

LAW
on the National Security of Romania

The Law No. 51/July 29, 1991 - Law on the National Security of Romania - was published in the "Monitorul Oficial"(Official Gazette of Romania), Part I, No. 163, August 7, 1991

CHAPTER I

General Provisions

Art. 1. - By the national security of Romania it should be understood a state of social, economic, and political legality, equilibrium and stability that is necessary to the existence and development of the Romanian national state - a sovereign, unitary, independent and indivisible state, to the maintenance of legal order as well as of the climate for the unhampered exercise of the fundamental rights, freedoms and duties of the citizens, in accordance with the democratic principles and rules provided by the Constitution.

Art. 2. - National security should be achieved by knowledge, prevention and removal of the domestic or external menaces that may cause damage to the values provided under Article 1.

As an expression of their faithfulness towards the country, the Romanian citizens shall have the moral obligation to contribute to the carrying out of the national security.

Art. 3. - The following are considered menaces to Romania's national security:

a) the projects and actions aiming at the suppression or at the prejudice of the sovereignty, unity, independence or indivisibility of the Romanian state;
b) the actions having as purpose, directly or indirectly, the provocation of a war against the country, or of a civil war, facilitating foreign military occupation, subjugation to a foreign power, or aiding a foreign or organisation to commit any of these deeds;

c) treason by helping the enemy;

d) the military or any other violent actions aiming at the weakening of the state power;

e) the espionage, transference of state secrets to a foreign power or organisation, or to their agents, illegal procurement and holding of state secret documents or data with a view to transferring them to a foreign power or organisation, or to their agents, or with any other end, unauthorised by law, as well as betrayal of state secrets, or negligence in their preserving;

f) the undermining, sabotage or any other actions that have as purpose to remove by force the democratic institutions of the state or that gravely harm the fundamental rights and freedoms of Romanian citizens, or may damage the defense capacity, or other similar interests of the country, as well as the acts of

destruction, degradation or bringing in an unusable state the structures necessary to the good development of social and economic life, or to the national defence;

g) the actions by which an attempt is made on the life, physical integrity or the health of the persons holding important positions in the state, or of the representatives of other states, or of international organisations, whose protection must be ensured during their sojourn in Romania, in accordance with the law, the treaties and agreements concluded, as well as with the international practice;

h) the initiation, organisation, perpetration, or the supporting in any way of the totalitarian or extremist actions of a communist, fascist, iron guardist, or of any other origin, of the racial, anti-Semitic, revisionist, separatist actions that can endanger in any way the unity and territorial integrity of Romania, as well as the instigation to deeds that can put in danger the order of the state governed by the rule of law;

i) the terrorist acts, as well as the initiation or the supporting in any way of any activities whose purpose is the perpetration of such deeds;

j) the attempts committed by any means upon a community;

k) the purloining of armament, ammunition, explosive or radioactive, toxic or biological materials from the units authorised to hold them, smuggling with these materials, the manufacturing, holding, alienation, transport or their utilisation in other conditions than those provided by the law, as well as the illegal bearing of armament and ammunition, if by these deeds national security is exposed to danger;

l) the initiation or constitution of organisations or groups, adhering to them, or their supporting in any way, with a view to carrying on one of the activities mentioned under the paragraphs a) to k), as well as the carrying on in secrecy of such activities by organisations or groups constituted according to the law.

Art. 4. - The provisions under Article 3 cannot be interpreted or used with a view to limiting or forbidding the right to defend a legitimate cause, to express a protest or an ideological, political, religious or of another kind disagreement, guaranteed by the Constitution or laws.

No person can be prosecuted for the free expression of his/her political opinions, nor can he/she be the object of an interference in his/her private life, family, dwelling place, properties, correspondence or communications; no person can also be the object of some prejudices regarding his/her honor or reputation unless he/she perpetrates one of the deeds that, in accordance with the provisions of the present law, constitute a menace against the national security.

Art. 5. - National security should be realised in accordance with the laws in force and with the obligations assumed by Romania through the international conventions and treaties regarding the human rights, which it is party to.

Art. 6. - The state bodies that have powers in the domain of national security are: the Romanian Intelligence Service, the External Intelligence Service, the Protection And Watch Service, as well as the Ministry of National Defence, the

Ministry of Internal Affairs, and the Ministry of Justice, through their internal specialised structures.

The activity for the achievement of national security is organised and coordinated by the Supreme Council of National Defense.

Art.7. - The Supreme Council of National Defense shall have, in the field of the national security, the following powers:

a) to examine the obtained data and information and to estimate the state of national security;

b) to establish the main directions of activity and to approve the general compulsory measures for the removal of the menaces stipulated under Article 3;

c) to establish the possibilities of turning to good account the information regarding national security;

d) to examine reports and accounts regarding the way of putting into operation the law on national security;

e) to approve the organisational structure, the number of personnel, and the functioning regulations of the Romanian Intelligence Service, the External Intelligence Service, and the Protection and Watch Service;

f) to approve the effective expenses destined to the realisation of the national security.

