ROUND TABLE
THE SETTING UP OF EFFECTIVE DOMESTIC REMEDIES TO CHALLENGE CONDITIONS OF DETENTION

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Presentation by Ms Alina Barbu

The preventive remedy concerning conditions of detention in Romania: "From the modern regulatory framework - to the effective domestic case-law"

The opinions expressed in this document are those of the author.

1. SHORT EUROPEAN BACKGROUND

The issue of prison overcrowding is not by far a typically Romanian problem, as the majority of European states are currently facing this situation and all aspects deriving from it. In the context of globalisation, but also of the deep economic crisis that has affected the European state, aggressiveness has increased both among the perpetrators of crimes representing cross-border criminality, and so has the severity of those called upon to stop crimes – either legislator or law enforcement body. Thus, since financial resources have remained, at best, the same, the increase in prison population has reduced the level of the individual services provided, resulting in an escalation of tensions, the violation of human dignity and the worsening of order and security matters. In this way, an even greater lack of intimacy and resources make sentenced persons even more vulnerable and considerably decrease their rehabilitation possibilities.
According to the SPACE Statistics[1] of the Council of Europe, more than 66.7% of the Member States of the Council of Europe have a great prison population rate – more than 100 detainees per 100 000 inhabitants. The 2011 statistics show that Romania has 139.3 prisoners per 100 000 inhabitants, this figure being exceeded in states such as Bulgaria (151.1), Great Britain (152), Hungary (174), Poland (211), Ukraine (347), Georgia (541), Russian Federation (546.1).
Some of these states manage to better organise their penitentiary systems, but also, in general, the criminal and criminal enforcement systems; others are still looking for solutions for an efficient management of the problem.
Moreover, concerning some of these states, ECHR found that prison overcrowding has become a systemic problem, and I refer to Italy[2], Poland[3] , Bulgaria[4,] and Romania, without implying that other states do not have this systemic problem, but merely that the European Court formally found this overcrowding issue only in these states.

2. THE ROMANIAN BACKGROUND

In this context, there are, starting from 2008, over 90 Romanian cases in which the European Court of Human Rights found, inter alia, deficiencies in ensuring material detention conditions, which have an impact on the way in which Article 3 of the European Convention on Human Rights is guaranteed and complied with.
Among them, the case of Bragadireanu[5] and the quasi-pilot judgment in the case of Iacov Stanciu[6] are obviously notable, the main identified aspects being the followings:

- the conditions in the penitentiary, in particular the overcrowding and the lack of access to hygiene and other facilities appropriate to his health situation, resulted in a violation of Article 3 of the Convention – Bragadireanu, paragraph 97;
- the lack of personal space afforded to detainees and unsatisfactory sanitary conditions, the cumulative effect of overcrowding in large capacity (and sometimes also insalubrious) dormitories, a poor regime of activities, bad food and poor hygiene conditions can prove detrimental to the prisoners and result in a violation of Article 3 of the Convention - Iacov Stanciu, paragraphs 176-177.

It is well known that the Court found violations of Article 3 of the Convention regarding detention conditions existing in the Romanian penitentiaries over the years, especially the overcrowding, the lack of proper

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1 http://www.coe.int/t/dghl/standardsetting/prisons/space_i_en.asp
2 The pilot-judgment in the case of Toregianni and Others v. Italy (27.05.2013).
3 The quasi-pilot judgment in the Orchowski case of 22.10.2009
4 The judgment of 01.18.2005 in the case of Kehayov group.
5 In the judgment delivered in the case of Bragadireanu, which became final on 6 March 2008, ECHR reminded that the applicant's medical condition was severe, that his basic sanitary needs were difficult to meet and that he had severe functional deficiencies. Although the authorities were aware of these facts, he was still detained in a regular penitentiary, was sharing the cell with other persons, had no shower or warm water at his disposal and was not regularly assisted for his needs. His poor condition has led to social segregation from the rest of the prison population (paragraph 94).
6 The judgment issued in the case of Iacov Stanciu, which became final on 24 July 2012, apart from the violation of Article 3, Article 46 of the Convention has been invoked, taking note of the existence of recurrent problems and emphasizing the need to put into place effective domestic remedies, allowing national authorities to deal with the substance of the violation of the Convention provisions and to order the cessation of the violation and to grant compensation.

hygiene and the lack of medical care[7], the Court's findings in respect of several Romanian penitentiaries throughout the country[8].

