DIRECTORATE GENERAL
HUMAN RIGHTS AND RULE OF LAW

DIRECTORATE OF HUMAN RIGHTS

DEPARTMENT FOR THE EXECUTION OF JUDGMENTS
OF THE EUROPEAN COURT OF HUMAN RIGHTS

H/Exec(2015)7 – 12 février 2015

Group of cases Bragadireanu v. Romania (No. 22088/04)

General measures adopted for the execution of 93 cases concerning mainly overcrowding and material conditions of detention in penitentiary and police detention facilities

Memorandum prepared by the Department for the execution of judgments and decisions of the European Court of Human Rights

The opinions expressed in this document are binding on neither the Committee of Ministers nor the European Court

EXECUTIVE SUMMARY

These cases concern mainly the inhuman and/or degrading treatment suffered by the applicants on account of overcrowding and precarious material conditions in prisons and police detention facilities and the lack of an effective remedy in this regard. Some of them also concern other dysfunctions regarding the protection of the prisoners' rights (medical treatment, restraining in hospital and prison environment, food, hygiene and transport conditions).

This document presents and assesses the general measures taken or envisaged in these cases to resolve the issues of overcrowding and precarious conditions of detention.

The general measures required to remedy the issues related to other prisoners' rights are not addressed in this document. Indeed, following a recent reform of the criminal law, the statutory framework in this field was modified and updated information is awaited from the authorities as regards the content and the application of the new provisions. These questions will be presented to the Committee of Ministers once all relevant information has been provided.

Contents

INTRODUCTION

1. The first findings of violation of Article 3 by Romania on account of overcrowding and material conditions in the detention facilities date back to 2008[1].

2. The measures adopted by the authorities in response to these findings before June 2012 and those whose adoption was then underway are presented and assessed in information document CM/Inf/DH(2012)13, prepared by the Secretariat. At its 1144th meeting (DH) (June 2012), the Committee of Ministers relied on this assessment to stress in particular the need for the authorities to adopt additional measures in order to tackle overcrowding and to put in place effective remedies at the domestic level in respect of complaints related to the conditions of detention.

3. In parallel, confronted with a flow of repetitive applications, the European Court considered it necessary to address a number of indications under Article 46 of the Convention to the Romanian authorities (*Iacov Stanciu* judgment, final on 24 October 2012). In this context, the Court indicated that, while the measures already taken might contribute to improving the living and sanitary conditions in Romanian prisons, consistent and long-term efforts, such as the adoption of further measures, must be made in order to achieve complete compliance with Articles 3 and 46 of the Convention. Moreover, an adequate and effective system of domestic remedies should be put in place allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief.

4. In response to the above-mentioned decision of the Committee of Ministers and to the indications addressed by the European Court in the *Iacov Stanciu* judgment, the Romanian Government adopted, in September 2012, a memorandum which established the priority actions to resolve the substantive issue at the origin of these judgments and set up a working group tasked with the regular follow-up of their implementation[2].

5. In the meantime, Romania became one of the six beneficiary States of a specific project of the Human Rights Trust Fund on "implementing pilot, 'quasi-pilot' judgments and judgments revealing systemic and structural problems in the field of detention on remand and remedies to challenge conditions of detention" (HRTF project No. 18). Within this project, an exchange of views with the Romanian authorities and international experts took place in February 2014, to assist the authorities in elaborating a consolidated action plan for this group of cases. In the same framework, Romania participated in a Round Table on the "The setting up of effective domestic remedies to challenge conditions of detention", held in Strasbourg on 8 – 9 July 2014.

6. On 23 October 2014, the Romanian authorities provided a revised action plan which presents updated information on the progress in the implementation of the priority actions for the execution of these judgments. The current status of the adoption of the general measures, in the light of the information thus provided, is examined below.

GENERAL MEASURES

I. Priority actions for the execution of the judgments

7. In September 2012, the Government established priority actions for the execution of these cases: finalise the reform of the State's criminal law policy which was underway at that date; adopt targeted awareness-raising measures in respect of judges, prosecutors and other State officials; and complete the projects for the expansion and modernisation of the penitentiary system and police detention facilities.

8. The reform of the criminal law policy, initiated in 2009, led to the entry into force, on the 1st of February 2014, of a new Criminal Code, a new code of Criminal Procedure and of new laws on

[1] Judgments *Bragadireanu* (No. 22088/04, final on 6 March 2008) and *Petrea* (No. 4792/03, final on 1st December 2008).

[2] The memorandum does not address the issue of remedies, since the Romanian authorities consider that the domestic law provides for an effective system of remedies in respect of complaints related to conditions of detention.

probation and the execution of custodial and non-custodial sentences and measures. The rules for the implementation of the new Codes entered into force on the same date; the adoption of those for the other laws mentioned above, including the ministerial orders that will set the accommodation conditions and the minimal standards on living space for prisoners, is underway.

9. According to the authorities, the new legislative framework should lead to a decrease in the number of prisoners as it allows greater possibilities for the courts to resort to alternative sentences and measures to detention, thus allowing the restriction in the future of the number of admissions to detention facilities. To increase the recourse to alternative measures to detention, the authorities reinforced the role of the probation service in assisting the courts in the individual assessment of sentences, coordinating the execution of alternative measures to the detention and supporting the social reintegration of prisoners.

