (16), inclusive, is subject to criminal liability.

As it is apparent from the entire Romanian legislation, for penal purposes, persons under eighteen (18) are dealt with as juvenile offenders.

The total number of population above fourteen (14) years of age is 18,243,071 and the total population above sixteen (16) 17,632,338.

1.4/1.5 There are no official statistical data regarding the number of non-natives.

1.6 The structure of population by area is 12,302,729 urban and 10,155,293 rural. From 1968 onwards, urban areas have been taken to include municipalities and towns.

1.7 The number of inhabitants employed at the end of 1999 is 8,420,000 of which 4,363,000 are male. The unemployment rate is 6.8%.

2. Criminal law statutes

2.1. The Romanian Penal Code was adopted on June 21, 1968 and entered into force in January, 1969. It replaced the previous Penal Code, named "Carol the Second Penal Code" which had been in force since 1936.

Before 1989, the most important reform of the Romanian Penal Code was made in 1973, when the institution of "correctional labour" was introduced, the institution of release modified, and the fine introduced as an alternative penalty for a number of offences. After 1989, several amendments have been made to the Penal Code, the most representative ones being Law no.104/1992 and Law no.140/1996.

Law no.104/1992 modified the regime of the "conditional suspension of the punishment's execution" and the regime of "the execution of the punishment at the workplace". It also introduced "the suspension of the punishment's execution under surveillance". Law no.140/1996 introduced new offences and aggravated the penalties for a significant number of offences as provided for in the Special Part of the Penal Code.

2.2 The Romanian Penal Code has not been officially published in other languages than Romanian. However, an unofficial translation in English is available on the following web site: http://www.era.int/domains/corpus-juris/public/texts/legal_text.htm.

2.3 In addition to the Penal Code, there are several special laws in force containing penal provisions criminalising violations of regulations in specific important areas. These include

- The Custom Code, Law no.141/1997;
- Law no.12/1990 regarding the protection of population against commercial illicit activities;
- The Companies Law no.31/1990, as amended;
- The Unfair Competition Law, no.11/1991;
- The Law no.64/1991 on patents;
- The Book-keeping Law no.82/1991, as amended;
- Audio-visual Law no.48/1992;
- Emergency Ordinance no.105/2001 on Romanian state borders;
- The Tax Evasion Law no.87/1994;
- The Law no.137/1995 on the protection of the environment, as amended;
- The Copyright Law no.8/1996;
- The Competition Law no.21/1996;

- Law no.90/1996 on labour protection;
- Law no.115/1996 regarding the statement and control of the assets of officials, magistrates, civil servants and persons in leading positions;
- Law no.2/1998 regarding transplant of human organs and tissues;
- The Banking Law, no.121/1998;
- The Law no.21/1998 on preventing and combating money laundering;
- Law no.78/2000 on preventing, detecting and combating corruption;
- Law no.143/2000 on combating illicit drug trafficking and consumption;
- The Government Emergency Ordinance no.141/2001 on sanctioning certain acts of terrorism, and the Government Emergency Ordinance no.159/2001 on preventing and combating the use of the financial banking system for financing acts of terrorism, both adopted by the Parliament in 2002.

Most of these statutes also provide administrative sanctions for less serious violations called contraventions (administrative illicit acts).

3. Procedural law statutes

3.1 Until the adoption of the 1936 Criminal Procedure Code, there were three separate regulations used: the 1864 Criminal Procedure Code for the Romanian provinces of Moldavia and Valachia, created on the basis of the 1808 French model, and two separate regulations for the other provinces, Transylvania and Bucovina. The 1936 Criminal Procedure Code unified the different regulations. It was, in turn, replaced by the Romanian Criminal Procedure Code enacted in 1969.

Major reforms were issued in

- 1990, when more guarantees for the accused were provided, and a new section dedicated to the temporary release under judicial control and the temporary release on bail was introduced;
- 1993, when provisions related to the competence of the court and the legitimacy of arrest were improved;
- 1996, when provisions related to evidence were amended, especially by including a new section dedicated to audio-video recordings.

3.2 The Romanian Criminal Procedure Code has not been officially published in other languages than Romanian. However, an unofficial translation in English is available on the following web site: http://www.era.int/domains/corpus-juris/public/texts/legal_text.htm.

3.3 Various statutes mentioned in 2.3. above contain specific criminal procedural regulations necessitated by the specificity of the offences, such as Law no.21/1998 on preventing and combating money laundering, Law no.78/2000 on preventing, detecting and combating corruption, and Law no.143/2000 on combating illicit drug trafficking and consumption.

In addition, the following laws contain procedural provisions:

- Law no.92/1992 on judicial organisation, as amended;
- Law no.56/1993 on the Supreme Court of Justice;
- Law no.54/1993 on the organisation of courts and military prosecutor's offices;
- Law no.47/1992 on the organisation and functioning of the Constitutional Court, as amended;
- The Government Emergency Ordinance no.141/2001 on sanctioning certain acts of terrorism, and the Government Emergency Ordinance no.159/2001 on preventing and combating the use

of the financial banking system for financing acts of terrorism, both adopted by the Parliament in 2002.

3.4 The Criminal Procedure Code includes numerous specific provisions regarding underage offenders. These include Law no.92/1992 on judicial organisation, as amended, and the Emergency Ordinance of the Government no.92/2000 regarding the organisation and functioning of the services concerning the rehabilitation of offenders, and the supervision of non-custodial sentences.

In the Criminal Procedure Code, within a separate Title dedicated to special procedures, there is a chapter named: "The procedures for cases of underage offenders". This chapter contains special provisions regarding, for example, the mandatory social investigation. The presence in court of a tutelary authority, parents and, depending on the case, other persons whose presence the court considers necessary, is also required.

Moreover, according to article 15 of Law no.92/1992 on judicial organisation, specialised panels may be constituted, when necessary, for judging certain cases. If the case involves underage offenders, it "shall be judged by judges especially appointed by the president of the court".

The particular services established on the basis of the Emergency Ordinance of the Government no.92/2000 are specialised in helping the underage offenders by providing protection as well as social and legal assistance.

4. Court system and enforcement of criminal justice

4.1 The organisation of the court system is regulated by Law no.92/August 4, 1992 on judicial organisation, published in the "Monitorul Oficial" ("Official Gazette" of Romania) Part I, no.197, August 13, 1992. Article 131 of this law abrogated laws no.58/1968 on judicial organisations and no.60/1968 on the organisation and operation of the Public Prosecutor's Office.

Law no.92/1992 was republished in 1997.

Since 1997, the Law no.92/1992 has been amended several times, the most important amendment being the Emergency Ordinance of the Government no.179/1999.

4.2 Law no.92/1992 was published in English and French in the Official Gazette of Romania under the title "Romanian Legislation (Collection of texts) 1995". The publication was authorised by the Ministry of Justice.

4.3 In addition to Law no.92/1992, there are three special statutes containing provisions on the organisation of the court system:

Law no.56/July 9, 1993 on the Supreme Court of Justice was published in the Official Gazette of Romania, Part I, no.159, July 13, 1993. This law has been amended twice, in 1996 and 1997. It was republished in 1999 in the Official Gazette of Romania, Part I, no.56/August 11. The Law on the Supreme Court of Justice contains provisions regarding the organisation, management, functioning and competence of the court, panels of judges, divisions, assistant-magistrates and procedures. There are also titles dedicated to the functions of the Public Prosecutor's Office attached to the Supreme Court of Justice.

Law no.54/July 9, 1993 on the organisation of military courts and the Prosecutor's Office was published in the Official Gazette of Romania, Part I, no.160 on July 14, 1993. In 1998, the military section of the Supreme Court of Justice was suppressed.

The law contains provisions regarding military tribunals, territorial tribunals, as well as appeal courts and the Prosecutor's Offices attached to them. There are also special provisions regarding the military magistrates and their statute.

Finally, Law no.47/May 18, 1992 on the organisation and functioning of the Constitutional Court was published in the Official Gazette of Romania, Part

I, no.101 on May 22, 1992. The most important provisions of this law concern the jurisdictional procedure of the Constitutional Court, namely:

- monitoring the constitutionality of laws before their promulgation;
- monitoring the constitutionality of the standing orders of the Parliament:
- settling cases risen before courts concerning the unconstitutionality of laws and Governmental Ordinances, and exceptions to it;
- observing the procedure for electing the President of Romania;
- examining allegations of the unconstitutionality of political parties;
- issuing an opinion on a proposal to suspend the President of Romania;

4.4 Formerly, the organisation of the police was regulated by Law no. 26/1994, published in the Official Gazette of Romania, Part I, no.123/1994 on May 18. In 2002, important steps were taken in order to harmonise Romanian legislation in this field with the European and international standards: two new laws, Law no.218/2002 on the organisation and functioning of the Romanian Police, and Law no.360/2002 on the status of the police, were adopted.

The Romanian Bar is organised by Law no.51/1995 on the organisation and functioning of the lawyers' profession as republished in 2001 in the Official Gazette of Romania, Part I, no.113/March,6.

As far as the prison and probation agencies are concerned, there are two separate regulations:

Law no.23/1969 as republished in 1973 regulates the enforcement of the penalties. This law has been amended several times. The most important modifications were made in 1990, when the death penalty was abolished, and in 1992, when a new mode of enforcing the imprisonment penalty – the enforcement of the penalty at one's workplace – was introduced.

Probation agencies are regulated by the Government Ordinance no.92/2000 August 29 on the organisation and functioning of the services concerning the rehabilitation of offenders and the supervision of non-custodial sentences.

4.5 As far as the juvenile offenders and their cases are concerned, there are no special criminal procedure statutes. However, there is a special chapter in the Criminal Procedure Code dedicated to these cases.

5. Fundamental principles of criminal law and procedure

5.1 The *principle of legality* has a long tradition in the Romanian criminal law, beginning with the 1864 Criminal Code. The principle is acknowledged in both the Romanian Constitution and the Penal Code.

It is stated in the 1991 Romanian Constitution, article 72 para. (3) let.f) that offences, penalties and their regime of execution are regulated by laws made by the Romanian Parliament (*nullum crimen et nulla poena sine lege*). Article15 para.(2) further stipulates that the law regulates only for the future. If, however, both the new and the old law could be applied, the law more favourable for the offender (ie. the more lenient one) is applied.

The *principle of legality* is recognised in article 2 of the Penal Code as follows:

"The law establishes the acts which constitute offences, the penalties applicable to the offenders, and the measures which may be taken if the said acts are committed."

Article 11 adds to the *principle of legality* by stipulating that the criminal law statutes are not retroactive:

"The criminal law is not to be applied to acts which at the moment of committing the act were not considered to be offences" (*nullum crimen sine lege praevia*).

5.2 The Penal Code does not contain any division of offences. For example, when referring to illicit acts, only one term, "infractiune" ("offence") is used. However, within the Romanian legislation, there are classifications of illicit acts according to their gravity: offences, contraventions and misdemeanours.

5.3 The Penal Code contains in its General Part a title dedicated to minor offenders. According to the first article of this title, article 99, a minor under fourteen (14) years of age is not criminally liable. A minor between fourteen (14) and sixteen (16) can be held liable only if it is proven that the act was committed intentionally. A minor who is sixteen (16) or older is subject to criminal liability.

As established in the entire Romanian criminal legislation, a minor is a person under eighteen (18) years of age.

5.4 The Penal Code does not recognise *strict liability* for any offence. Criminal liability is consequent of an offence, and the offence itself cannot exist without the existence of culpability. Article 19 of the Penal Code distinguishes two forms of culpability: intention or *culpa* (negligence).

5.5 The general provision of the Penal Code regarding the concept of offence, criminal liability and culpability applies to the whole penal legislation. In consequence, *strict liability* is not recognised in any part of the Romanian penal legislation.

5.6 In the Romanian penal system, criminal responsibility is restricted to apply only to individuals. The so-called *corporate responsibility* is not recognised, although the Romanian legislation acknowledges the civil and administrative responsibility of legal persons. Taking into account the necessity of harmonising the Romanian legislation with the *aquis* and the relevant European conventions, a draft Law regulating the penal responsibility of legal persons is being reviewed by the Ministry of Justice.

5.7 According to articles 44–51 of the Penal Code, the penal character of a criminal act is not fulfilled in case of:

- self-defence (article 44);
- state of emergency (article 45);
- physical and moral constraint (article 46);
- fortuitous event (article 47);
- irresponsibility (article 48);
- severe involuntary intoxication (article 49);
- the minority of the offender (article 50);
- mistake of fact (article 51).

All these grounds are acknowledged in the General Part of the Penal Code, and are establish reduced culpability.

Also the Special Part of the Penal Code provides certain causes of non-penal character. They are applied to certain cases as stipulated by the law, such as the *exceptio veritatis* (article 207) to offences of insult and defamation, and constraining active corruption (article 255 para.2).

5.8 According to article 121 of the Penal Code, criminal responsibility falls under the statute of limitations after a certain period of time. However, offences committed against peace and humanity make exceptions to this rule. The time limits for criminal responsibility are as follows:

a) 15 years, when the law imposes a penalty of life imprisonment or imprisonment longer than 15 years for the committed offence;

b) 10 years, when the law imposes a penalty of imprisonment longer than 10 years, but no more than 15 years for the committed offence;
c) 8 years, when the law imposes a penalty of imprisonment longer than 5 years, but no more than 10 years for the committed offence;
d) 5 years, when the law imposes a penalty of imprisonment longer than one year, but no more than 5 years for the committed offence;
e) 3 years, when the law imposes a penalty of imprisonment no longer than one year or a fine for the committed offence.

Article 128 para.1 regulates the periods of limitation. There are also some special provisions which provide, for example, that the period of limitation in case of a juvenile offender is half of the normal term.