In this context, the reaction of the Romanian authorities was complex, addressing the issues both individually and as a whole. This way, a broad reform was prepared and put into place and a great effort is currently being made for their implementation, in criminal, criminal procedure and criminal enforcement matters – new codes and laws on the execution of sentences are being adopted, including with a view to reduce the prison population[9].

3. THE LAW ON THE EXECUTION OF CUSTODIAL SENTENCES - GENERAL ASPECTS

The current legal framework[10] concerning the protection of the rights of detainees related to detention conditions is included in **Law no 254 of 19 July 2013 on the execution of sentences and of measures involving deprivation of liberty, ordered by the judicial bodies during criminal proceedings.**

The mechanism for exercising these rights is built around the judge supervising the execution of sentences.

It should be mentioned that **the institution of this judge** is regulated in the Romanian legal system since 2006, the new law strengthening its position and conferring upon it an effective control of the way in which persons, minors or adults, are deprived of their liberty, under the law, regardless of the detention space: penitentiaries, custody and preventive detention centres, preventive detention centres, educational centres, juvenile detention centres[11].

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[7] See, among other cases, Bragadireanu, cited above; Petrea v. Romania, no. 4792/03, 29 April 2008; Gagiu v. Romania, no. 63258/00, 24 February 2009; Brânduşe v. Romania, no. 6586/03, 7 April 2009; Măciucă v. Romania, no. 25673/03, 26 August 2009; Artimenco v. Romania, no. 12535/04, 30 June 2009; Marian Stoicescu v. Romania, no. 12934/02, 16 July 2009; Eugen Gabriel Radu v. Romania, no. 3036/04, 13 October 2009; V.D. v. Romania, no. 7078/02, 16 February 2010; Dimakos v. Romania, no. 10675/03, 6 July 2010; Coman v. Romania, no. 34619/04, 26 October 2010; Dobri v. Romania, no. 25153/04, 14 December 2010; Cucolaş v. Romania, no. 17044/03, 26 October 2010; Micu v. Romania, no. 29883/06, 8 February 2011; Fane Ciobanu v. Romania, no. 27240/03, 11 October 2011 and Onaca v. Romania, no. 22661/06, 13 March 2012), Iacov Stanciu, paragraph 195

[8] Such as Bucharest-Jilava, Bucharest-Rahova, Giurgiu, Ploieşti, Gherla, Aiud, Mărgineni, Timişoara, Botoşani, Târgu-Ocna, Mândreşti, Poarta-Albă, Târgşor, Baia-Mare, Galaţi and Craiova

[9] The regulatory acts making up the reform in criminal, criminal procedure and criminal enforcement matters, at the level of organic laws, are:_ THE CRIMINAL CODE – Law no 286/2009, CODE OF CRIMINAL PROCEDURE – Law no 135/2010, Law no 254 of 2013 on the execution of custodial sentences, Law no 253 of 2013 on the execution of non-custodial sentences, Law no 252 of 2013 on the organisation and functioning of the probation system, Law no 187/2012 for the implementation of Law no 286/2009 on the Criminal Code, Law no 255/2013 for the implementation of Law no 135/2010 on the Code of Criminal Procedure and amending and supplementing regulatory acts including criminal procedure provisions, Government Emergency Ordinance no 116/2013 on the measures necessary for the functioning of the evaluation committees within penitentiaries, re-education centres and custody and preventive detention centres as well as establishing measures for the proper functioning of courts during the activities carried out by these committees, Government Emergency Ordinance no 3/2014 adopting implementing measures necessary for the enforcement of Law no 135/2010 on the Code of Criminal Procedure and implementing other regulatory acts.

[10] Most provisions regulating the conditions of detention as such were included in Title IV - Chapter III of the law, called precisely "*Conditions of detention*".

Law no 275/2006 also provided for certain procedural guarantees regarding the rights of persons deprived of liberty, namely the procedure of complaint against the measures on the exercise of rights, laid down in Article 38 of Law no 275/2006. Pursuant to the provisions regulating this procedure, the persons deprived of liberty had the possibility to address a complaint to the judge responsible for the execution of sentences in the penitentiary where they were detained and then, if they believed their rights continued to be violated, they could address the court in whose jurisdiction the penitentiary was. The interpretation of these provisions showed that Article 38 of Law 275/2006 regulated a procedure meant to guarantee the respect of the rights conferred upon the persons deprived of liberty, **but the procedure was applicable only for the violation of the rights provided for in Title IV - Chapter III of Law no 275/2006 – chapter called "*The rights and obligations of the persons serving deprivation of liberty sentences*".**