CHAPTER II

Intelligence Activity

Art. 8. - The intelligence activity for the realisation of the national security should be carried out by the Romanian Intelligence Service, a state body specialised in the intelligence matters in the interior, the External Intelligence Service, a state body specialised in obtaining from abroad the data regarding the national security, and the Protection and Watch Service, a state body specialised in ensuring the protection of the Romanian dignitaries and of the foreign dignitaries during their presence in Romania, as well as in ensuring the watch of their work seats and residences.

The state bodies stipulated under paragraph 1 should be organised and shall function in accordance with the law, and should be financed from the state central administration budget.

The activity of the state bodies stipulated under paragraph 1 shall be supervised by the Parliament.

Art. 9. - The Ministry of National Defense, the Ministry of Internal Affairs, and the Ministry of Justice shall organise their own intelligence structures having powers specific to their activity fields.

Intelligence activity of these bodies should be carried on in conformity with the provisions of the present law, and it shall be supervised by the Parliament.

Art. 10. - The intelligence activity for the realisation of the national security shall have the state secret character. The information from this field cannot be communicated but in the conditions of the present law.

Art. 11. - Information from the field of the national security may be communicated:

a) to the President of the Senate, to the President of the Chamber of Deputies, as well as to the standing committees for the defense and the ensuring of public order of the two Chambers of the Parliament.

b) to the ministers and to the heads of departments in ministries, when the information are related to the activity fields that they co-ordinate or they are responsible for;

c) to the prefects, to the general mayor of the Capital, as well as to the chiefs of the county councils, respectively that of the Municipality of Bucharest, for the questions related to the competence of the respective bodies;

d) to the criminal prosecution bodies, when the information concerns the perpetration of a criminal offence. The communication of the information should be approved by the chiefs of the bodies having powers in the field of the national security.

The provisions of the Article 10 regarding the protection of the state secret should be applied correspondingly to all the persons stipulated under paragraph 1, subparagraph a) to d).

Art. 12. - No person has the right to announce secret activities regarding the national security, taking advantage of the unrestricted access to information, of the right to their diffusion, and of the freedom of expressing opinions.

The disclosure, by any means, of secret data and information that may be prejudicial to the interests of the national security, regardless of the way in which they have been obtained, is prohibited and shall involve the responsibility of the guilty persons, according to the law.

The provisions of the paragraphs 1 and 2 do not cause damage to the freedom of opinion and expression, to the right of the person not to be in any way disturbed for his/her opinions, as well as to the right to look for, to receive and to diffuse information and ideas, by any means of expression, if these rights are exercised in accordance with the laws of Romania.

Art. 13. - The cases stipulated under Article 3 shall constitute a legal ground to request to the public prosecutor, in justified cases, and by observing the provisions of the Code of criminal procedure, the authorization for the effectuation of some acts, with the object of collecting information, consisting in: interception of communications, seeking of certain information, documents, or acts for the getting of which it is necessary the access in a place, to an object or the opening of an object; the taking over and restoring to its place of an object or document, its investigation, the drawing out of the information that they contain, as well as the recording, copying or getting of excerpts by any methods; the installation of objects, their maintenance and taking them from the places where they have been

placed.

The application for authorisation shall be expressed in writing, and it must include: date or indications from which to result the existence of one of menaces against the national security, stipulated under Article 3, for the prevention, finding or counteracting of which it is necessary the issue of the warrant; the classes of activities for the development of which the warrant must be issued; the identity of the person whose communications must be intercepted, if the person is known, or the identity of the person who holds the information, the documents, or the objects that must be obtained; if and when it is possible, the general description of the place where the authorised activities are to be accomplished; the validity duration of the requested warrant.

The authorisation act should be issued at the request of the bodies having powers in the field of the national security, by the public prosecutors specially appointed by the General Public Prosecutor of Romania.

In the case that the public prosecutor ascertains that the application is justified, he shall issue a warrant that must contain: the approval for the classes of communications that may be intercepted, the classes of information, documents or objects that may be obtained; the identity of the person, if he/she is known, whose communications must be intercepted, or who holds the data, information, documents or objects that must be obtained; the body empowered with its carrying out; the general description of the place where the warrant is to be carried out; the validity duration of the warrant.

The validity duration of the warrant can't exceed 6 months. In well founded cases, the general public prosecutor can extend, at request, the duration of the warrant, without being possible to exceed 3 months, every time.

Any citizen who considers himself injured in an unjustified manner through the activities that constitute the object of the warrant provided under paragraphs 1 to 4 may lodge a complaint with the public prosecutor specially appointed, hierarchically superior to the public prosecutor who has issued the warrant.

Art. 14. - The warrant issued on the basis of Article 13 shall grant to the holders or to the authorised classes of persons the right to hold and use, without to resort to means of physical or moral compulsion, the adequate means for the carrying out of the authorised acts, and the right to be assisted by the persons whose presence is considered required.

Art. 15. - In the situations that shall necessitate the removal of certain imminent dangers for national security, the activities mentioned under Article 13 may be undertaken, even without the authorisation provided by law, that authorisation having to be requested as soon as possible, but not later than 48 hours.