5.9 The Penal Code is divided into the General Part and the Special Part. The structure is as follows:

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Title IX. Offences that harm some communal relations

Chapter I – Offences against the family
Chapter II – Offences against public health
Chapter III – Offences regarding the assistance of persons in danger
Chapter IV – Other offences that harm communal relations

Title X. Offences against Romania's defence establishment

Chapter I – Offences committed by military persons
Section I – Offences against the military order and discipline
Section II – Offences on the battlefield
Section III – Offences specific to the air force and the navy
Chapter II – Offences committed by military persons or civilians
Chapter III – Offences committed by civilians

Title XI. Offences against peace and humanity

5.10 **(a) Murder & (b) intentional homicide** – There is no legal definition or distinction between a murder and an intentional homicide. Intentional homicide and aggravated intentional homicide are provided for in articles 174-176 of the Penal Code as follows:

"Art. 174. – Homicide is punished by imprisonment from 10 to 20 years and by the interdiction of certain rights.

An attempt is also a penal offence.

Art. 175. – A homicide which is committed

a) with premeditation;
b) with financial interest in mind;
c) against husband/wife or a close relative;
d) by taking advantage of the victim's incapacity to defend himself/herself;
e) by using means that put other persons' lives in danger;
f) in order to prevent the victim from fulfilling his/her professional or public duties;
g) in order to elude or help an other person to elude prosecution or arrest, or to escape punishment;
h) in order to facilitate or hide the perpetration of another offence; or
i) in public; is punished by imprisonment from 15 to 25 years and by the interdiction of certain rights.

An attempt is also a penal offence.

Art. 176. – A homicide which is committed
a) with cruelty;
b) against two or more persons;
c) by a person who has already committed a homicide;
d) in order to commit or to hide the perpetration of a robbery;
e) against a pregnant woman; or
f) against a magistrate, a policeman, the gendarme or the armed forces during or related to the fulfilment of their professional or public duties; is punished by life imprisonment or imprisonment from 15 to 25 years and by the interdiction of certain rights.

An attempt is also a penal offence."

(c) Robbery – The legal definition of this offence is provided in article 211 para.1 of the Penal Code. Robbery means a theft committed by using violence or threats, by making the victim lose consciousness or unable to defend herself/himself, or a theft committed with the intent to keep the stolen goods, remove the evidence of the offence or facilitate offender's escape.

(d) Assault – In the Romanian Penal Code, there is an entire Section dealing with injuries caused to another person's physical integrity or health. Assaults have been divided into three categories according to the gravity of the offence:

Article 180 penalises all injures or any other violent actions which cause physical pain to another person. It deals with the minor cases and the aggravated forms of the minor cases, i.e. injuries and violent actions which require medical care up to 20 days.

Article 181 is dedicated to the second group, i.e. injuries against a person's health or physical integrity which require medical care up to 60 days.

Article 182 deals with the most severe cases: injuries or any other violent actions which require more than 60 days of medical care, or which result in one of the following consequences: loss of feeling or an organ, functional disorder of an organ, a permanent physical or mental disability, mutilation, abortion, or danger to a person's life. It furthermore distinguishes an aggravated form when the act of violence has been perpetrated in order to produce any of the above mentioned consequences.

(e) Theft – The legal definition of a theft is provided in article 208 para.1. A theft is committed if a person appropriates without the owner's consent a movable that belongs to somebody else. Power resources with financial

value, as well as pieces of written texts are also regarded as movables. An action is considered a theft even if the good in question belongs wholly or partially to the offender, but which at the moment of committing the offence was in the lawful possession or detention of another person. An illegal seizure of a vehicle is also considered a theft if it takes place under the above stated conditions.

Article 209 of the Penal Code provides a definition for an aggravated theft.

A theft is aggravated if the offence is committed

- by two or more persons together;
- by a person carrying a weapon or a narcotic substance;
- by a masked, disguised person;
- against a person who is not capable of expressing his/her will or to defend himself/herself;
- in a public place;
- in a public transport;
- at night time;
- during a calamity;
- by burglary, climbing or by using a key or its duplicate without permission;
- by seizing an item which is part of cultural heritage;
- by seizing identity papers.

It is also considered an aggravation if the theft is targeted at certain categories of products such as oil products, electric devices, and traffic safety devices.

6. Organisation of investigation and criminal procedure

6.1. General issues

6.1.1 The first phase of a trial is the investigation. It is led by a prosecutor, who co-ordinates the whole pre-trial investigation, and decides which measures are to be taken after the initiative phase. The prosecutor works in permanent collaboration with the police.

The judiciary bodies are obliged to gather evidence both in favour and against the accused, even if the accused has admitted to the offence.

The investigation starts when the perpetration of an offence is detected, and the appropriate bodies are informed by issuing a complaint, by denunciation or *ex officio*. If there is enough evidence or if the prosecutor succeeds in gathering sufficient proofs, the next important step can be taken: the actual criminal investigation is initiated by prosecutor's ordinance. From this moment onward, the status of the potential offender shifts from a suspect to an accused.

Once the criminal action is initiated, the investigative body is obliged to get in contact with the accused in order to inform him/her of the existence of the facts for which he/she is being charged, and to explain the rights of the accused (article 237 paragraph 2 Criminal Procedure Code). The decision to initiate a criminal investigation has to be justifiable (article 302 Criminal Procedure Code) and both the facts of the case and their legal regime need to be described (article 235 paragraph 3 Criminal Procedure Code). Due to his/her new status, the accused is entitled to be heard by the prosecutor, to have access to the case file, and to be familiarised with the criminal investigation material. Throughout the procedure, the accused is entitled to have an attorney present at all phases of the investigation. If the accused is arrested, his/her status, as well as the status of the lawyer, is safeguarded by special rules and guarantees.

The judicial bodies are in charge of gathering the evidence. The Criminal Procedure Code provides also the accused an opportunity to make proposals in this respect.

The right to be heard belongs not only to the accused but also to the victim, the civil party (according to article 24 of the Criminal Procedure Code, the civil party is an injured person who claims damages in a penal trial), and the party bearing the civil responsibility (according to the same article, the party bearing the civil responsibility is a person responsible for the

damages caused by the accused). All the parties involved in a criminal trial have the right to an attorney and to be represented during the trial.

As far as the summoning procedure is concerned, article 291 of the Criminal Procedure Code states that a trial may take place only if the parties have been legally summoned, and the procedure appropriately followed.

6.1.2 Like all other modern criminal procedure legislations, the Romanian Criminal Procedure Code reflects a combination of the inquisitorial and accusatorial system. Although the preliminary phase is primarily regulated by the inquisitorial system, and the trial phase by the accusatorial one, the two systems intertwine. For example, during the pre-trial phase, the written and partially secret *ex officio* procedure follows the inquisitorial system but at the same time the influences of the accusatorial system are evident from the numerous rights protecting the accused and the person defending him/her.

6.1.3 Both during the pre-trial investigation and at the end of it, there are several alternative courses of actions from which to choose: the criminal investigation may be terminated, there can be an exemption from criminal investigation, or the case can be dismissed. If the prosecutor feels that there is enough evidence to submit the case to the court, a special indictment is issued. If, however, the prosecutor decides to end the pre-trial phase by not sending the case to the court, the parties involved can ask the court to review the prosecutor's decision. This type of procedure is regulated by specific stipulations.

6.1.4 As it was already mentioned in 6.1.2. above, the trial phase gives emphasis to the accusatorial system which is based on such principles as orality, publicity and contradictoriality.

6.1.5 The 1936 Criminal Procedure Code acknowledged the institution of the examining judge, but the present criminal legislation no longer recognises it. The investigative role now belongs to the prosecutor, who is obliged by the law to respect and safeguard the rights of the accused, especially when his/her freedom is being limited or deprived.

It should be noted that the present Criminal Procedure Code is currently being reformed. The aims of the reformation include establishing the court's competence regarding arrests, interceptions of suspects' conversations and correspondence, and any other measures concerning certain fundamental human rights. The said modifications will be in line with the standards imposed by the European Convention of Human Rights, and the jurisprudence of the European Court of Human Rights.

6.1.6 The Romanian Criminal Procedure Code is divided into the general part and the special one which follow the structure below:

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SPECIAL PART

6.2 Special issues

6.2.1 According to article 23 para.3 of the Romanian Constitution, apprehension (police custody) cannot exceed 24 hours. Para.4 of the same article states that an arrest must be warranted by a magistrate (judge or prosecutor), and that the arrest can last no longer than 30 days. The Criminal Procedure Code contains details concerning the above mentioned preventive measures, and prescribes specific grounds for apprehension and arrest.

6.2.2 Article 136 of the Criminal Procedure Code indicates that in cases which may lead to imprisonment, preventive measures (police custody, interdiction to leave town, arrest) can be taken. The measures ensure the successfulness of the criminal trial proceedings, and prevent the defendant from eluding the criminal investigation, the trial or the enforcement of the punishment.

When deciding upon the appropriate measure, the following criteria are to be taken into account: the degree of social danger caused by the offence, and the health, age, antecedents and other matters related to the person in question.

A person can be taken into police custody only if there are pieces of evidence or clear indications that the defendant has committed the offence. If the defendant is to be arrested, one of the following additional criteria has to be met:

- defendant's identity or domicile cannot be clarified without additional data;
- the offence is flagrant, and the minimum term of imprisonment stipulated by the law is 3 months;
- the defendant has escaped or hidden himself/herself with the purpose of eluding the investigation or the trial, or has made prep-

arations to do so, or during the trial shows signs that he/she wishes to elude the punishment;

- there is sufficient proof that the defendant has tried to impede the revealing of the truth by influencing a witness or an expert, by destroying or altering the evidence, or by any other means;
- the defendant has committed a new offence, and there is proof that he/she will probably commit other offences;
- the defendant is a recidivist;
- there are aggravating circumstances;
- the defendant has committed an offence for which the law stipulates a minimum sentence of 2 years of imprisonment, and the release of the defendant would endanger public security. Before the measure is taken, the defendant must be given the chance to be heard by the prosecutor or the court.
  The same criteria apply if the arrest is ordered during the trial.

6.2.3 The warrant for an arrest is issued by the prosecutor, who is a magistrate. Complaints against the warrant can be filed to a court which has the competence to judge the case. If the trial has already begun, the warrant for an arrest is issued by the court. The major reforms already mentioned in 6.1.5 above will have an impact also on these practices. In the future, the warrants for arrest will be issued by courts, not by the prosecutors. The provisions of article 5 of the European Convention of Human Rights and the jurisprudence created on the basis of it by the European Court of Human Rights will thus be fully met.

6.2.4 Article 23 para.4 of the Constitution and article 149 of the Criminal Procedure Code limit the duration of the arrest to 30 days.

However, the court can prolong the arrest as long as it is necessary. The procedure of the prolongation is detailed in the Code and can be done for very short periods at a time. It is evident that the procedure of verifying the prolongation every 30 days reflects the trend towards shortening the terms of detention.

Moreover, according to article 140 para.2 of the Criminal Procedure Code, the preventive arrest has to be ended if the term of detention amounts to half of the maximum punishment stipulated by law for the respective offence before the court of first instance passes the sentence. There are also other reasons listed in the article.

6.2.5 According to article 23 para.4 of the Constitution.
“Arrest shall be made under a warrant issued by a magistrate for a maximum period of thirty days. The arrested person may lodge a complaint

with the court concerning the legality of the warrant, and the judge is bound to make a pronouncement by a motivated decision. The period of arrest can be extended only by a court decision."

The detailed procedure is included in the Criminal Procedure Code as interpreted by the Constitutional Court in a number of its decisions. Starting with Decision no.60, May 25, 1994, over 18 decisions have been issued on this topic, the most recent one being the Decision no.28, February 1, 2001.

The established practice determines that after the initiative time limit of 30 days has expired, the court is obliged to renew the warrant every 30 days.

Furthermore, the arrested person can at any time make a complaint against the measure, and demand its termination.

6.2.6 In conformity with articles 88 and 89 of the Penal Code, the duration of police custody and preventive arrest is subtracted from the duration of the pronounced imprisonment penalty. The subtraction is done also when the convict has been kept under observation or judged, at the same time or separately, for several concurrent offences even if he/she is no longer a subject of an investigation, the criminal investigation has been terminated, the convict has been discharged, or the penal trial regarding the action which initially caused the police custody or the arrest has expired. In case of a pecuniary penalty, the time spent in police custody or in preventive detention is compensated by suspending the execution of the fine totally or partially. If the convict has been in custody or detention abroad, the duration of these terms is subtracted from the duration of the penalty delivered for the offence by the Romanian court.

According to article 350 of the Criminal Procedure Code, the court of first instance is obliged to decide on the revocation, maintenance or enforcement of the arrest measures in accordance with the pronounced sentence.

In case of acquittal or termination of the criminal trial, the court of first instance orders the release of the arrested defendant. The defendant is also immediately released if the court sentences him/her to

a) imprisonment the length of which equals to or is shorter than the period spent in police custody (apprehension) and detention;
b) imprisonment with a conditional suspension, suspension under surveillance, or if the penalty is to be enforced at one's workplace;
c) pay a fine.

If, however, the sentence pronounced by the court of first instance means that the arrest is prolonged, the arrested can make an appeal to the second instance which then verifies whether the court of first instance has justly enforced the provisions regarding the police custody (apprehension) and the arrest. The prolonged period of arrest will be subtracted from the final sentence (article 381). The same provisions apply to recourse (remedy at law).

6.2.7 Chapter III of the Criminal Procedure Code contains regulations concerning the two most common methods of making an appeal: the appeal and the recourse.

The appeal is an ordinary procedure for reviewing the legitimacy and the facts of the case. The procedure is similar to the one used in the court of first instance.

Exclusive of few exceptions, appeals can be made against all decisions delivered by the court of first instance. The exceptions include cases in which the risk of social danger is seen to be a minor one, as well as cases in which the Court of Appeal has acted as the court of first instance. In these cases, the court decision can be revised by a procedure of recourse. These are, furthermore, the only cases where both the legal and the factual issues are reviewed through recourse.

The appeal can be made by the prosecutor or the defendant regarding both the penal and the civil issues. Also the defendant's spouse may lodge the appeal on the behalf of the defendant. If the defendant is acquitted or the trial terminated, the defendant may also make an appeal against the reasons which led to the acquittal or the termination of the criminal trial.