Nevertheless, it should be mentioned that, also in the process of enforcing the former law, there were judges responsible for the execution of sentences in penitentiaries or courts of law **who interpreted extensively the scope of the protection conferred by the provisions of Article 38 of Law no 275/2006, granting protection also for other rights apart from the ones regulated in Title IV-Chapter IV**. This way, it was found that **the complaint can also concern other aspects which are not expressly regulated in Title IV-Chapter IV of Law no 275/2006, but only in as much as they are directly related to the rights laid down in this chapter and they can be exercised effectively.** (for example: food, equipping detention rooms with furniture and the clothing of the persons deprived of liberty were regulated in Chapter III of the law, but it was appreciated that the failure to ensure them or the failure to ensure them properly is related to the right to receive and to use goods and the right to medical care and to health, regulated in Chapter IV).

[11] This judge essentially has the following competences:

The rights included in the new regulation are taken over from the previous regulation, but there are certain slight differences resulting from the evolution of the society and its adjustment to new elements, but also designed to expressly regulate certain rights in respect of which ECHR found, in its case-law, certain violations:

- ✓ Freedom of conscience, of opinions and freedom of religion – Article 58
- ✓ The right to information – Article 59
- ✓ The right to consult documents containing personal data – Article 60
- ✓ Ensuring the exercise of the right to legal assistance (a new element) – Article 62
- ✓ The right to petition and the right to correspondence – Article 63
- ✓ The right to phone calls – Article 64
- ✓ The right to online communication (a new element) – Article 66
- ✓ The right to daily walks – Article 67
- ✓ The right to receive visits and the right to be informed of special family situations (new element for the last part, concerning the right to be informed) – Article 68
- ✓ The right to conjugal visits – Article 69
- ✓ The right to receive, buy and hold goods – Article 70
- ✓ The right to medical assistance, treatment and healthcare – Article 71-Article 73
- ✓ The right to diplomatic assistance – Article 74
- ✓ The right to conclude a marriage – Article 75
- ✓ The right to vote (new element) – Article 76
- ✓ The right to weekly rest time (new element) – Article 77
- ✓ The right to work (new element) – Article 78
- ✓ The right to education (new element) – Article 79
- ✓ **The right to food, clothing, bedding and minimum accommodation conditions (new element) – Article 80**

Concerning this latter right, it should be mentioned that it covers, globally, the provision of the conditions regulated in Article 48-50 of the law, as follows:

- ✓ **Article 48 – The accommodation of sentenced persons** – article imposing to the National Administration of Penitentiaries (NAP) to:

- take the necessary measures in order to progressively increase the number of accommodation spaces, to refit the existing cells and build new cells complying with international recommendations, especially from the CPT.
- ensure natural lighting and the installations necessary to provide appropriate artificial lighting,
- provide a bed and the necessary corresponding bedding,
- respect the accommodation conditions in prison hospitals according to the rules laid down by the Ministry of Health,
- take specific measures if the legal capacity of accommodation of the penitentiary is exceeded - its director is required to inform the Director General of the National Administration of Penitentiaries in view of transferring the sentenced persons to other penitentiaries.

From this perspective, it is worth mentioning these new texts regarding the concrete steps that must be taken both by the director of the penitentiary and by the Director General of the National Administration of Penitentiaries if it is found that the legal accommodation standard is exceeded – namely to transfer the sentenced person to other penitentiary.

- ✓ **Article 49 – The clothing of sentenced persons** – providing free civil clothing
- ✓ **Article 50 – The food supply for sentenced persons** – article requiring:

– the provision of adequate conditions for the food preparation, distribution and serving according to the food hygiene standards, depending on age, health condition, the type of work performed, respecting the religious beliefs assumed by the sentenced person by an affidavit.
– provide access to drinking water[12].

- ✓ settles detainees' complaints concerning the exercise of rights and those concerning the setting up of and changing of regimes for sentence execution;
- ✓ settles detainees' complaints concerning the application of disciplinary sanctions;
- ✓ participates in the food refusal procedure;
- ✓ as president, participates in the meetings of the commission for conditional release;

[12] Cases of Viorel Burzo v. Romania, paragraph 100 and Cucolaș v. Romania, paragraph 96.