Art. 16. - The means for obtaining the information required by the national security must not endanger, by no means, the fundamental rights and freedoms of the citizens, the private life, their honour or reputation, or to subject them to unlawful restrictions.

Law against such interference or prejudices protects any person. The culprits for the initiation, transfer or execution of such measures, without a legal reason, as well as for abusive application of the measures of prevention, discovery or counteracting of the menaces against the national security, shall be under civil, administrative or criminal responsibility, as the case may be.

The citizen who considers himself injured in his rights or freedoms by the utilisation of the means provided under paragraph 1 may inform any of the standing committee for the defense and ensuring of the public order, of the two chambers of the Parliament.

CHAPTER III

Obligations and Responsibilities of State Bodies, of Public or Private Organisations

Art. 17. - With a view to realising the national security, the ministries, all the other bodies of the state, the organisations in the public or private spheres shall have, according to the law, the following duties:

- a) to afford the necessary support, at the request of the bodies having powers in the field of the national security, for the carrying out of their prerogatives, and to permit their access to the data that may provide information regarding the national security;
- b) b) to take the necessary measures for enforcement of the law on the national security in the domains in which they carry on their activity, or in the matters they are occupied with;
- c) c) to solicit the support of the bodies having powers in the field of the national security for the carrying out of the measures necessary for the implementation of the national security in their sphere of activity.

Art. 18. - The bodies and the organisations holding state secrets, in accordance with the provisions of the special law, or the activity of which may be taken into account, through the actions considered, according to the Article 3, as menaces against to the national security, shall draw up their own programmes for the prevention of the leakage of information of a secret nature; the respective programmes shall be submitted for specialised approval to the Romanian Intelligence Service.

The responsibility for the carrying out of the obligation provided under Article 17 and paragraph 1 of the present article shall devolve upon the head of the respective body or organisation, according to the law.

There shall be excepted from the specialised approval provided under paragraph 1 the own programmes for the prevention of the leakage of information of a secret nature of the Parliament of Romania, of the Ministry of National Defense, the Ministry of Internal Affairs, the External Intelligence Service, the

Protection and Watch Service, and of the General Central Board of the Penitentiaries subordinate to the Ministry of Justice.

CHAPTER IV

Sanctions

Art. 19. - The initiation, organisation or the constitution on the territory of Romania of some informative structures that can cause damage to the national security, their supporting in any way or adhering to them, the holding, manufacturing or unlawful utilisation of specific means for the intercepting of the communications, as well as the collecting and transfer of information of a secret or confidential nature, by any means, outside of the legal framework, shall constitute a criminal offence and it should be punished with imprisonment from 2 to 7 years, if the deed is not considered a more serious offence.

The attempt should be punished.

Art. 20. - The carrying on, without a warrant, of the activities subject to the authorisation under the provisions of Article 13, with the exception of those undertaken in the situations set forth under Article 15, or the exceeding of the issued warrant should be punished with imprisonment from 1 to 5 years, if the deed is not considered a more serious offence.

With the same punishment should also be punished the deed of the civil servant who divulges, refuses or impedes, in any way, the carrying out of the warrant issued under the terms of the Article 13.

The attempt should be punished.

Art. 21. - The information regarding the private life, the honor or reputation of the persons, incidentally known on the occasion of the getting the data necessary to the national security, may not be made public.

The disclosure or the utilisation, outside the legal framework, by the wage earners of the intelligence services, of information, of the data provided under paragraph 1, shall be considered an offence and should be punished with imprisonment from 2 to 7 years.

The attempt shall be punished.

Art. 22. - The criminal prosecution of the offences provided in the present law shall be carried out by the bodies of the Public Ministry.

CHAPTER V

Final Provisions

Art. 23. - The documents of the intelligence bodies and of those having powers in the field of the national security should be preserved in their own archives and they may be consulted only in the terms of the law.

Art. 24. - The personnel of the Romanian Intelligence Service, of the External Intelligence Service, and of the Protection and Watch Service should consist of standing military cadres and civilian wage earners.

The military cadres of the bodies provided under paragraph 1 shall have the rights and duties provided for the military of the Romanian army.

To the civilian wage earners there are applicable the provisions of the Labor Code and the other legal rules regarding their rights and duties.

Art. 25. - The personnel provided under Article 24, paragraph 1, that execute operative powers, carry on activities involving the exercise of the state authority and enjoy all the rights and obligations provided by the law to this end.

Art. 26. - The employees of the intelligence bodies and those having powers in the field of national security cannot be members of a party or of other organisations of a political or secret nature, and they cannot be employed for political purposes.

The persons that were found guilty of actions directed against fundamental human rights and freedoms cannot be employed in the intelligence services.

Art. 27. - The employees of the intelligence bodies and of those having powers in the field of national security shall be under the obligation to keep the state and professional secret, inclusively after leaving the office, in any way whatsoever.

Art. 28. - The persons provided under Article 27, summoned as witnesses before courts, may make depositions concerning the facts and the circumstances regarding national security they have taken notice of while carrying on the job powers, and in connection with these, only with the written agreement of the head of the body they belong to.

Art. 29. - On the date of coming into force of the present law, any other contrary provision should be abrogated.