Appeals can, furthermore, be lodged by the following parties under the following circumstances:

- the victim if the criminal action is initiated due to a prior complaint, but only with regard to civil issues;
- the civil party and the party bearing the civil responsibility with regard to the civil issues;
- the witnesses, the expert, the interpreter and the defender with regard to their legal expenses;
- any person whose legitimate interests have been violated by a measure or an act of the court.

The court can re-try the case *ex integro* or *in partibus* depending on who makes the appeal. Article 371 of the Criminal Procedure Code stipulates

that the court judges the appeal only with regard to the person who lodged it and to the person to whom the appeal claim refers, and only by taking into account the position that the plaintiff making the appeal holds in the trial. Within these limits, the court is obliged, notwithstanding the reasons claimed and the requests filed by the plaintiff in the appeal, to examine all aspects of the case. The appellate court can extend the appeal to cover also parties who have not lodged appeals if their situation is not thereby worsened. This principle of *non reformatio in pejus* is described in article 372 of the Criminal Procedure Code. The appellate instance dealing with the case is not allowed to create a situation that is more difficult for the person lodging the appeal. For the appeal claimed by the prosecutor in favour of one party, the appellate court could not make the latter's situation worse. This principle is applied only if the party in question is the only appealing party. However, if there are several appeals made against the same case, including one lodged by the prosecutor, this rule no longer applies.

The recourse is also a common procedure but it is permitted only on certain legal grounds. *(According to the Romanian legal system, a case is generally brought to trial as follows: "in first instance", "in appeal" and "in recourse". "In first instance" the case is judged in its entirety for the first time. "In appeal" the case is judged for the second time by a superior court. "In recourse" a superior court judges only the legal grounds of the case.*

The "appeal" is a completely new – or second – trial.

The "recourse" in a new partial trial – the third one in all. The recourse follows the "appeal" and is based on certain grounds of legality.) These grounds are unambiguously prescribed in the law and, with one exception, cannot concern *errores facti* but, as it was already mentioned, only *errores juri*. According to article 385^9, the decisions are subject to cassation when

1. the provisions regarding the competence of *rationae materiae* or *rationae personae* were not followed;
2. the court was not legally notified;
3. the composition of the court differed from that required by the law or there was a case of incompatibility;
4. the trial was not a public one, except when the law otherwise stipulates;
5. the trial took place without the participation of the prosecutor or the accused when their presence was obligatory;
6. the criminal investigation or the trial took place without a lawyer when his/her presence was obligatory;
7. the case involved underage offenders, but there was no social investigation conducted;

8. the mental state of the defendant was not evaluated in accordance with the stipulations of the law;
9. the sentence did not include the reasons for the solution, the reasons contradicted the disposition of the decision, or the disposition was not comprehensible;
10. the sentence delivered by the court was not based on the offence for which the defendant was indicted, on actual evidence, or on claims necessary for guaranteeing the rights of the relevant parties;
11. the appeal procedure the court authorised contradicted the stipulations of the law, or the right of appeal was granted after the due appeal period had expired;
12. the offence lacked some constitutive elements, or the instance convicted the defendant for some other offence than for which he/she was originally sent to court;
13. the defendant was convicted for an offence that is not stipulated by the penal law;
14. the individualisation of punishments contradicted the provisions of the Penal Code, or otherwise exceeded the limits stipulated by the law;
15. the person convicted had been previously judged for the same offence, or he/she could not be held criminally responsible, the defendant had been pardoned, or he/she had died;
16. the defendant had been wrongly acquitted because the offence committed was not stipulated by the penal law, or the termination of the trial had been wrongly ordered due to *res judicata*, or the defendant could no longer be held criminally responsible owing to his/her pardoning or death;
17. the offence committed had received a wrong judicial frame of reference;
17[1]. the decision was illegal or led to wrong enforcement of the law;
18. a serious factual error occurred;
19. the judges abused their position by trespassing on the domain of another power established in the State;
20. the trial in the court of first instance or in the court of appeal took place while one of the relevant parties had not been summoned, or while the legally summoned party could not appear and was not able to inform the court of this.

After analysing the recourse, the court makes one of the following decisions:

1. rejects the recourse and maintains the appealed decision;
2. admits the recourse and
   a) reinforces the decision of the court of first instance if the appeal has been wrongly admitted;

b) acquits the defendant or orders the termination of the criminal trial if the conditions required by the law are met;
c) orders a new trial held by the court whose decision was subject to cassation due to the grounds for nullification stipulated by the law, with the exception of the incompetence case, in which case the new trial will be conducted by a competent court. A new trial by the court whose decision was subject to cassation is held, furthermore, if the original trial took place in the absence of an illegally summoned party, or if the party who had been legally summoned could not appear in the court, nor could inform the instance of this, or if a request for postponement made by one of the parties was unjustifiably rejected and the said party could not, therefore, properly defend himself/herself, or if the decision did not correspond to the substance of the case.

The appeal or the recourse is to be filled within 10 days. The execution of the appealed decision is therewith suspended regarding both to the penal and the civil issues, except if the law otherwise stipulates.

6.2.8 Trial *in absentia* is accepted by the criminal procedure system, but since it is rarely used, it is considered an exception.

6.2.9 The main regulations concerning evidence are prescribed in a special section of the General Part of the Criminal Procedure Code. It is stated that any fact that leads to the acknowledgement of the existence or non-existence of an offence, to the identification of the person who has committed the offence, or to the clarification of the circumstances necessary for the fair solution of the case, is considered an evidence. It is worth mentioning that the importance of particular pieces of evidence is not pre-established.

According to article 64, the means of gathering facts which amount to factual elements admissible as evidence are strictly limited to the following: the testimonies of the defendant, the victim, the civil party or the party who bears the civil responsibility (*see explanations in 6.1.1.),* the testimonies of the witnesses, writings, audio-video recordings, photographs, probative material, technique-scientific findings, medico-legal findings, and expertises.

The burden of proof is borne by the criminal investigation bodies and the courts. The accused is not obliged to prove his/her innocence, and if there

is evidence against him/her, the accused has the right to prove the inconsistency of the evidence. According to article 68, it is forbidden to obtain evidence by using violence, threats or any other constraints, as well as promises or encouragement. Also, it is forbidden to force a person to commit or continue to commit an offence for the purpose of obtaining evidence.

The person who knows any fact or circumstance that may lead to the truth in the penal trial may be heard as a witness. If the witness has learnt the facts or circumstances while practising his/her profession, and the principle of professional confidentiality prevents him/her from testifying, he/she will not be forced to testify without a permission of the person or the institution whose confidence is thus violated. If a person has learnt about the facts and circumstances before becoming a lawyer or a representative of one of the parties, the procedural position of the witness overrides that of the lawyer.

The defendant's husband/wife and close relatives are not obliged to testify as witnesses.

Minors can be heard as witness. If they are 14 years of age or younger, their hearing is conducted in the presence of a parent, a tutor, or a person who has taken care of their upbringing and education. There are detailed rules concerning the hearing procedure. These rules are not only applied when hearing witnesses, but also when hearing the other parties of the trial. They include the preliminary questions, questions related to the case, writing down the statements, confrontation, etc.

If an expert report is needed, the court or the prosecutor can designate an expert. The parties may bring in their own experts to assist the court-appointed expert. The expertise may be subjected to additional clarifications or supplement expertises can be drawn. Furthermore, if the criminal investigation body or the court doubts the accuracy of the conclusions of the expertise report, a new one may be ordered.

The possibility of using audio-video recordings as evidence was introduced in the Criminal Procedure Code in 1996. A detailed procedure defines strict conditions under which this type of proof is regarded legal. This procedure aims to respect the standards of private life as prescribed in the provisions of the European Convention of Human Rights.

6.3 Organisation of detection and investigation

6.3.1 The Romanian criminal procedure system prescribes that the criminal investigation is performed by prosecutors and the criminal investigation bodies. The latter include the police investigation bodies and other special investigation institutions such as military officers, border guard service officers, and port officials.

The operative staff of the Ministry of Home Affairs, acting as the police investigation body, is appointed through a special Order of the General Inspector of the Police. The General Inspector is in turn nominated through a Government decision at the proposal of the Ministry of Home Affairs.

As a rule, the criminal investigation is conducted by the police. The law directs that certain serious offences are, however, investigated by the prosecutors. There are police investigation divisions working under the local police and each prosecutor's office.

6.3.2 Prosecutors supervise the criminal investigation procedure. In other words, they both conduct inquiries and monitor the criminal investigation performed by the police and other specialised bodies.

Prosecutors may undertake any amount of criminal investigation in cases which they supervise. The police is obliged to obey the prosecutors' orders, and to assist them when necessary.

6.3.3 The prosecutor can give oral or written instructions to the police investigation bodies regarding the investigation of an offence. In cases mandatorily investigated by the prosecutor, the police may be ordered to undertake certain parts of the criminal investigation. The prosecutor verifies the investigation conducted by the police or other bodies, and makes sure that the investigation is performed in compliance with the legal provisions. The prosecutor may assist in carrying out any criminal investigation or conduct it himself/herself. The prosecutor may ask the criminal investigation body to verify any file, and the investigation body is obliged to supply the requested material together with all the relevant facts and data. The prosecutor may give orders regarding the conduct of the investigation. From the viewpoint of the investigative body, these orders are binding. If there are representations to be made, the investigative body can contact the head of the prosecutor's office. If the head of the office himself/herself has given the orders, a prosecutor ranking above is contacted. Meanwhile, the execution of the orders is not interrupted. The decision regarding the complaint has to be made within 3 days from the notification.

If the prosecutor sees that a trial-related act or measure taken by the criminal investigation body does not comply with the legal provisions, he/she is entitled to reject it.

6.3.4 Within the public prosecutor's office, there are numerous specialised divisions subordinate to the Supreme Court of Justice and the Ministry of Home Affairs. These divisions concentrate on investigating drug offences, firearms offences, and economic offences. It is worth mentioning that special attention is paid to the training of both the police officers and the prosecutors who investigate these types of offences.

In the field of fighting organised crime and corruption, special bodies were established by Law no.78/2000 on preventing, disclosing and punishing corruption.

In 2002, an important piece of legislation was enacted in order to combat corruption: Emergency Government Ordinance no. 43/2002 regarding the National Anticorruption Prosecution Department, adopted by the Parliament by Law no. 503/2002.

The National Anticorruption Prosecution Department will be established as a prosecution division specialising in corruption cases. It will have its headquarters in the city of Bucharest, and exercise its prerogatives in the whole country via specialised prosecutors. The National Anticorruption Prosecution Department is to be an autonomous body within the Public Ministry, led by the chief state prosecutor, and co-ordinated by the chief state prosecutor of the Prosecution Department of the Supreme Court of Justice.

The National Anticorruption Prosecution Department is independent in relation to the court instances and other prosecution divisions, as well as to other public authorities. Its prerogatives and actions are governed solely by the law.

The prerogatives of the National Anticorruption Prosecution Department include:

a) to take action against corruption offences as stipulated in Law 78/2000 on preventing, disclosing and punishing corruption,
b) to conduct criminal investigation and control the investigation carried out by the judicial police officers working under the orders of the chief state prosecutor of the National Anticorruption Prosecution Department;
c) to conduct investigation regarding the technical aspects of an offence, and control such investigation carried out by specialists

in the fields of economics, financing, banking, customs, computer sciences etc. appointed by the National Anticorruption Prosecution department;

d) to study causes which generate and conditions which favour corruption, and to draw up suggestions in order to remove them,
e) to present the Parliament with an annual report regarding the activities of the National Anticorruption Prosecution Department.

The National Anticorruption Prosecution Department will be divided in two types of sub-departments, namely the "corruption fighting departments" and "the departments for fighting offences connected to corruption". The sub-departments are led by departmental chief prosecutors.

Sections of the National Anticorruption Prosecution Department will operate throughout Romania at the prosecution department level of the courts of appeal. The sections are to be led by head prosecutors, who work directly under the chief state prosecutor of the National Anticorruption Prosecution Department.

In order to disclose and prevent corruption with celerity and thoroughness, the police officers who constitute the judicial police of the National Anticorruption Prosecution Department work within the Department. The officers carry out criminal investigations under the direct management, supervision and control of the National Anticorruption Prosecution Department. The judicial police officers are appointed by the Ministry of Interior for a period of 6 years. The appointment may be extended if an officer so desires. With the exception of a few extraordinary situations, the officers cannot be assigned to any other duties. Moreover, highly trained specialist in the fields of economics, financing, banking, customs, computer sciences etc. will be appointed by the National Anticorruption Prosecution Department to look into the technical aspects of the criminal investigation. The specialists will be appointed by the chief state prosecutor of the Prosecution Department of the Supreme Court of Justice upon the suggestion of the chief state prosecutor of the National Anticorruption Prosecution Department. The appointments need to be approved by the relevant ministries. The specialists work under the direct management, supervision and control of the prosecutors of the National Anticorruption Prosecution Department.

The National Anticorruption Prosecution Department began operations on the 1st of September, 2002 with 75 prosecutors, 150 judicial police officers and 35 specialists.

6.4 Organisation of the prosecution agency

6.4.1 Provisions concerning the Public Ministry, provided for in Chapter VI dedicated to the Judicial Authorities, comply with the 1991 Constitution. Under a constitutional principle, the Public Ministry represents general interests of society and defends legal order, as well as citizens' rights and freedoms. As stated in article 131 para.1 of the Constitution, public prosecutors shall execute their office in accordance with the principles of legality, impartiality and hierarchical control, and under the authority of the Minister of Justice.

Title III of Law no.92/1992 is dedicated to the Public Ministry. According to article 26, the Ministry shall exercise its powers via public prosecutors who work under the authority of the Minister of Justice in public prosecutor's offices attached to each court of law.

The actions of the Public Ministry are carried out in conformity with the principles of legality, impartiality and hierarchical control. The Ministry functions independently from other public authorities, and exercises its powers only on the basis and in compliance with the law.

The public prosecutor's offices are attached to the courts of first instance, tribunals, courts of appeal, and the Supreme Court of Justice. Each office is supervised by a head of office, and the public prosecutors work under him/her. The head of the public prosecutor's office is in turn subordinate to the head of the hierarchically superior public prosecutor's office from the same territorial area of jurisdiction.