4. THE LAW ON THE EXECUTION OF CUSTODIAL SENTENCES – THE PREVENTIVE REMEDY

Therefore, the Romanian legal system comprises a mechanism for invoking, within a short period of time, before an independent magistrate, the aspects considered by the persons deprived of liberty as violating fundamental rights and freedoms.
Thus:

1. Article 57 of the law requires **the judge to ensure the respect for the rights** provided for by the law
2. Article 56 regulates **the procedure by which a detained person can challenge the measure** taken in his/her respect by the administration of the penitentiary:
    a. **the complaint** can be filed by the judge supervising the execution of sentences, **within 10 days** from the date when they took note of the measure adopted; the person concerned shall be heard at the penitentiary by the judge supervising the execution of sentences; the complaint shall be settled, by reasoned interlocutory decision, **within 15 days from the date of its receipt**.
    b. The interlocutory decision of the judge supervising the execution of sentences shall be notified to the sentenced person and to the administration of the penitentiary, within 3 days from the date of its delivery.
    c. The sentenced person and the administration of the penitentiary may **challenge** the interlocutory decision of the judge supervising the execution of sentences **at the court of first instance in whose district the penitentiary is located, within 5 days** from the communication of the interlocutory decision.
    d. **Objections shall be lodged with the court of first instance**, together with the case file, within two days from their receipt. The objection shall be heard in open court, the sentenced person and the administration of the penitentiary being summoned and having the possibility to submit written observations and conclusions. The sentenced person shall be brought before the court only upon the court's request and, in this case, he/she shall be heard. Legal assistance shall not be mandatory. If the prosecutor and the representative of the administration of the penitentiary appear in court, they shall submit conclusions. The court shall rule by final decision, in open session. The sentence shall be notified to the sentenced person and to the administration of the penitentiary.
    e. Article 56 also regulates **the solutions** which can be adopted by the judge, namely:
        a) Admitting the complaint, in whole or in part, and ordering that **the measure taken by the administration of the penitentiary be annulled or amended or ordering the administration of the penitentiary to take the legal measures required**;
        b) rejecting the complaint, if it is ill-founded or devoid of object, was lodged out of time or is inadmissible, as the case may be;
        c) Noting the withdrawal of the complaint.

We appreciate that the procedure laid down in Article 56 of Law no 254/2013 constitutes an effective preventive remedy in the event of a violation of the detainees' rights regarding the detention conditions:
As we have showed, the persons deprived of liberty who believe that their rights relating to the enforcement of sentences are breached, including in the event of a violation of the rights related to detention conditions, may file complaints against the measures taken by the administration of the penitentiary.
In the proceedings provided for in Article 56, the person deprived of liberty may address a complaint to the judge supervising the execution of sentences in the penitentiary that allegedly infringed his/her rights and then may lodge an objection before the court of law, if he/she is not satisfied with the measures ordered by the supervising judge.
The object of the complaint is a measure adopted by the administration of the penitentiary which violates a right, in which case the supervising judge shall order the annulment, revocation or amendment of the measure taken by the administration of the penitentiary, in order to put an end to the violation of the right in question; **the term "measure" shall also mean the failure to fulfil an obligation related to one of the**

rights conferred upon the persons deprived of liberty, in which case it is possible to order the administration of the penitentiary to fulfil the obligation incumbent upon it, also in order to put an end to the violation of the right/rights in question (for example, if the prescribed medical treatment is not provided accordingly, the penitentiary shall be ordered to provide the required medical treatment).

The solutions made available to the supervising judge show that the purpose of the proceedings laid down in Article 56 is to stop the harm caused by the breach of the right/rights in question.
This first **administrative-judicial phase, which can be considered a *preventive remedy* meant to ensure a fast restoration of the rights of the persons deprived of liberty (the time limit for the settlement of such a complaint being 15 days)** may be followed, if the person deprived of liberty believes his/her rights continue to be violated, by a trial proper, conducted in court, during public proceedings.
Even if the first phase of the complaint addressed to the supervising judge has an administrative-judicial nature, its capacity to stop the harm caused by the violation of the rights must not be disregarded. According to the Regulation on the organisation of the activity carried out by the supervising judge, with the purpose to settle the complaints filed, **the relevant information and documents shall be required from the administration of the penitentiary, as well as its opinion, on which occasion it shall be informed of the complaint addressed to the supervising judge and of the aspects incriminated by the detainees; in many cases, the penitentiary complies, on its own initiative, with the action requested by the persons deprived of liberty.** Many times, believing that the aspects invoked by the detainees are well founded**,** the penitentiaries accepted their requests even before the supervising judge ordered a solution, so that, as the infringement of the right/rights had ceased, it was found that the complaints were devoid of object.

As the period since the entry into force of the new law on sentence execution was not long enough, nationwide statistics concerning the way of handling complaints addressed to supervising judges have not been produced yet.
Nevertheless, we could mention, for example, that, after the entry into force of the new law, in the period 02.01.2014-04.30.2014, there were 43 complaints alleging a breach of detainees' rights registered with the supervising judge's office at the Iași Penitentiary and were settled. Among them, 25 complaints referred to the conditions of detention[13].