The Minister of Justice, upon the suggestion of the Public Prosecutor General, establishes the hierarchy and organisation of the staff of criminology bureaux and services, and of each public prosecutor's office, including those offices which contain divisions specialised in maritime law, river traffic, and criminalistics.

The military public prosecutor's offices are organised according to the special Law no. 54/1993, as amended. The law states that the military prosecutor's offices can only be attached to military courts, territorial military courts, and the Military Court of Appeal. In addition to being members of the active military forces, military prosecutors have the status of a civil magistrate.

6.4.2 According to Article 27 of Law no.92/1992 on judicial organisation, the main duties of the Public Ministry include the following:

- carrying out criminal prosecution and its supervision; when exercising this power, the public prosecutors shall lead and control

the criminal investigation conducted by the police or an other body. Investigators are obliged to fulfil the orders of the public prosecutors as long as they comply with the conditions of the law;
- instituting criminal case proceedings before courts of law;
- instituting civil actions in cases stipulated by the law;
- within the limits of the law, participating in trying cases before the courts of law;
- within the limits of the law, instituting appeals against judicial decisions;
- supervising the observance of the legitimacy of the execution of judicial decisions and other writs of execution;
- verifying that the places of preventive detentions, the execution of punishments, and the educational and safety measures comply with the law;
- safeguarding the rights and interests of minors and persons placed under judicial interdiction;
- studying the circumstances which generate or favour criminal behaviour, and presenting proposals which aim to eliminate such circumstances.

The Public Ministry shall also exercise any other power stipulated by the law.

6.4.3 In article 131 para. 1 of the 1991 Romanian Constitution, it is stated that the prosecutors carry out their duties in compliance with the principle of hierarchical control, and under the authority of the Minister of Justice.

- Law no.92/1992 particularises this constitutional provision by stipulating in its article 34 para. 5 that the Minister of Justice has the right to give written orders, directly or through the General Public Prosecutor, to competent public prosecutors to institute, under the provisions of the law, the criminal investigation of offences which fall within the cognisance of the Minister of the Justice, and to promote actions and appeals necessary for defending the public interest before the courts of law. The Minister of Justice cannot order a legally initiated criminal investigation to be ended. According to article 33, the dispositions assigned by the Minister of Justice, given directly or through the General Public Prosecutor, are compulsory as long as they comply with the conditions of the law.

As provided in article 28, the public prosecutors of each public prosecutor's office are subordinate to the head of this office, who in turn is subor-

dinate to the head of the hierarchically superior public prosecutor's office operating within the same territorial jurisdiction.

The hierarchically superior public prosecutor may exercise any authority of the subordinate public prosecutors, or suspend or refute their acts and dispositions if they do not agree with the law. They can, furthermore, give mandatory instructions to the subordinate public prosecutors.

However, the public prosecutor is always free to present before the court the conclusions which he/she deems just and legitimate while taking into account the existing evidence of the case.

Furthermore, there is a chapter in the Criminal Procedure Code entitled "Complaints against the criminal investigation acts and measures". This chapter gives any person the right to file a complaint against the acts and measures of the criminal investigation body if they violate his/her legitimate interests. There is a detailed procedure regarding these complaints. The complaints are to be submitted either to the prosecutor who supervises the actions of the criminal investigation body, or to the hierarchically superior public prosecutor.

The Romanian Constitutional Court ruled in its Decision no.486/2 of December 2, 1997, published in the Official Gazette no. 105/ March 6, 1998 that the last mentioned procedure contradicts the Constitution if it is interpreted to restrain the right of the defendant to address the court. Owing to this decision, the defendant now has the right to make a complaint against certain acts and measures of the criminal investigation body directly to the court.

6.4.4 The Criminal Procedure Code gives the public prosecutor the right to terminate a criminal investigation or to decide to acquit the defendant under the following circumstances:

1. the criminal investigation can be terminated when
   a) the preliminary complaint made by the victim, the authorisation or notification of a competent body, or any other condition stipulated by the law and necessary for the investigation is not met;
   b) the offender has been pardoned or has died, or the crime has fallen under the statue of limitations;
   c) the preliminary complaint has been withdrawn or the parties have reconciled, and the offence is such that the criminal responsibility of the offender is annulled by the named actions;
   d) there is *res judicata* in the case.

2. the defendant can be acquitted when
   a) no act has been committed;
   b) the act committed is not acknowledged by the criminal law;
   c) the act committed has not caused enough social danger to be defined as an offence;
   d) the act has not been committed by the defendant or the accused;
   e) there are one or more grounds which annul the criminal nature of the act.

As it was already explained, a special chapter in the Criminal Procedure Code and the Romanian Constitutional Court Decision no.486/2 of December 2, 1997 allow any interested person to appeal in court against the prosecutor's decision to close a criminal case.

6.5 Organisation of the courts

6.5.1 According to article 10 of Law no.92/1992 on judicial organisation, the courts of law are divided into:

1. courts of first degree;
2. tribunals;
3. courts of appeal;
4. the Supreme Court of Justice.

The military courts also operate within the limits established by the law.

The courts may have one or more divisions depending on the nature of the cases brought before them. For instance, there are divisions specialised in maritime law, river traffic, labour market, and social security.

The Supreme Court of Justice has the following divisions:

– Civil division
– Penal division
– Commercial division
– Division for administrative actions

According to the Government Decision no.212/2001, Annex no.2, there are 15 courts of appeal, 42 tribunals, and 186 courts of first instance.

Number of judges and the number of penal actions brought before courts

	1994	1995	1996	1997	1998	1999
Judges	2,471	2,806	2,863	3,130	3,308	3,479
Actions	234,426	250,054	254,889	280,760	292,356	291,190

6.5.2 In Romania, all courts of first instance deal with criminal offences. Their operations are regulated by specific and detailed rules.

The appellate level is composed of tribunals, courts of appeal, and the Supreme Court of Justice.

The jurisdictions over criminal matters were recently modified by Law no.456/July 18, 2001 amending the Criminal Procedure Code.

Courts of first degree
Ratione oficii: the courts of first degree judge only in first instance.

Ratione materiae: one can sustain that the courts of first degree have general competence. Some offences, however, have been specifically prescribed to belong to the jurisdiction of superior courts.

Tribunals
Ratione oficii: the tribunals judge in first instance, in appeal, in recourse (*see explanation in 6.2.7)*, and also solve conflicts of competence appearing within the court's territorial area of jurisdiction.

Ratione materiae: the tribunals judge in first instance the following offences:

a) homicides (article 174-177 PC), determining or facilitating suicide (article 179 PC), illegal deprivation of freedom (article 189 para 3 PC), slavery (article 190 PC), rape (article 197 para 3 PC), aggravated theft (article 209 para 3 and 4 PC), robbery (article 211 para 2 and 3 PC), piracy (article 212 PC), fraud (article 215 pare 5 PC), peculation (article 215^1 para 2 PC), aggravated destruction (article 218 PC), negligence in protecting state secrets (article 252 PC);
b) passive corruption (article 254 PC), active corruption (article 255 PC), trafficking in influence (article 257 PC), illegal arrest and abusive criminal investigation (article 266 PC), ill-treatment (article 267 PC), torture (article 267^1 PC), unjust repression (article 268 PC), escape (article 269 PC), facilitation of escape (article

270 PC), offences against the safety of the railways resulting in catastrophe (articles 273–276 PC), violations against nuclear power plants and radioactive materials (article 279[1] PC), revealing economic secrets (article 298 PC), trafficking in toxic substances (article 312 PC), nationalist-chauvinistic propaganda (article 317 PC), smuggling guns, ammunition, explosives or radioactive materials;

c) premeditated offences leading to the death of the victim;
d) offences regarding the national security of Romania as provided in special laws;
e) money laundering and drug trafficking;
f) fraudulent bankruptcies if the act concerns banking;
g) other offences under its jurisdiction.

The tribunals judge the appeals made against the criminal case rulings of the courts of first degree, with the exception of the following offences: injures or any other violent actions (article 180 PC), offences of negligence committed against the health or physical integrity (article 184 PC), menaces (article 193 PC), insult (article 205 PC), defamation (article 206 PC), thefts committed by relatives or by other persons who have a special relationship to the victim (article 210 PC), abuse of trust (article 213 PC), crime against property (article 220 PC). These offences have been excluded since they are not serious by nature.

The tribunals judge the recourses against criminal case rulings issued by the courts of first degree, the above mentioned offences excluded, as well as other recourses as stipulated by the law.

Courts of appeal
Ratione oficii: the courts of appeal judge in first instance, in appeal, in recourse, and solve conflicts of competence appearing within their territorial area of jurisdiction.

Ratione materiae or *ratione personae:* the courts of appeal judge in first instance:

a) offences against the state security, offences against peace and humanity;
b) offences committed by the judges of the courts of first degree and the tribunals, prosecutors of the public prosecutor's offices attached to the above mentioned courts, and by public notaries;
c) offences committed by judges, prosecutors and financial controllers from the district chambers of accounts;
d) other offences as stipulated by the law.

The courts of appeal judge the appeals made against the first instance criminal case rulings issued by the tribunals, the recourses made against the criminal case decisions of the tribunals in appeal, as well as in other recourses as stipulated by law.

The Supreme Court of Justice
As first instance, the Supreme Court of Justice has only a *ratione personae* competence. It judges the offences committed by senators and deputies; members of the Government; judges of the Constitutional Court; members, judges, prosecutors and financial controllers of the Court of Accounts and by the president of the Legislative Council; offences committed by marshals, admirals and generals; the heads of the established churches and other members of the High Clergy who are at least bishops or the equivalent; offences committed by the judges or the assistant-magistrates of the Supreme Court of Justice; judges of the courts of appeal or the Military Court of Appeal; as well as prosecutors of the public prosecutor's offices attached to these courts.

The Supreme Court of Justice judges recourses made against the first instance criminal case rulings issued by the courts of appeal or the Military Court of Appeal; the recourses against criminal case decisions issued in appeal by the courts of appeal or the Military Court of Appeal; and the recourses against criminal case decisions issued in first instance by the criminal division of the Supreme Court of Justice.

The Supreme Court of Justice judges recourses in the interest of law and recourses in annulment. These both are extraordinary procedures subject to the sole jurisdiction of the Supreme Court of Justice. The Supreme Court of Justice also judges the conflicts of competence if the case involves courts of superior instance (for example, the conflicts of competence between two courts of appeal), or if the normal legal procedure has for some reason been interrupted or there have been claims of removal (i.e. the trial is removed from one court to another in order to ensure ideal conditions).

6.5.3 The principles of jurisdiction concerning the *rationae materiae* and *rationae personae* are mentioned above. As far as *rationae loci* is concerned, the issues of jurisdiction are provided in article 30 of the Criminal Procedure Code. The appropriate court is determined according to the

a) place where the offence was committed;
b) place where the offender was caught:
c) place where the offender lives;
d) place where the victim lives.

6.5.4 In first instance, the cases are judged by a single judge.
The appeals are judged by a panel of two judges, and the recourses by a panel of three judges.

6.5.5 The Romanian criminal procedure system does not recognise the participation of lay members in trials. Only the professional judges are competent to decide cases.

6.5.6 The Supreme Court of Justice is the highest court in criminal matters. The Supreme Court of Justice can review decisions in different roles: as an appellate court (the appeal is handled by a division of the Court, and judged by a panel of 9 judges) and as a recourse instance. In appeal, the Court appraises both the merits and the legal grounds of the case. In recourse, the review is limited to the latter.

6.5.7 Article 414^2 regulates the extraordinary procedure of recourse in the interest of law. These cases are subject to the sole jurisdiction of the Supreme Court of Justice, and are raised on the initiative of the Public General Prosecutor of the Supreme Court of Justice, or the Minister of Justice acting through the Public General Prosecutor. The purpose of the recourse in the interest of law is to ensure that the criminal law and the criminal procedure law are interpreted and enforced consistently throughout Romania. The Supreme Court of Justice reviews only the legal aspects of the case, and only those aspects on which the lower instances have disagreed. The decisions are issued by the United Sections of the Supreme Court of Justice, after which the Ministry of Justice informs the courts of the decisions. The cases are reviewed only in the interest of the law. This means that the decisions of the Supreme Court of Justice have no bearing on the rulings of the lower instances, or on the parties involved in the trial.

6.6. The Bar and legal counsel

6.6.1 In the Romanian Criminal Procedure Code, there is a special chapter dedicated to judicial assistance and representation. The accused has the right to be assisted by a lawyer throughout the criminal investigation and the trial, and the judicial bodies are obliged to inform him/her of this right. Judicial assistance is obligatory if the accused is a minor, a military person in active service, a military person in reduced service, a person in the Reserve, a student of a military educational institute, held in a medico-educative centre, or if the accused has been arrested even if the arrest relates to another case.

During the trial, judicial assistance is obligatory. If the accused has not chosen a lawyer, one is appointed *ex officio.*

Article 172 of the Criminal Procedure Code prescribes the rights of the lawyer. During the criminal investigation, the council for the defence has the right to assist in the investigation, and draw up claims and memos. If the judicial assistance is obligatory, the criminal investigation body must make sure that the lawyer is present whenever the accused is heard.

If the accused is arrested, the lawyer is entitled, with certain limited exceptions, to have contact with him/her.

The lawyer has the right to lodge complaints against the measures taken by the prosecutor.

During the trial, the lawyer assists the accused in order to safeguard his/her rights.

In Article 173 of the Criminal Procedure Code, there are regulations concerning the assistance of the victim, the civil party, and the party bearing the civil responsibility.

6.6.2 Article 23 of the Constitution is dedicated to personal freedoms. In para.3, it is stated that any person apprehended or arrested shall be promptly informed, in a language he/she understands, of the grounds of the police custody or arrest, and as soon as possible, notified of the charges against him/her. The notification of the charges can be made only in the presence of a lawyer who has been chosen by the arrested or appointed *ex officio.*

If the prosecutor decides to order an arrest, it is mandatory to hear the arrested person in the presence of his/her lawyer. If the arrested has not chosen a lawyer, one is appointed *ex officio*. The same rule applies also to the second phase of the case, i.e. when the accused is heard in court.

6.6.3 The right of defence is provided in article 24 of the Constitution:
"The right of defence in guaranteed.

During the trial, the parties are entitled to be assisted by a lawyer of their own choice or one appointed *ex officio*."

This constitutional provision is explained at length in article 6 of the Criminal Procedure Code:
"The right of defence is guaranteed to perpetrators, to the accused, and to all other parties during the criminal trial.

The judicial bodies must inform the accused before the first hearing of his/her right to be assisted by a lawyer. Notation of this is made to the examination minutes. In accordance with the circumstances and cases stipulated

by the law, the judicial bodies must provide legal assistance for the accused if he/she has not chosen a lawyer on his/her own."

In cases in which the legal assistance is mandatory, and the perpetrator or the accused has not chosen a lawyer on his/her own, one must be appointed *ex officio*.

If the defendant/offender/perpetrator/accused has not chosen a lawyer, the criminal investigation body or the court will take measures to appoint one *ex officio*. In this case, the fees of the lawyer are paid by the state through the Ministry of Justice. If having legal assistance is not mandatory but the accused nevertheless wishes to be assisted by a lawyer, but he/she does not have the financial means for hiring one, he/she can make an application to the local Bar which appoints a lawyer *ex officio*.

6.6.4 Under Law no.51/1995 on the organisation and activities of the lawyers' profession, a member of the Bar must fulfil the following requirements:

- Romanian citizen,
- the exercise of his/her civil and political rights,
- does not exercise another authorised or paid profession abroad,
- a degree from a law school or a doctorate in law,
- dignity.

6.7 Position of the victim

6.7.1 According to article 24 of the Criminal Procedure Code, a person who as a result of a criminal act has suffered physical, moral or material harm is during the trial referred to as the injured party.

The injured party can take a civil action within the framework of the penal trial, in which case he/she obtains the status of the civil party.

6.7.2 Just like any other party in a penal trial, the injured party has the right to propose evidence and request their admission.

6.7.3 Furthermore, the injured party has the right to file a suit against the prosecutor's decision to close the case. This right derives from article 21 of the Constitution which guarantees free access to courts.

6.7.4 The injured party is entitled to take a civil action regarding the criminal proceedings. This right is not restricted in any way.

6.7.5 In a few rare instances, the Criminal Procedure Code gives the injured party the right to initiate criminal proceedings.

According to article 76 of Criminal Procedure Code, the injured party must be heard by the criminal investigation body or the court.

Before being heard, the injured party is informed that he/she may take part in the trial as a victim, and that if he/she has suffered material damage, he/she may take a civil action.

6.7.6 During the trial, the victim has the right to be assisted and represented at all times.

6.7.7 If the victim was the one who initiated the criminal proceedings, he/she has the right to appeal in penal matters.

If the injured party has acted also as a civil party in the penal trial, he/she is entitled to appeal in civil matters.

6.7.8 As a rule, the victim is the one who claims compensation from the offender. If the victim is not capable of exercising this right, or he/she is for some reason prevented from doing so, the prosecutor during the penal trail files a civil action *ex officio* on behalf of the victim.

6.7.9 There is no victim compensation system organised by the State and provided by the law.

6.7.10 There is no victim support scheme at the national or local level. However, there are numerous non-governmental organisations that provide assistance for various victim groups, especially for minors and women.

7. Sentencing and the system of sanctions

7.1 The Romanian Penal Code system divides the sanctions into three categories: penalties, educative measures, and safety measures.

7.2 The Penal Code makes a distinction between penalties and measures. The penalties are consequent on the criminal responsibility, and are applied when an offence is committed.

The measures are divided into educative measures and safety measures: The educative measures are applied only to minors as a consequence of their criminal responsibility. The safety measures, in turn, have no connection to the criminal responsibility, but have been designed to remove a threat of some sort, or to avoid the perpetration of a criminal act. These measures can be applied to persons who have committed acts acknowledged by the penal law, even if the said acts are not regarded as offences.

According to the Romanian penal law system, an act is an offence if it (1) exposes to social danger, (2) is premeditated and (3) is identified in the penal law as an offence. As a consequence, it is possible that an act which is acknowledged by the penal law is not in fact an offence. In these cases, penalties or educative measures cannot be used, but it is possible to apply safety measures.

The Penal Code, furthermore, makes a distinction between principal and additional penalties. The principal penalties include life imprisonment, imprisonment and fine. One of these penalties is applicable to every offence.

The additional penalties are divided into complementary penalties and accessory penalties. The complementary penalties are interdictions of rights or military degradations.

According to article 64 of the Penal Code, a complementary penalty can result in the interdiction of the following rights:

a) the right to elect, and the right to be elected in public authority functions or elective functions;
b) the right to have a position involving the exercise of state authority;
c) the right to have a position, to practise a profession or to carry out some activity similar in nature to the position, profession or activity the convicted person used when committing the crime;
d) parental rights;
e) the right of being a tutor or a guardian.

The complementary penalty of interdiction of rights can be imposed if the principal penalty is a minimum of 2 years' imprisonment, and the court thinks that the complementary penalty would be necessary when considering the nature, gravity and circumstances of the offence and the offender.

The complementary penalty of interdiction of rights must be imposed when the law so requires, and the established principal penalty is a minimum of 2 years' imprisonment.

The execution of the complementary penalty of interdiction of rights begins when the term of imprisonment ends, after a total or a partial pardon, or after the limitation of the penalty's execution**.**

As established by article 67 of the Penal Code, the complementary penalty of military degradation consists of the loss of rank and the right to wear a military uniform. This penalty can be imposed on convicted military persons and reservists if the principal penalty is the minimum of 10 years' imprisonment, or life imprisonment. It can also be imposed on military persons and reservists if they have committed a premeditated crime, and the principal penalty is from 5 to 10 years' imprisonment.

According to article 71 of the Penal Code, the accessory penalty consists of the interdiction of all the rights provided in article 64.

Conviction to life imprisonment or imprisonment is automatically followed by the interdiction of all the rights provided in article 64 from that moment onwards when the court makes its final ruling until the execution of the entire penalty, a total or a partial pardon, or until the limitation of penalty's execution.

7.3 The Penal Code provides the educative measures as special sanctions for juveniles. Article 101 defines the following measures:

a) reprimand;
b) liberty under surveillance;
c) confinement to a re-educative centre
d) confinement to a medico-educative centre.

Penalties may be imposed on a minor only if the educative measures are insufficient for improving his/her attitude. The possible penalties are imprisonment or a fine. The primary penalty prescribed by the law for each offence is reduced by half. The minimum term of imprisonment must be under 5 years. If the primary penalty is life imprisonment, imprisonment from 5 to 20 years is imposed. Complementary penalties are not applied to juveniles.

a) Reprimand
Reprimand means that the minor is explained what kind of social threat the committed offence caused. He/she is advised to behave in such a way that he/she can prove that his/her attitude is improving. The offender is, furthermore, warned against committing a new offence, in which case a more serious measure or a penalty will be imposed.

b) Liberty under surveillance
The liberty under surveillance means that the juvenile's behaviour is kept under special observation for a period of one year. The observation may be confined to the juvenile's parents, foster parents or a tutor. If the said parties cannot ensure that the observation is carried out in a satisfactory way, the court may request some other, reliable person to do the observation – preferably a close relative. Or the court may assign the task to a legitimate authority.

The person or authority in charge of the observation must immediately notify the court if the juvenile takes up an inappropriate attitude, or if he/she commits a new offence.

The court may impose one or more of the following restrictions on the juvenile:

a) not to attend certain places;
b) not to get in touch with certain persons;
c) to do 50–200 hours of unpaid work in a public institution specified by the court. The work is done during weekends and holidays, or on weekdays after school, maximum of 3 hours per day.

If the minor engages in inappropriate behaviour or commits another offence, the court revokes the liberty under surveillance, and imposes a measure of confinement to a re-educative centre, or a penalty.

c) Confinement to a re-educative centre
The purpose of confining the juvenile to a re-educative centre is to re-educate him/her. In the re-educative centre, the juvenile can get an appropriate education and a professional training which corresponds to his/her personal skills. This measure is imposed if the other educative measures prove insufficient.

d) Confinement to a medico-educative centre
The educative measure of confinement to a medico-educative centre is applied if the juvenile due to his/her physical or psychological condition needs special medical treatment and special education.

Both the confinement to a re-educative centre and the confinement to a medico-educative centre can be exercised for an indefinite time, but the term of confinement automatically ends when the juvenile turns 18 years of age.

7.4 There are no special sanctions for distinct groups of people such as the civil servants, the military personnel etc.

7.5 **A. Capital punishment**
In 1990, the capital punishment was repealed from the Romanian legislation by the Decree-Law no.6/January 10. It was replaced by life imprisonment. The 1991 Romanian Constitution states in article 22 para.3 that the death penalty is forbidden. This provision is in accordance with article 1 of the Protocol no.6 to the European Convention of Human Rights, ratified by the Romanian Parliament in 1994.

B. Imprisonment
Imprisonment is defined in the Romanian Penal Code as a principal penalty. The term of imprisonment can range from 15 days to 30 years. The offence-specific terms are stipulated in the Special Part of the Penal Code. These do not exceed 25 years.

Life imprisonment is considered a different main penalty with a different denomination: "life detention". In the Special Part of the Penal Code, life detention is mentioned as an alternative to imprisonment.

C. Deprivation of liberty for an indefinite time
The deprivation of liberty which is realised in the form of imprisonment must always have a fixed length.

However, some custodial measures can be applied for an indefinite time. The educative measures consisting of the confinement to a re-educative centre and the confinement to a medico-educative centre can be applied indefinitely until the offender turns 18. The safety measure of hospitalisation lasts until the person recovers.

D. Other forms of detention
Besides life detention and imprisonment, the Penal Code does not provide other forms of detention.

E. Probation and other measures involving supervision
The first elements of probation were introduced to the Romanian penal system in 1992 when the Penal Code was amended. Regulations concerning the suspension of the punishment's execution under surveillance were drawn up on the basis of the French model.

The necessary infrastructure for the proper implementation of these types of measures was created 8 years later by Governmental Ordinance no.92/ 2000. The purpose of the Ordinance was to regulate the organisation and execution of the rehabilitation services and the surveillance of the non-privative sanctions. This Governmental Ordinance was enforced by Law no.129/2002.

F. Community service
The Romanian penal system includes no statutes on community service. However, there is a special administrative law regulating the replacement of administrative imprisonment with community service.

G. Compensation orders
Compensation orders are not perceived as penal sanctions, but are consequent on civil liability.

H. Fine
The Penal Code establishes the fine as a form of principal penalty. The fine can range from 1,000,000 to 500,000,000 in national currency. The national currency of Romania is called "*leu*" (ROL). On November, 30, 2001, the exchange rate of one American dollar was 31,516 ROLs.

Article 63 of the Penal Code sets special limits for the fines.

According to this provision, the fine consists of a sum of money the offender is sentenced to pay.

The specific amounts are fixed according to the following regulations:

If the law provides that an offence is punished by a fine but specifies no exact sum, the fine is set somewhere between 1,500,000 *lei* and 100,000,000 *lei*.

If the law specifies no exact sum, but stipulates that the fine is an alternative penalty for a maximum of one year's imprisonment, the fine is set between 3,000,000 *lei* and 150,000,000 *lei.*

Finally, if the law provides that the fine is an alternative penalty for a minimum of one year's imprisonment, the fine is set between 5,000,000 *lei* and 300,000,000 *lei*.

The regulations concerning both the general and the fixed fines were modified and updated by Law no.169/2002.

I. Other alternatives or substitutes for imprisonment or fine
Execution of the punishment at the workplace

As provided in article 86^7, the court may order the execution of the punishment at one's workplace under the following conditions:

a) the maximum penalty imposed is 5 years' imprisonment;
b) the offender's prior convictions amount to a maximum of one year's imprisonment.

The execution of the punishment at one's workplace is not possible if the minimum sentence for the particular offence is imprisonment for 15 years, or if the crime committed has caused serious injury, injury leading to death, or has involved rape or torture.

However, it may be used in certain cases of aggravated theft, if the applied penalty is no more than 2 years' imprisonment.

During the execution of the punishment, the convicted person must fulfil all the duties assigned to him/her. Furthermore, certain restrictions concerning his/her rights are provided by the law.

The execution of the punishment at the workplace may or must be revoked or cancelled under the conditions stipulated by the law.

7.6 The Penal Code contains a provision concerning the defaulting on the payment of a fine. If the convicted person, in bad faith, does not pay the fine, the court may replace the fine with imprisonment within the limits established by law for the committed offence. The paid part of the fine is taken into account.

7.7 Besides the principal and additional penalties, the educative measures and the safety measures presented above, the Romanian penal system does not stipulate other penal measures.

7.8 As far as the general provisions on sentencing are concerned, article 72 of the Penal Code describes the general criteria. They consist of:

– provisions of the General Part of the Penal Code;
– offence-specific limits established by law;
– social danger caused by the committed offence;
– character of the offender;
– mitigating and aggravating circumstances.

7.9 If the offence relates to traffic, narcotics, firearms, environment or economy, there are no particular penal sanctions or measures provided – other than those presented above. However, for traffic violations there are special administrative sanctions, such as the suspension of driving license.

8. Conditional and/or suspended sentence, probation

8.1 The Romanian Penal Code identifies two types of suspended sentences: the conditional suspension of the punishment's execution, and the suspension of the punishment's execution under surveillance.

Conditional suspension of the punishment's execution
According to article 81 of the Romanian Penal Code, the court may impose a conditional suspension of the punishment's execution for a certain period of time and under the following conditions:

a) the imposed penalty is at most 3 years of imprisonment or a fine;
b) the offender's prior convictions amount to a maximum of 6 months' imprisonment;
c) the court believes that the purpose of the penalty is served without its execution.

The conditional suspension of the punishment's execution is not possible if the minimum sentence for the particular offence is imprisonment for 15 years, or if the crime committed has caused serious injury, injury leading to death, or involved rape or torture.