Analysing this mechanism from the perspective of ECHR requirements – Article 13 of the Convention imposes an effective remedy in fact and in law, which can put an end to the situation created[14], we appreciate that it complies with the European requirements.
Moreover, the cases resolved either by penitentiary judges or by courts of law concerning various aspects related to the conditions of detention prove that this mechanism was well known and used quite often in the previous regulations. We believe that, having regard to the improvements made, there are sufficient premises to enable the current regulation to generate a case-law consolidating the previous trend.

[13] Out of the 25 complaints concerning the conditions of detention: 1 complaint was admitted in whole, 6 complaints (out of which 5 complaints were joined into a single complaint, since they were filed by the same detainee) were admitted in part; 5 complaints were devoid of object since the penitentiary had taken the measures requested by the detainees in order to put an end to the violation of the rights before the supervising judge made any decision; 6 complaints were withdrawn, in one case the detainee expressly mentioning that he was withdrawing his complaint as the penitentiary had taken the necessary measures to stop the infringement of his rights (the detainee had alleged that he was not granted medical treatment and that the food was not appropriate for his diseases); 5 complaints were dismissed as ill-founded.
[14] Iacov Stanciu, paragraphs 197-199.

5. THE DOMESTIC PREVENTIVE REMEDY – THE RELEVANT CASE-LAW

The Overcrowding, the Accommodation

- By Interlocutory decision no 98/11.02.2011, the delegated judge allowed the complaint, finding that the Codlea Penitentiary failed to ensure the necessary conditions of detention for the applicant's room. The detainee in question benefited from the legal provisions on the accommodation conditions.

- By judgment no 3521/19.12.2012, Bucharest Fourth District Court upheld the objection lodged by a detainee of the Bucharest-Jilava Penitentiary and found the violation of Article 8 of the annex on the minimum mandatory standards for the accommodation conditions of the detainees, approved by OMJ no 433/2010 and of Article 36 of Law no 275/2006, as amended. The detainee concerned benefited from the legal provisions on the accommodation conditions.

- By judgment no 1612/20.06.2012, delivered in case no 13585/4/2012, the Bucharest Fourth District Court upheld the objection lodged by a detainee against Interlocutory decision no 317/ 02.04.2012 of the judge responsible for the execution of sentences in the Jilava Penitentiary, finding that the administration of the penitentiary did not ensure the minimum mandatory standards for the conditions of accommodation in detention room E2.11, namely 4 m^2 of useful floor area.

- By judgment no 208 din 25.01.2012, Bucharest Fourth District Court settled the objection lodged by a detainee against the Interlocutory Decision no 1020/ 07.11.2011 of the delegated judge in the Jilava Penitentiary dismissing the complaint filed by the sentenced person concerning the accommodation conditions. The objection was upheld in part, mentioning the infringement of the minimum mandatory standards for the accommodation conditions in the sense of the failure to comply with the conditions of equipping sanitary installations with showers in rooms 402, 417, 501, and 507, the conditions for keeping goods and personal effects, for the storage of the food and tableware and for the serving of meals in room 402 and, respectively, the conditions for the serving of meals in rooms 402, 417, and 507. The detainee concerned benefited from the legal provisions on the accommodation conditions.

- By judgment no 672/14.03.2012, the Bucharest Fourth District Court settled the complaint lodged by the detainee Tudor Remus against the Interlocutory decision no 1175/30.12.2011 issued by the delegated judge within the Jilava Penitentiary. The court repealed the above-mentioned interlocutory decision in part and decided that the living space of 4 m^2 was not ensured for room 305 and the failure to provide the conditions for keeping personal goods and, respectively, a shower within the bathrooms. The detainee benefited from the legal provisions on the accommodation conditions.

In order to enforce the above-mentioned judgments referring to Jilava penitentiary, the management of the Bucharest-Jilava Penitentiary drew up 27 proposals for the transfer of 459 persons deprived of liberty in the period 01.25.2012-07.20.2012 and 17 proposals for the transfer of 382 persons deprived of liberty in the period 06.26.2013-01.14.2013.

- By interlocutory decision no. 279/21.06.2012, the delegated judge within the Botoşani Penitentiary allowed a detainee's complaint concerning the violation of the minimum compulsory standards for accommodation. The delegated judge allowed the complaints concerning the volume of air to be provided to every prisoner, for non-compliance to legal rules, as well as those concerning the plaintiff's allegations about the lack of furniture. The delegated judge ordered the Botoşani Penitentiary administration to remedy the deficiencies found; the order was carried out.