The term of the conditional suspension equals to the term of probation. It is fixed by adding 2 years to the imposed term of imprisonment.

As far as the penalties by fine are concerned, the term of the conditional suspension is one year.

Suspension of the punishment's execution under surveillance
According to article 86^1, the court may, under the following conditions, impose a suspension of the punishment's execution under surveillance:

a) the imposed penalty is at most 4 years of imprisonment;
b) the offender's prior convictions amount to a maximum of one year's imprisonment;
c) the court believes that the conviction is a serious enough warning, and that the convicted will not commit another offence even if the penalty is not executed.

The suspension of the punishment's execution under surveillance is not possible if the minimum sentence for the particular offence is imprisonment for 15 years, or if the crime committed has caused serious injury, injury leading to death, or involved rape or torture.

As far as aggravated theft is concerned, the measure may be used if the applied maximum penalty is 2 years' imprisonment.

The term of probation in case of a suspension of the punishment's execution under surveillance is fixed by adding 2–5 years to the imposed term of imprisonment.

Both the conditional suspension of the punishment's execution, and the suspension of the punishment's execution under surveillance may or must be revoked or cancelled under the conditions stipulated by law.

8.2 See 8.1.

8.3 The law does not allow the court to impose a sentence that is only partially suspended.

8.4 The main distinction between the conditional suspension of the punishment's execution and the suspension of the punishment's execution under surveillance is that the latter requires or enables certain surveillance measures and obligations.

The convicted must comply with the following surveillance measures:

a) to appear at certain dates before the judge who is responsible for the surveillance, or before other authorities assigned by the court;
b) to notify in advance of any changes in one's domicile, of travels which last longer than 8 days, as well as of the dates of return;
c) to notify and justify any changes in one's place of work;
d) to give enough information so that his/her living conditions can be monitored.

Moreover, the court may impose on the convict one or more of the following obligations:

a) to attend to various activities, or to a educational or vocational training course;
b) not to change one's domicile, or to cross certain geographical boundaries with the exceptions established by the court;
c) not to attend certain places;
d) not to get in touch with certain individuals;
e) not to drive any vehicles or certain vehicles;
f) to comply with certain measures of control, treatment or assistance, especially during detoxification.

8.5 The judge responsible for the surveillance or another authority assigned by the court supervises that the convict complies with the above mentioned surveillance measures and obligations. Since 2000, the rehabilitation and supervision services have been in charge of the surveillance in cases of the suspension of the punishment's execution under surveillance.

8.6 If the convicted person does not comply with the surveillance measures and obligations, the court may revoke the suspension of the punishment's execution, impose the execution of the entire penalty, or extend the period of probation by not more than 3 years.

8.7 There is a special Governmental Ordinance regulating the organisation and functioning of services which relate to offenders' rehabilitation, and to the supervision of the non-custodial sentences. According to it, these types of services are organised and supervised by the tribunals. The overall management of the services is the responsibility of a special department of the Ministry of Justice.

8.8 The functions of the rehabilitation and supervision services include:

- supervising that the convict complies with the surveillance measures and obligations;
- at the request of the court, drafting evaluation reports on offenders;
- collaborating with public institutions in connection with the sentences imposed on juvenile offenders;
- developing individual counselling for the offenders concerning their social, group and personal behaviour;
- initiating and developing specialised programs for protecting juveniles and youngsters, as well as for providing them with social and legal assistance;
- in collaboration with volunteers and representatives of civil, governmental and non-governmental organisations, initiating and developing rehabilitation programs which support the offenders in their efforts to comply with the conditions imposed by the court;
- if necessary, co-operating with public and private institutions in locating suitable workplaces, schools and vocational courses for the offenders;
- in collaboration with prison authorities specialised in assistance and counselling, developing lucrative programs for inmates which involve societal, educational or vocational activities.

8.9 While carrying out the said duties, the rehabilitation and supervision services may collaborate with non-governmental organisations, specialists in various fields, local volunteers, and representatives of civil organisations.

9. Prison system and after-care of prisoners

9.1. Organisation of the prison system

9.1.1 The General Department of Penitentiaries is a subordinate unit of the Ministry of Justice.

9.1.2 The Romanian Prison Administration is led by the General Director and the Deputy General Director. There are several directorates:

- Penitentiary Regime and Detention Safety Directorate (The Penitentiary Regime Department, The Detention Safety Department);
- Human Resources Directorate (Staff Employment and Promotion Department, Professional Training Department, Staff Management Department);
- Logistics Directorate (Constructions - Investments Department, Logistics Department, Financial Directorate);
- Budget, Financial and Wages Department;
- Accounting and Methodology Department;
- Education, Studies and Penitentiary Psychology Directorate (Cultural-Educative and Penitentiary Psychology Department, Studies and Penitentiary Prognosis);
- Public Relations and Secretariat Department;
- Computer and Data Processing Department;
- Penitentiary Control Department;
- Medical Department;
- Disputed Claims Office;
- Organisation and Mobilisation Office.

9.1.3 In Romania, the Government – acting through the Ministry of Justice – decides on the prison policy, and by so doing lays down the guiding principles also for the institutional and organisational measures. As far as legislative measures are concerned, the Parliament and the Government share the responsibility for finding suitable policies.

9.1.4 The basic principles concerning the execution of penalties are provided by Law no.23/1969, fundamentally amended in 1973, 1990 and 1992. This law contains provisions regarding the rights and obligations of the inmates, their work and wages, the grounds and procedures for their disciplinary responsibilities, conditional release, the surveillance of the convicts, access rights within the penitentiaries, the execution of the punishment at one's workplace, the execution of fines, the execution of the complementary penalties, and the execution of the pre-trail detention.

The Ministry of Justice has issued several Orders in this field:

- the 2001 Order regarding the right to receive audio-visual, musical and sports equipment;
- the 2001 Order regarding the enforcement methodology of a semi-open scheme for certain groups of detainees;
- the 2000 Order regulating the religious assistance in prisons;
- the 2001 Protocol on the education and training of the detainees;
- Order regulating the right of correspondence;
- other regulations concerning specific rights of the detainees, such as the right to purchase food stuffs and other basic commodities, the right to obtain books and newspapers, visitation rights, the right to make phone calls, the right of correspondence, and the right of filing petitions.

The objective of this legal framework is to bring the domestic legislation into line with the international standards, especially those imposed by the Rome European Human Rights Convention of 1950, ratified by Law no.30/1994; the Council of Europe Standard Minimum Rules for the Treatment of Prisoners; and the Council of Europe Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, ratified by Law no.80/1994.

9.1.5 In Romania, the current situation is the following:

- 9 maximum security prisons (also closed and half-open wards): Aiud, Arad, Bucuresti-Jilava (for transit and remand), Bucuresti-Rahova, Craiova, Gherla, Margineni, Poarta Alba;
- 24 closed regime penitentiaries (also half-open wards), including one penitentiary with half-open regime (Pelendava) and one women's penitentiary (Tîrgsor);
- a penitentiary for juvenile and young offenders: Craiova;
- 3 re-educative centres for juveniles: Gaesti, Tichilesti and Tîrgu Ocna;
- 5 penitentiary hospitals: Bucuresti-Jilava, Colibasi, Dej, Poarta Alba, Tîrgu Ocna.

Other units:

- The Military School of Prison Administration: Tîrgu Ocna;
- The Unit for Supplies, Husbandry and Repairs: Bucharest;
- The Sub-unit for supervising and escorting transferees.

The Romanian prison system

Location	Accommodation capacity (places)	Overcrowding index	Ratio: staff-prisoners	Regime
Aiud	1,750	153%	1 to 8	High security and half-open
Arad	613	184%	1 to 4	Half-open
Bacau	784	214%	1 to 8	–
Baia Mare	540	193%	1 to 5	–
Botosani	710	130%	1 to 4	–
Braila	668	154 %	1 to 5	–
Bucuresti	1,385	213%	1 to 7	–
Bistrita	837	129%	1 to 6	–
Codlea	640	144%	1 to 5	–
Colibasi	1,105	138%	1 to 6	Half-open
Craiova	1,309	150%	1 to 7	High security
Deva	1,271	141%	1 to 7	–
Drobeta-Turnu Severin	709	162%	1to 5	–
Focsani	715	190%	1 to 6	–
Galati	590	223%	1 to 6	–
Gherla	1,363	170%	1 to 8	High security
Iasi	1,205	191%	1 to 9	–
Margineni	1,177	159%	1 to 7	High security
Miercurea Ciuc	435	196%	1 to 5	–
Oradea	680	143%	1 to 5	Half-open
Pelendava	50	0%	1 to 1	Half-open
Ploiesti	465	130%	1 to 4	–
Poarta Alba	2,359	120%	1 to 7	Half-open
Rahova	1,335	163%	1 to 4	High security
Satu Mare	588	137%	1 to 5	–
Slobozia	800	158%	1 to 7	–
Timisoara	1,371	147%	1 to 9	–
Targsor	790	127%	1 to 6	Women's penitentiary
Targu Mures	470	173%	1 to 5	–
Targu Jiu	500	236%	1 to 5	–
Tulcea	1,415	133%	1 to 6	–
Vaslui	538	176%	1 to 5	–
Bucuresti	773	90%	1 to 2	Penitentiary hospital
Colibasi	135	163%	1 to 3	Penitentiary hospital
Dej	257	70%	1 to 2	Penitentiary hospital
Poarta Alba	323	69%	1 to 4	Penitentiary hospital
Targu Ocna	274	67%	1 to 1	Penitentiary hospital

9.1.6 As it was earlier mentioned, the Romanian prison system for juveniles consists of a prison and 3 re-educative centres:

Location	Accommodation capacity (places)	Overcrowding Index	Ratio: staff-prisoners	Regime
Craiova	558	107%	1 to 2	Penitentiary for minors and youngsters
Gaesti	729	79%	1 to 2	Re-educative centre for minors
Tichilesti	419	131%	1 to 2	Re-educative centre for minors

(There is no data available on the Tîrgu Ocna re-educative centre.)

According to Article 32 of the Romanian Constitution, the right to education is guaranteed by general compulsory education, and by the education provided by high schools and vocational schools. The penitentiary and the re-educative centres for minors develop special programmes in collaboration with the Ministry of Education and Research.

The General Directorate of Penitentiaries has introduced a new strategy on minor offenders. This strategy is based on the enforcement of the Constitutional provisions regarding the fundamental human rights and freedoms, and on the International Convention of the Rights of the Child. The rehabilitation of minors is among the principal objectives.

To this end, the General Directorate of Penitentiaries has organised a unique experiment on the European scale: a new re-educative centre for minors was founded in Tîrgu Ocna near the Military School of Non-commissioned Officers. The goal of this experiment is twofold: firstly, to rehabilitate juvenile offenders, and secondly, to train new penitentiary personnel.

9.1.7 According to the Criminal Procedure Code, the enforcement of the conviction belongs to the executive court, i.e. the court of first instance. The executive court sends the convict to the closest place of detention. If the convict is a female or a minor, he/she is sent to one of the special units mentioned above.

9.1.8 Since a number of old prisons are still in use, the Romanian prison system allows more than one prisoner to be housed per cell. At present, overcrowding poses a major problem. In mid-2001, the average percentage of overcrowding was approximately 44%.

9.1.9 During the first 7 months of 2001, over 13,000 of the average 50,000 persons held in custody have carried out various lucrative activities:

a) approximately 7,000 have performed paid work;
b) approximately 6,000 have performed activities for the benefit of the place of detention.

(Currently, the latter are not remunerated; all the other activities are paid.) In 2001, the main socio-educative and psycho-therapeutic activities included:

- programmes of self-development for prisoners and minors;
- schooling (primary and lower secondary school);
- vocational training;
- arts, sports, promotion of multi-culturalism;
- penitentiary social assistance;
- therapeutic programmes for prisoners and minors;
- studies and researching;
- local broadcasting;
- journals/reviews.

There are 78 clubs, 61 school classes, and 49 sports grounds located at the penitentiary establishments.

9.1.10 According to Law no.23/1968, a convict whose behaviour whilst in prison has been good, and who has served 1/5 of his/her sentence, may work outside the penitentiary. These provisions do not apply to recidivists or to persons who have been convicted of serious offences such as homicide or crimes against peace and humanity.

As far as education is concerned, there are various special programmes available. Convict's age and status are taken into account.

9.1.11 In case of serious family crisis or other such situations, Law no.23/1968 on the enforcement of the penalties allows a special furlough of no more than 5 days to be granted to a convict whose behaviour whilst in prison has been good.

9.1.12 The Romanian Penal Code criminalises the escape from legal hold or detention. According to article 269, the punishment for this offence is imprisonment of 6–24 months. If the escape involves violence, use of weapons or other instruments, or is committed by two or more persons together, the punishment is 2–8 years of imprisonment. The punishment imposed for the escape is added to the prior sentence as long as the total term of imprisonment does not exceed the maximum term of 30 years. An attempt is also a penal offence.

9.1.13 In Romania, there are no significant minorities among the prisoners, with the exception of the Roma. The following data is from 2000:

No.	Nationality	Total	Percentage
1.	Romanian	40643	84.2
2.	Hungarian	1980	4.1
3.	Roma	5001	10.4
4.	Turkish	295	0.6
5.	Arabian	45	0.09
6.	Chinese	15	0.03
7.	Moldavian	92	0.2
8.	Ukrainian	31	0.06
9.	Others	194	0.4

9.1.14 In 1996, Romania ratified the European Convention on the transfer of sentenced persons by passing the Law no.76/1996. In 1999, the Additional Protocol to this Convention was also ratified by the Government Ordinance no.92/1999. Although these international instruments are already part of the national legislation, a special law on the transfer of the persons convicted abroad, Law no.756/2001, has been adopted.

9.2 Conditional release (parole), pardon and after-care

9.2.1 Conditional release means that the convict is released from the penitentiary before the entire penalty has been served. The Romanian Penal Code stipulates that the release is continued only if the convict does not commit another crime between the time of his/her release and the termination of the entire penalty.