- By interlocutory decision no. 534/17.07.2013, the delegated judge within the Codlea Penitentiary allowed a detainee's complaint concerning the conditions of detention provided, alleging the failure to provide the minimum personal space and furniture for having meals; the judge ordered the penitentiary administration to provide the minimum personal space, as laid down in OMJ no. 433/C/2010. The detainee benefited from the legal provisions concerning the conditions of detention.

- By judgment no. 1874 of 22.10.2013, the Brăila District Court settled the complaint lodged by a detainee against the interlocutory decision no. 236/05.08.2013 issued by the delegated judge within the Brăila Penitentiary. The Brăila District Court found, in the detainee's case, a failure to comply with the minimum Convention standards for the conditions of detention during the term of his prison sentence and ordered the case to be disjoined with regard to the complaint in respect of non-pecuniary damage; as a result, new proceeding was opened. Following this order, the Brăila Penitentiary administration provided the plaintiff with optimum conditions of detention. The case file in respect of non-pecuniary damage has not been settled.

- By judgment no. 1873 of 21.10.2013, the Brăila District Court settled the complaint lodged by a detainee against the interlocutory decisions nos. 243/08.08.2013 and 141/03.06.2013 issued by the delegated judge within the Brăila Penitentiary rejecting the detainee's complaints. The Brăila District Court found, in the detainee's case, a failure to comply with the minimum Convention standards for the conditions of detention during the term of his prison sentence in the Brăila Penitentiary and ordered the case to be disjoined with regard to the complaint in respect of non-pecuniary damage; as a result, new proceeding was opened. Following this order, the Brăila Penitentiary administration provided the plaintiff with optimum conditions of detention. The proceedings regarding the non-pecuniary damage have not been settled.

- By judgments nos. 2961 of 30.10.2013, 2802 of 17.10.2013, 2719 of 08.10.2013, 2510 of 19.09.2013, 1838 of 20.06.2013, 3331 of 27.11.2013 and 3379 of 02.12.2013, the Bucharest District 4 Court settled the complaints lodged by several detainees and found that the Bucharest Jilava Penitentiary administration violated the minimum compulsory standards for the conditions of detention, in the sense that the plaintiffs were not provided with a living space of 4 square metres or a volume of air of 6 cubic metres. The detainees benefited from the legal provisions concerning the conditions of detention.

Conditions in the Cells

- By interlocutory decision no. 625/18.11.2011, the judge responsible for the execution of sentences in the Codlea Penitentiary allowed a detainee's complaint concerning the failure to secure the minimum conditions of detention in the custody suite of the Braşov County Court. The judge considered that custody suite no. 2 of the Braşov County Court did not meet all the legal basic conditions allowing the accommodation of detainees during their hearings in court and called for measures to ensure the conditions laid down in Article 1 (2) of the Order of the Minister for Justice no. 433/C/2010; the judge recommended to Codlea Penitentiary authorities to send a copy of the interlocutory decision, once final, to the Braşov County Court to take the required measures.

Ensuring the Means Necessary for Personal Hygiene, the Hygiene of the Cell

- By interlocutory decision no. 64/02.02.2012, the judge responsible for the execution of sentences in the Codlea Penitentiary allowed a detainee's complaint concerning the provision of products necessary for personal hygiene, having found that in the given period the detainee had received only toilet paper and soap, whereas – under regulations in place (OMJ no. 2056/06.09.2007) – each detainee is to also receive, among other things, a toothpaste and a shaving cream every two months as well as a disposable razor every month. The delegated judge found that the failure to provide the shaving cream, the toothpaste and the disposable razor over a period of four months did not ensure the proper maintenance of hygiene of the plaintiff, who did not have other sources of income and does not receive visits. The penitentiary administration contested the said interlocutory decision, but the objection was dismissed by judgment no. 756/13.04.2012, delivered by Braşov District Court; the plaintiff was granted this right.

- By interlocutory decision no. 250/05.04.2012, the judge responsible for the execution of sentences in the Codlea Penitentiary allowed a detainee's complaint concerning the breach of collective hygiene rules, finding that cleaning products had been distributed in insufficient quantities and that the penitentiary administration was required to prove the effective distribution of products for each cell, as the proof for distributing products for each wing was insufficient. The provisions were implemented to the letter.

- By interlocutory decision no. 693/08.08.2011, the judge responsible for the execution of sentences in the Aiud Penitentiary allowed a detainee's complaint concerning the walls full of dampness as his cell was next

to the bathroom and the walls were not waterproofed. The interlocutory decision was not contested and sanitizing measures for the area were taken.