9.2.2 Conditional release and life imprisonment
It is worth mentioning that according to article 55^1 of the Penal Code, an offender sentenced to life imprisonment may be conditionally released after 20 years if he/she has demonstrated discipline and improved attitude, and has been hard working. The convict's criminal record is also taken into account.

Under the same conditions, a convicted male over 60 years of age and a female over 55 may be conditionally released after serving 15 years.

The sentence is considered served if the convict has not committed a new crime within 10 years from the release.

Conditional release and imprisonment
According to article 59 of the Penal Code, the following conditions are taken into account when deciding on conditional release:

- if the term of imprisonment is no longer than 10 years, two thirds of the sentence have been served. If the term exceeds 10 years, the limit is three quarters;
- convict is hard working, and has demonstrated discipline and improved attitude;
- criminal record.

If the convict has committed an offence of negligence, and the term of imprisonment does not exceed 10 years, the conditional release may be granted when at least half of the sentence has been served. If the term of imprisonment exceeds 10 years, the limit is two thirds.

There are also special provisions regarding the conditional release of juvenile and elderly offenders, concerning especially the reduction of the time limits described above.

Article 61 of the Penal Code provides that a sentence is considered served if the convict does not commit another crime between the time of his/her release and the termination of the entire penalty.

If the released convict, however, commits a new crime before the termination of the sentence, the court, after taking into account the seriousness of the crime, may either continue the release or revoke it. If the release is revoked, the penalty imposed for the new offence is added to the remaining term of the original offence. However, the extension may be not more than 5 years.

The revoking of the release is obligatory when the offender has committed a homicide or a premeditated crime resulting in a person's death or other very serious consequences, or when he/she has committed a crime against state security, or peace and humanity.

9.2.3 In addition to the provisions presented above, there are no other general or special conditions stipulating the conditional release.

9.2.4 Matters related to the conditional release fall under the jurisdiction of the courts operating within the area of the penitentiary. The court bases its decision on documents presented by a special committee established at each penitentiary, or on the convict's own appeal.

9.2.5 According to the Romanian legislation, conditional release is not supervised.

9.2.6 As presented in 9.2.2. above, the conditional release may or may not be revoked if a new offence is committed.

9.2.7 The Romanian Penal System makes a clear distinction between a pardon and an amnesty. A pardon means that the execution of the penalty is totally or partially revoked, or that a penalty is replaced by another, lighter punishment. An amnesty, on the other hand, removes the criminal responsibility for the committed offence. In accordance with article 72 para.3 let.g) of the Romanian Constitution, the Parliament regulates by an organic law the granting of amnesties and collective pardons (an organic law is a law which becomes effective after being seconded by more than one- half of the parliamentarians). Furthermore, the President of Romania can grant individual pardons (article 94 let.d) of the Romanian Constitution).

9.2.8 There are certain institutions, both governmental and non-governmental, involved in the after-care of offenders. The most important governmental institutions are the rehabilitation and supervision services set up under the authority of the Ministry of Justice.

9.2.9 These services collaborate with volunteers and non-governmental organisations in initiating and developing special programs for locating available workplaces, schools and vocational training courses for the former inmates.

10. Reformation plans

10.1 When its role as the consolidator of the Romanian legislation is taken into account, the Ministry of Justice is in key position when the substantial reform in the criminal justice system is promoted.

The reform will focus on the independence and impartiality of justice, harmonising the domestic legislation with the *acquis communautaires*, protecting the human rights, and creating a permanent partnership between the authorities and civil society.

The legislative reform represents an essential element in the criminal justice system reform. Special committees have thus been founded to review the following domains:

- judicial organisation,
- penal legislation,
- criminal procedure legislation,
- legislation related to the execution of penalties.

A. The legislation on judicial organisation will focus on the following subjects: consolidating the role and jurisdiction of the Superior Council of Magistrates; founding specialised courts, especially tribunals for minors; organising continuous training for the magistrates, especially in the field of probation and cases involving minor offenders; international aspects or mutual legal assistance, combating corruption, money laundering and organised crime; introducing a panel of two judges to first instance trials; and establishing an IT network for courts. The draft of the new Law on judicial organisation is being deliberated by magistrates nation-wide.

B. The penal legislation will be reviewed in the context of the European legislative unification process. A special committee has been founded to elaborate the New Penal Code of Romania in this respect. The major reforms of the Penal Code will include establishing criminal responsibility for legal persons, the possibility of using community service as a means of sanctioning, and creating the necessary legal instruments for fighting new forms of criminality. The committee will, furthermore, take the economic and financial offences under consideration. Special attention will also be paid to creating effective alternatives to imprisonment and, more generally, to reforming the framework of penal sanctioning. Creating a special legislation on cyber-crime is also on the agenda.

The new penal legislation will be consistent with the most recent international or European instruments signed or ratified by Romania. These include The European Criminal Law Convention on corruption, The European Convention on cyber-crime, the European Convention on Money Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the United Nations Convention against Transnational Organised Crime, its additional protocols, and the International Criminal Court Statute.

C. Due to the fact that the criminal procedure legislation constitutes the primary instrument for enforcing the substantive penal provisions, the reform of the Romanian Criminal Procedure Code will reflect the new penal legislation. Furthermore, the Code is to be amended in accordance with the standards imposed by the jurisprudence of the European Court of Human Rights, and the Romanian Constitutional Court. Reflecting the permanent duality between *due process* and *crime control*, the Romanian criminal procedure legislation will contain new provisions related to pre-trial detention, searches, and the interception of conversations and correspondences. The status and security of witnesses will be ensured by implementing new provisions regarding witness protection.

A draft Law that substantially amends the Criminal Procedure Code, and a draft Law on witness protection have been adopted by the Romanian Senate, and submitted to the Romanian Chamber of Deputies for deliberation.

D. The present legislation on the execution of penalties will undergo profound changes when the new legislation, in line with the international standards, is adopted.

In 2001 and 2002, important steps were taken in order to criminalise illegal activities which pose a serious threat to public security. In this connection, it is worth mentioning that human trafficking, together with all its social and economic implications, constitutes a phenomenon that has reached worrying dimensions. In order to suppress it, a special Law has been adopted to prevent and combat human trafficking. The law includes provisions regarding the prevention of trafficking, the penal measures, victims' protection and assistance, enforced judicial procedures, as well as the promotion of international co-operation.

The rapid societal development creates new forms of criminality, and poses an implicit, yet permanent challenge for legislators. The recent events of September 11, 2001 clearly demonstrate this fact.

Among the most recent legislative measures taken by Romania in its effort to fight terrorism are: The Government Emergency Ordinance no.141/2001

on sanctioning certain acts of terrorism, and the Government Emergency Ordinance no.159/2001 on preventing and combating the use of financial banking system for financing acts of terrorism. These Government Emergency Ordinances were passed by the Parliament in 2002.

For combating illegal migration, the Government adopted the Emergency Ordinance no.112/2001 on sanctioning certain actions committed abroad by Romanian citizens or by persons who are not Romanian citizens, but who reside in the country. The Ordinance has been approved by the Parliament.

At the institutional level, the National Committee for Crime Prevention was recently established (Governmental Decision no.763/2001). It is to operate as a part of the criminal justice system.

A modern draft Law on organised crime has been approved by the Government, and submitted to the Parliament for deliberation.

10.2 Romanian legislators are considering different possibilities for establishing sanctions alternative to imprisonment. The objective is to reduce the use of imprisonment, and consequently, to expand the use of non-custodial sanctions. In 2000, for example, the Penal Code was amended to provide more variety to applying the suspensions of the punishment's execution.

10.3 As a reaction to both the domestic needs and international influences, there has been a tendency to increase penalties and create new offences: During the past decades, new offences related to environmental issues, firearms, certain economic issues, copyright, money laundering, recent drug trafficking trends, human trafficking, and new forms of terrorism have been created. At the same time penalties for serious violent offences, especially domestic violence, have been increased.

Although there has been no official evaluation of the results of such tendencies, the preventive effects are indisputable.

10.4 An important step in providing special protection and assistance for victims was taken by adopting the Law on preventing and combating human trafficking. This law grants special physical, legal and social protection and assistance for victims, especially when they are women or children. At the institutional level, the law stipulates that 9 Centres for Assisting and Protecting the Victims of Human Trafficking are to be founded.

Furthermore, a draft Law concerning the protection of victims, in line with the relevant international standards, especially the European Convention on the Compensation of Victims of Violent Crimes, is being elaborated.

11. Statistics and research results on crime and criminal justice

Total number of persons convicted
Here, "Total" refers to all persons convicted, not just to those who have been convicted for the offences mentioned in the table below.

Year	1995	1996	1997	1998	1999	2000
Total	101705	104029	111926	106221	87576	75407
Premeditated homicide	1924	2039	2082	1989	1865	1456
Assault	2031	2221	2685	2837	2440	2578
Rape	1005	969	985	776	727	627
Robbery	3175	3064	2744	3174	3058	2670
Theft	48330	49062	49962	44206	33729	27411
Drug offences	240	359	357	279	267	178

In this table, the data on homicides refers to homicides, aggravated homicides and infanticides.

Assault includes physical injury and aggravated physical injury.

This statistic presents an increasing trend from 1995 to 1997. After 1997, the number of offences has fallen by approximately 25%.

The same curb characterises almost all the offences. The most frequent offence is theft.

Number of women and minors among the convicted in 2000

	Number of women	Number of minors
Total	10361	6738
Premeditated homicide	118	60
Assault	200	82
Robbery	237	513
Theft	2475	5019
Drug offences	23	8

When compared to the total number of persons convicted, the percentage of women and minors has decreased. The most common offence among this segment is theft, followed by robbery.

Type of sanctions imposed in 1999

Here, "Total" refers to all sanctions imposed, not just to sanctions imposed for those offences mentioned in the table below.

Type of offence	Total sanctions & measures	Fines	Non-custodial sanctions & measures	Suspended custodial sanctions & measures	Unsuspended custodial sanctions & measures
Total	87576	19169	20266	1154	45415
Premeditated homicide	1853	2	49	0	1800
Rape	727	2	19	1	705
Robbery	3058	17	115	4	2850
Theft	33729	356	2845	196	24283
Drug offences	267	20	22	2	222

Non-custodial sanctions and measures include non-custodial measures for juveniles, as well as suspensions under certain conditions after a conviction.

Suspended custodial sanctions and measures include suspended prison sentences with supervision, and suspended custodial measures for juveniles.

Unsuspended custodial sanctions and measures include imprisonment, imprisonment of juveniles, and unsuspended custodial measures for juveniles.

In 1999, more than 50% of all offenders were convicted to an unsuspended custodial sanction and measure. This reflects the trend of using the imprisonment as the primary sentence.

Number of convictions by length of unsuspended custodial sanctions and measures imposed in 1999

Type of offence	Total unsuspended custodial sanctions	Under 12 months	12 months & less than 60 months	60 months & less than 120 months	120 months & over	Life
Total	45415	12610	24316	3174	749	13
Premeditated homicide	1800	10	558	615	530	12
Rape	705	9	275	247	77	0
Robbery	2879	58	1149	1128	72	0
Theft	27312	7213	15709	874	29	0
Drug offences	222	86	104	9	11	0

The most common convictions are between 12 and 60 months. It is evident that life imprisonment is an exception, usually imposed for aggravated homicide.

Prison population (including pre-trial detainees): STOCK

STOCK: on 1 September	1995	1996	1997	1998	1999	2000
Total	46,454	43,609	44,227	51,310	51,396	49,682
of which: Pre-trial detainees	10,646	10,895	10,346	6,555	5,330	5,523
of which: Female	1,604	1,571	1,782	2,081	2,017	1,932
of which: Aliens	413	429	427	322	311	288
of which: Minors	2,872	2,446	2,478	2,429	1,856	1,599

Prison population (including pre-trial detainees): FLOW

FLOW: number of entries/receptions	1995	1996	1997	1998	1999	2000
Total	46,333	43,160	44,800	44,027	38,613	35,622

"Stock" refers to the number of prisoners or offenders under the supervision or care of the correctional services at the given date, 1 September.

"Flow" refers to the number of entries into penal institutions, or commencements of supervision or care by the correctional services.

The tables cover all penal institutions of whatever nature that fall under the responsibility of the prison administration: institutions for those held in pre-trial detention on remand and institutions for sentenced prisoners, including those reserved for special groups (e.g. institutions for minors).

12. Bibliography

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"Manual de drept penal", Costică Bulai, Editura ALL, 1997, Bucureşti, ISBN 973-9229-74-3

"Tratat de procedurã penalã" Ion Neagu, Editura PRO, 1997, Bucureşti, ISBN 973-97447-9-6

"Tratat de procedură penală", Nicolae Volonciu, Editura Paidea, 1997, Bucureşti, ISBN 973-9131-01-8

„Justiţie penală – Norme Juridice-„ Pavel Abraham, Editura Naþional 2001, Bucureşti, ISBN 973-9459-89-7

„Vinovăţia penală", George Antoniu, Editura Academiei Române, Bucureşti 1995, ISBN 973-27-0499-3

„ Romanian legislation (collection of texts), 1995, Sucursala Pologrefica „Bucurestii Noi",
http://www.anp.ro/en/index.htm - the official web-site of the Romanian prison administration
http://www.kappa.ro
http://www.era.int/domains/corpus-juris/public/texts/legal_text.htm.

No official translations exist of publications dealing with the Romanian penal law, criminal procedure and penitentiary law.

There are several specialised Romanian magazines on legal issues, including "Dreptul" (The law), "Revista de drept penal" (The criminal law magazine), and "Pandectele române".

APPENDIX

1. Demographic issues

1.1 What is the *total population* as of 1 January 20___?

1.2 What is the *minimum age of criminal responsibility*? Is this an absolute limit, or are courts allowed discretion on a case-by case basis? What is the total population that has reached this minimum age?

1.3 What is the age at which *full (adult) criminal responsibility* is reached? What is the total population that has reached this age?

1.4 What is the total number of *non-natives* (aliens) as of 1 January 20___?

1.5 What are the most important *nationalities* represented among these non-natives?

1.6 What proportion of the population lives in *urbanized areas*? (What is the definition of urbanized areas used in your country?)