Medical Assistance, Including Dental Services

- By judgment no. 35334 of 21.01.2013, the Iaşi District Court settled the complaint lodged by a detainee against the interlocutory decision no. 1177/90/06.11.2012 of the judge responsible for the execution of sentences in the Iaşi Penitentiary rejecting the detainee's complaint concerning the dental works recommended by the specialist doctor. The judge had rejected the detainee's complaint because he had an appointment made at the Rahova Penitentiary on 20.02.2013 to undergo the dental prosthesis treatment, but he lacked financial means. In its judgment, the Iaşi District Court ordered the penitentiary administration to provide the plaintiff with money required to undergo the dental treatment recommended by the specialist, to the extent that the cost of the treatment was not covered by the national health insurance system. Consequently, the detainee received the required dental treatment.

- By interlocutory decision no. 1120/16.10.2013, the judge responsible for the execution of sentences in the Iaşi Penitentiary allowed a detainee's complaint concerning the breach of legal provisions on the conditions of detention, nutrition, education and psycho-social intervention activities, and the right to medical assistance, as the plaintiff was certified as a person with an accentuated disable degree. The judge partly allowed the plaintiff's complaint and ordered the Iaşi Penitentiary administration to take the necessary measures to provide the plaintiff with conditions of detention and transportation adequate for his special condition as well as the diet recommended by the specialist doctor. Consequently, the detainee received a diet and accommodation in a room especially arranged for disabled persons and was placed under permanent medical monitoring.

Nutrition Norms

- By judgment no. 1277/30.03.2012, the Piteşti District Court settled the complaint lodged by a detainee against interlocutory decision no. 583/90/04.10.2011 delivered by the judge responsible for the execution of sentences in the Colibaşi Penitentiary, by repealing the mentioned decision and ordering a special diet to be made according to the plaintiff's diseases, as recommended by the specialist doctor. In that case, the judge had rejected the plaintiff's complaint as ill-founded, considering that the penitentiary administration had not violated the plaintiff's right to medical assistance and to nutrition for convicted persons. The court noted that the plaintiff was suffering, *inter alia*, of short bowel syndrome and that a gastroenterologist concluded in a forensic report that he needed to follow a daily dietary routine consisting of 5-6 meals per day, avoiding certain foods that could aggravate or maintain his condition. Thus, the court found that, according to evidence taken in that case, the detainee's right concerning nutrition during detention and the right to medical assistance were prejudiced, as the diet was not prescribed by an internist and was not including varied food based on medical recommendations, to be repeated at long enough intervals so as not to put his health at risk in the absence of those foods. The detainee received the diet adequate for his condition, based on the nutritionist's recommendations.

- By interlocutory decision no. 552/20.06.2011, the judge responsible for the execution of sentences in the Aiud Penitentiary allowed a Muslim detainee's complaint, concerning the provision of food corresponding to his religion. The penitentiary administration did not contest the delivered interlocutory decision. The detainee received food according to his religious beliefs, under regulations in force.

- The case of a detainee diagnosed with diabetes, who complained that he was provided with cold meals to last him for up to three days during his temporary transfer to another penitentiary in order to settle certain legal issues. The delegated judge ordered that, in case of a three day-period temporary transfer of detainees diagnosed with diabetes or gastrointestinal diseases, the Satu Mare Penitentiary administration is to inform the Oradea Penitentiary to provide the detainee with hot meals for one day, according to his condition; in addition, the Satu Mare Penitentiary was ordered to not include in the cold meal parcel any food perishable at high temperatures. The provisions in the interlocutory decision were implemented in the sense that all detainees in transit to the Oradea Penitentiary (from the Satu Mare Penitentiary) are provided with hot meals.

Conjugal Visit

- There are many cases in this connection; let me present a classic case: by interlocutory decision delivered on 03.02.2012 in case no. 52/2012, the judge responsible for the execution of sentences in the Botoşani Penitentiary allowed a detainee's complaint concerning the right to conjugal visit, noting that the plaintiff had participated in the meantime in seven educational programmes and expressed his willingness to engage in work activities as well. The fact that, for reasons beyond his control, his participation in those activities failed to materialise, does not fall upon him and cannot have an adverse effect on granting him the right to conjugal visit. Under these circumstances, the judge allowed the complaint and **ordered the conjugal visit to be granted**; the detainee exercised this right.

As I was saying, the **new legal framework** ensures more certainty when approaching this mechanism. If the previously described cases prove the efficient enforcement of the old law's provisions, we have reasons to believe that the new rules, much more articulate, will allow the consolidation of preventive remedy procedures.

For example, since we are in the company of a judge responsible for the execution of sentences in the Iași Penitentiary, with a population of approximately 1 400 detainees, between 01.02.2014 and 30.04.2014, **in this penitentiary the office of the judge responsible for the execution of sentences recorded and settled 43 complaints whereby detainees complained about violations of their rights**. Among them, 25 complaints concerned the conditions of detention[15]. In some of these proceedings, the judge responsible for the execution of sentences either ordered the penitentiary to take the necessary measures to put an end to the violation of rights, or the penitentiary administration itself fulfilled its legal obligations, on its own initiative, as a result of the judicial actions undertaken by the detainees. For example:
- In one case, the detainee alleged the violation of legal provisions on nutrition for detainees, as he was suffering from diseases requiring a specific diet. After complaining to the judge responsible for the execution of sentences, the plaintiff was included by the penitentiary under a special nutrition rule, *i.e.* Rule no. 18 set forth in OMJ no. 2713/C/2001, to be applied to chronically ill detainees under out-patient treatment, as well as to sick convicts requiring a diet, held in places of detention.
- In another case, the plaintiff reported the violation of legal provisions on detainees' rights to medical assistance and nutrition, demanding to be brought before specialists from the medical establishments in Iași for medical review in order to diagnose his diseases, to receive the appropriate medical assistance as well as the corresponding diet. Subsequently, in front of the judge, the plaintiff withdrew his complaint as, after lodging it, all the aspects complained about had been solved by the penitentiary administration.
- In another case, the detainee complained, *inter alia*, that the cell where he had been placed was insalubrious and unsanitary and that there were cracks in the wall. The judge responsible for the execution of sentences carried out specific fact-finding actions – he inspected the cell and noted that repairs and sanitary work were in progress, initiated as a result of the complaint.
- Another detainee complained that he was not taken to the penitentiary medical cabinet for examination, despite his request, and that he was no longer receiving painkillers for his hand aches (the detainee alleged having a fracture of his left forearm which had failed to heal due to other diseases). Since the penitentiary administration, following his complaint to the judge, took measures to have the detainee examined at the medical cabinet and to have painkillers administered to him, as he demanded, the complaint was found to have become irrelevant.

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[15] Out of the 25 complaints concerning the conditions of detention:
- 1 complaint was allowed in full;
- 6 complaints (5 of which were joined as they were lodged by the same prisoner) were allowed in part;
- 5 complaints became irrelevant as the penitentiary took the measures demanded by the prisoners to put an end to the infringement of their rights before the judge delivered a decision;
- 2 complaints became irrelevant as the prisoners were released from prison;
- 6 complaints were withdrawn; in one case, the prisoner expressly stated he was withdrawing his complaint because the penitentiary had taken the required measures to put an end to the violation of his rights (the prisoner had claimed he was not granted medical treatment and that the food was not adequate for his diseases);
- 5 complaints were dismissed as ill-founded.

6. CONCLUSIONS, PERSPECTIVES

It is known that any major legislative and institutional effort involves, at a certain point, a serious implementation assessment in order to correct the inherent inconsistencies as well as to consolidate, perhaps improve, the newly regulated institutions.

It is obvious that such intervention, legislative or institutional, will also be required in connection with the execution of sentences and it may even envisage **a possible consolidation/amendment of the existing mechanism**.

We take into account a potential legislative intervention in areas such as: the execution of the open regime outside the penitentiary; the potential reduction of the sentence as a form of compensation for the period of time spent in inadequate conditions of detention, etc. It is worth mentioning however that, no matter what solution is adopted, it requires an extensive consultation and information of Romanian society, of state and non-governmental institutions in this field, so that the solution in terms of execution-criminal policy is the most suitable for Romanian society.

Finally, an important legislative progress for the entire construction of defending human rights and preventing violations was recently created in Romania and deserved to be mentioned: the creation of the National Preventive Mechanism under the Optional Protocol to the United Nations Convention against Torture, by extending the competencies of the Romanian Ombudsman. Thus, it was adopted the Government Emergency Ordinance no.48/2014 according to which regular inspections of detention facilities would be carried out by independent experts, which will be coordinated by a special Ombudsman Deputy, and private interviews with detainees could be taken in order to ascertain compliances with both domestic legal provisions and international standards.

Thank you for your attention.

Alina Barbu, legal adviser
Department of drafting legislation,
Public law division
Ministry of Justice
Romania