1.7 How many people are *employed*? What percentage of the employed are male? How large is the unemployment rate?

2. Criminal law statutes

2.1 Please provide a brief history of your *Penal Code*. When was it enacted? Has it been influenced by foreign Penal Codes and, if so, by which? What have been the major reforms of the Penal Code since 1945?

2.2 In what languages has the Penal Code been officially published? What translations are available (English, French, German, Spanish, Russian, other)? Please provide the bibliographical references and, if available, the international standard book number (ISBN).

2.3 What *other main statutes* contain definitions of criminal offences, such as narcotics offences, traffic offences, environmental offences or economic offences? Please list these statutes, with their date of enactment and describe in brief their content. Should violation of these statutes be deemed an administrative infraction or transgression, please note this.

3. Procedural law statutes

3.1 Please provide a brief history of your *Code of (Criminal) Procedure*. When was it enacted? Has it been influenced by foreign procedural codes and, if so, by which? What have been the major reforms of the Code since 1945?

3.2 In what languages has the Procedural Code been officially published? What translations are available (English, French, German, Spanish, Russian, other)? Please provide the bibliographical references and, if available, the international standard book number.

3.3 What *other main statutes* contain provisions on criminal procedure? Please list these statutes, with their date of enactment and describe in brief their content. If your country has a system of administrative penal offences, please refer also to the statute which contains the applicable procedural provisions.

3.4 Is there a special statute on juvenile offenders? Please give the date of enactment and describe in brief its content.

4. The court system and the enforcement of criminal justice

4.1 Please provide a brief history of the statute on the *organization of the court system* (if separate from the Code of Procedure). When was it enacted? What have been the major reforms of this statute since 1945?

4.2 In what languages has this statute been officially published? What translations are available (English, French, German, Spanish, Russian, other). Please provide the bibliographical references and, if available, the international standard book number.

4.3 What *other main statutes* contain provisions on the organization of the court system? Please list these statutes, with their date of enactment and describe in brief their content.

4.4 What statutes contain provisions on the *organization of the police, the bar*, and *the prison and probation agency*?

4.5 Is there a special statute on criminal procedure in the case of juvenile offenders? Please give the date of enactment and describe in brief its content.

5. The fundamental principles of criminal law and procedure

5.1 Is the *principle of legality* established in the Penal Code? If so, please annex an English translation of the relevant provision.

5.2 What *division of offences* (e.g. crime/delit/contravention or Vegrehen/Verbrechen) is made by the Penal Code, and on what criteria is this division based? Is the same division used in other criminal law statutes as well and, if not, what divisions are used?

5.3 What are the *minimum and maximum ages* at which an offender is dealt with as a juvenile? What is the minimum age at which an offender is dealt with as an adult offender?

5.4 Is *strict liability*[1] for certain offences or categories of offences recognized in the Penal Code? If yes, for which offences?

5.5 Is strict liability for certain offences or categories of offences recognized elsewhere in criminal law? If yes, for which offences?

5.6 Is criminal responsibility restricted to individuals, or can also groups of persons be held responsible ("*corporate responsibility*")?

5.7 What grounds for *justification* are expressed in the Penal Code? Apart from these written grounds, are other grounds recognized in case law?

5.8 What *time limits* bar prosecution of criminal offences?

5.9 Is the Penal Code divided into a *general part* and a *special part*? If not, is another division used? In order to provide an overview of the contents of the Penal Code, please append a table of contents that provides the titles of parts and chapters of the Penal Code.

5.10 Please provide an English translation of the *legal definition* of (a) murder, (b) intentional homicide, (c) robbery, (d) (ordinary, simple) assault, and (e) (ordinary, simple) theft. What *aggravating circumstances* are mentioned in the Penal Code in the cases of assault and theft?

6. The organization of the investigation and criminal procedure

6.1. General issues

6.1.1 Please describe briefly the main aspects of ordinary criminal procedure (for example, how is the procedure initiated, how is evidence gathered and presented, who is summoned, what is the role of counsel, who has the right to be heard, who presents questions).

6.1.2 Does the pre-trial phase have an inquisitorial or an accusatorial character?

6.1.3 At what stage is the pre-trial phase deemed to end, and the trial stage to begin?

6.1.4 Does the trial phase have an inquisitorial or an accusatorial character?

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[1] Strict liability means that a statute imposes criminal sanctions for an unlawful act without requiring that the criminal intent of the offender be demonstrated.

6.1.5 Does your system recognize the role of the examining judge (jude d'instruction, Untersuchungsrichter), and if so, what is the function of the examining judge?

6.1.6 Is the Code of Judicial Procedure divided into a *general part* and a *special part*? If not, is another division used? In order to provide an overview of the contents of the Code of Judicial Procedure, please append a table of contents that provides the titles of parts and chapters of the Code.

6.2 Special issues

6.2.1 Please describe briefly the stages of apprehension, arrest and pre-trial detention as recognized in your system.

6.2.2 What are the legal prerequisites for the application of apprehension / arrest / pre-trial detention?

6.2.3 Who decides on the application of pre-trial detention?

6.2.4 Is the maximum term of pre-trial detention determined in law? Is there any trend towards shortening this maximum term?

6.2.5 Who may request a review of the decision to hold a suspect in pre-trial detention, and/or does the law prescribe an automatic review of this decision at regular intervals?

6.2.6 How is the term of pre-trial detention to be deducted from the sentence?

6.2.7 What are the general legal remedies (appeal) against a decision by the court of first instance?

6.2.8 May a case be tried in the absence of the defendant?

6.2.9 Please describe briefly the main rules of evidence (types of admissable evidence, methods of acquiring evidence and the assessment of evidence).

6.3 The organization of detection and investigation

6.3.1 What is the composition and internal organization of the national agency responsible for the detection and investigation of criminal offences?

6.3.2 Who supervises and controls this activity?

6.3.3 Is this agency subject to written or oral instructions by the prosecution agency in the investigation of specific offences?

6.3.4 Do special law enforcement agencies exist for the detection and investigation of (1) traffic offences, (2) narcotics offences, (3) firearms offences, (4) environmental offences, (5) economic offences, or other major offence categories?

6.4 The organization of the prosecution agency

6.4.1 What is the composition and internal organization of the national prosecution agency?

6.4.2 What are the main duties and powers of the prosecution agency in criminal cases?

6.4.3 Is the prosecution agency a dependent or independent body? Are its decisions subject to review by another body? Who is vested with the right to issue directives to the prosecution agency regarding (a) general prosecution policy and (b) prosecution of specific cases?

6.4.4 What possibilities exist in your system for the police or the prosecution agency to close a criminal case officially on the basis of, for example, composition, caution or simplified procedure?

6.5 Organization of the courts

6.5.1 What is the composition and internal organization of the court system?

6.5.2 What courts deal with criminal offences as the first instance and as the appellate level?

6.5.3 What are the main rules of jurisdiction?

6.5.4 What criminal offences are tried by a full bench and what are tried by a single judge?

6.5.5 What forms of participation by laypersons are recognized in your system? What questions are they competent to decide?

6.5.6 What is the highest court in criminal matters? Is it competent to review a decision in full, is its review limited to the issues appealed, or is it restricted to controlling due process and the fairness of the procedure?

6.5.7 What is the significance of decisions of this highest court as precedents?

6.6. The Bar and legal counsel

6.6.1 What are the legal rights of the Bar during the pre-trial stage?

6.6.2 Does the suspect have the right to counsel immediately upon apprehension / arrest by the police? Does the suspect have this right during pre-trial detention?

6.6.3 Is cost-free legal aid provided to (1) those who are apprehended / arrested by the police, (2) those held in pre-trial detention, and/or (3) those charged with an offence? If so, under what conditions is cost-free legal aid provided?

6.6.4 What qualifications must a member of the Bar or legal counsel fulfill?

6.7 The position of the victim

6.7.1 Does your system recognize a legal definition of "victim" ("injured person", "complainant")?

6.7.2 Does the victim have an officially recognized role in pre-trial proceedings, for example in the presentation of evidence or in questioning?

6.7.3 Does the victim have legal remedies against a decision of the police or the prosecutor not to proceed with a case?

6.7.4 Does the victim have the right to present civil claims in connection with criminal proceedings? Are there any restrictions on this right?

6.7.5 Does the victim have the right to present criminal charges and/or to be heard on the charges presented by the public prosecutor?

6.7.6 Does the victim have the right to counsel?

6.7.7 Does the victim have the right of appeal?

6.7.8 Is the victim assisted by the State in claiming compensation from the offender?

6.7.8 Does the victim have the right to State compensation for injuries or loss caused by crime? If so, please describe briefly the system used.

6.7.9 Does your country have national and/or local victim support schemes? If so, please describe these schemes briefly, including the extent to which they are supported by the State.

7. Sentencing and the system of sanctions

7.1 What *classification of sanctions* is given in the Penal Code?

7.2 Does the Penal Code distinguish between *punishments and measures* and/or between *principal and additional punishments*?

7.3 Does the Penal Code or another statute provide *special sanctions for juveniles*? If so, please describe these provisions.

7.4 Does the Penal Code or another statute provide *special sanctions for civil servants, military personnel or other major groups*?

7.5 Please provide information concerning the provisions on the following *sanctions*:
* capital punishment;
* imprisonment (what is the general minimum and maximum);
* deprivation of liberty for an indeterminate period;
* other forms of detention (what is the general minimum and maximum);
* probation and other measures involving supervision;
* community service;
* compensation orders;
* fines and/or day-fines (what is the general minimum and maximum; how is the size of the day-fine calculated)
* (other) alternatives or substitutes for imprisonment or fine.

7.6 In case of *default of payment of a fine*, may a fine be converted into imprisonment or another sanction? What is the term of such imprisonment, or the severity of such sanction? Who determines the conversion?

7.7 What *measures* (for example withdrawal of license, restriction of rights) may be imposed on adults as a reaction to an offence? In what cases can such measures be imposed, and for how long?

7.8 Does the Penal Code (or other statute) contain general provisions on sentencing? If so, please explain them briefly.

7.9 What general or specific sanctions or measures are used for (1) traffic offences, (2) narcotics offences, (3) firearms offences, (4) environmental offences, and (5) economic offences?

8. Conditional and/or suspended sentence, and probation

8.1 Please describe the basic provisions concerning the conditional and/or suspended sentence.

8.2 For what offences and what sentences may the conditional or suspended sentence be applied?

8.3 May the court impose a sentence that is suspended only in part?

8.4 What general or special conditions may be attached to a conditional or suspended sentence?

8.5 Who supervises compliance with such conditions?

8.6 What is the procedure followed if an offender is in breach of a condition, and what are the possible consequences?

8.7 What are the main lines of the organization of the probation service on the national and the regional level?

8.8 What are the main functions of the probation service?

8.9 What is the role of volunteers in probation activities?
9. The prison system and after-care of prisoners

9.1. Organization of the prison system

9.1.1 Does the prison administration form part of the Ministry of Justice? If not, under which Ministry does it function?

9.1.2 What are the main lines of the organization of the prison administration?

9.1.3 Who is responsible for the development of prison policy?

9.1.4 Please describe briefly the main legislation on the enforcement of prison sentences and fines, and on the legal position of prisoners.

9.1.5 Please describe briefly the prison system in your country (the number, size and classification of prisons: high security, semi-open, open, night prisons etc.).

9.1.6 Please describe briefly the juvenile prison system in your country.

9.1.7 Who decides on the placement of prisoners in different prisons?

9.1.8 Does your system allow more than one prisoner per prison cell?

9.1.9 What activities are convicted prisoners and pre-trial detainees required to participate in (prison work, education, other)?

9.1.10 Under what conditions can a prisoner work or pursue education outside the prison?

9.1.11 Under what conditions can a prisoner be granted a furlough?

9.1.12 Is absconding from prison deemed a criminal offence, and if som what is the minimum and maximum penalty imposed?

9.1.13 Do your prisons contain any significant minority categories of prisoners (e.g. aliens)?

9.1.14 Is your country a contracting party to an international convention on the transfer of prisoners to their home country in order to serve a prison sentence imposed by a judge abroad?

9.2 Conditional release (parole), pardon and after-care

9.2.1 Please describe the basic provisions concerning conditional release (parole).

9.2.2 Under what legal conditions may a prisoner be released conditionally, and what is the minimum term to be served?

9.2.3 What general or special conditions may be attached to conditional release?

9.2.4 Who decides on conditional release?

9.2.5 Who supervises compliance with the conditions?

9.2.6 What is the procedure followed if an offender is in breach of a condition, and what are the possible consequences?

9.2.7 Which person or agency is empowered to grant pardon or amnesty?

9.2.8 Please describe briefly how the after-care of released prisoners is organized in your country.

9.2.9 What functions does this organization have (assistance in providing housing and employment, counselling services, etc.)

10. Plans for reform

10.1 Are there any major reforms related to the issues dealt with in this questionnaire that are now under discussion and that are planned to come into force during the following five years? If so, please describe briefly the purpose of the reforms, and what agency or committee is preparing the reforms. Please provide bibliographical references if available.

10.2 Is there a tendency in your country to reduce the use of imprisonment and/or to expand the use of non-custodial sanctions? If so, please describe briefly the reasons for this tendency and the results achieved.

10.3 Is there a tendency in your country to increase sentences for certain offences (e.g. narcotics offences, environmental offences, certain serious economic offences, certain serious violent offences)? If so, please describe briefly the reasons for this tendency and the results achieved.

10.4 Is there a tendency in your country to increase the support provided to victims of offences? If so, please describe briefly the reasons for this tendency and the results achieved.

11. Statistics and research results on crime and criminal justice

Please prepare a short (ca. 3-5 page) summary of crime trends and the operation of criminal justice in your country over the past decade, using available statistics and research results.

Such a summary might include indicators on, for example, the following:
– trends in homicide, robbery, assault and theft (NB question 5.10)
– clearance rate
– number of convicted offenders
– number of different sanctions imposed
– trends in the use of imprisonment and in the total prison population.

12. Bibliography

Please provide a list of general references in crime and criminal justice in your country, with particular attention to references available in the major international languages.