10. The authorities accompanied this reform by a vast professional training programme for judges, prosecutors and other authorities concerned (Ministry of Justice, Ombudsman, National Prison Administration, General Inspectorate of the Romanian Police). A certain number of organised in this context aimed specifically to make the link between the application of the new framework and the implementation of the judgments under examination, by stressing the importance of an effective application of the provisions aiming to reduce the prison population. It is worth mentioning in this respect in particular the "Seminar on the execution of judgments of the European Court of Human rights concerning conditions of detention", organised in Bucharest in March 2014, within the HRTF project No. 18, with the support of the National Institute for the Magistracy.

11. Between 2012 and 2014, the authorities also continued implementing the projects for the expansion and modernisation of detention facilities in Romania previously announced to the Committee of Ministers (see information document CM/Inf/DH(2012)13, §§16 to 18).

12. The new framework maintains the system of detention which existed under the previous legislation. Prisoners on remand continue to be placed in police detention facilities during the investigation phase. Once they are committed to trial, they are transferred to special sections in penitentiary facilities or to remand centres attached to such facilities. Convicted prisoners are detained in penitentiary facilities or, in the case of minors, in detention or educational centres. To assess the measures adopted and/or envisaged for the execution of these judgments, the situation in penitentiary facilities and that in police detention facilities should be addressed separately.

II. Penitentiary facilities

A. Legislative measures

13. The authorities consider that some provisions of the new Criminal Code and Code of Criminal Procedure favour a decrease in prison population, since they allow an increased recourse to alternative measures to detention. More specifically, these measures:

- introduced two new alternatives to the detention on remand (house arrest and release under judicial supervision);
- extended the scope of pecuniary sentences (criminal fines) for various offences punished thus far by custodial sentence;
- reformed the system of alternative measures that can be applied *in lieu* of a sentence, by modifying the conditions under which sentencing may be deferred and an exemption of sentence may be granted;
- diversified the non-custodial educational measures in respect of convicted minors and allowed wider recourse to such measures.

14. On the occasion of the seminar organised within HRTF project No. 18 in Bucharest in March 2014, the Romanian participants noted that home arrest, the release under judicial supervision and the new non-custodial educational measures in respect of minors are truly innovative measures. The participants also noted that in the first months of the application of the reform, home arrest was well endorsed by courts. As regards the criminal fine – which is in fact the sole alternative sentence to imprisonment provided under the new legislation – the interveners agreed that the new framework

indeed extended the possibilities to apply this sentence. The Romanian authorities indicated on this occasion that they had just allocated additional human resources to the probation service.

15. The possibility of using alternative measures to sentencing however had already existed under the former legislation; moreover, the conditions for applying such measures are globally more restrictive. The eligibility for conditional release is likewise subjected to more restrictive conditions under the new legislation. The interveners at the aforementioned seminar recommend that caution should be exercised when assessing the impact of the reform on the size of prison population.

16. According to the authorities, between the 1st of February 2014 (date of the entry into force of the reform) and 23 October 2014, approximately 1,000 persons were released as a result of the application of the more lenient criminal provisions and alternative measures to detention on remand.

17. The Ministry of Justice is considering establishing a mechanism to monitor the implementation and the impact of the new legislation, which it envisages organising in cooperation with the Supreme Council for Magistracy.

B. Measures aimed at expanding and modernising the prison system

18. The Strategy for the Prison System for 2013 – 2016, drawn-up by the National Prison Administration (hereinafter the "NPA"), includes projects to expand and modernise the prison estate. In this framework, construction and renovation works have been carried out and new places were made available between 2012 and 2014. Works are currently underway or envisaged in 11 penitentiary facilities and it is expected to complete some of them in 2015.

19. According to the authorities, these works resulted in 2,621 new places being made available between 2012 and July 2014. The data published on the NPA's website show however that between March 2012 and January 2015, the number of available places only increased by 1,619, from 17,367 places[3] to 18,986 places.

C. Current situation in penitentiary facilities

20. Since 2011, the NPA has been monitoring the occupancy rate in all facilities it is responsible for (prisons, penitentiary hospitals and facilities for minors) on a daily basis. The data thus collected is published on this institution's website[4].

21. According to this data, as of 15 January 2015, the prison population in Romania was of 30,153 prisoners. On the same date, the global capacity of the penitentiary system, calculated on the basis of a 4 sqm space *per* prisoner, stood at 18,986 places. Among the 16 facilities for prisoners assigned to strict regimes, 15 continued to have an occupancy rate of over 100%, reaching even 200% at Iaşi and Galaţi, 193% at Craiova and 180% at Miercurea-Ciuc. The occupancy rate for these facilities is calculated based on the national minimal standard on living space for such prisoners, which is set at 4 sqm *per* person. Among the 17 facilities for prisoners assigned to open and semi-open regimes, 6 had an occupancy rate of over 100%, but the NPA calculates this rate based on the national standard on living space, which is set at 6 cubic meters of air *per* prisoner for those assigned to low-risk regimes. As regards the profile of prison population, according to the data available as of 31 October 2014, remand prisoners and minors in detention represented approximately 5,80% and 1,30% of the total prison population[5].

22. In a communication dated 26 May 2014, an NGO (*the Association for the defence of human rights in Romania – Helsinki Committee*, hereinafter "APADOR-CH") underlines that detention facilities in Romania continue to be severely overcrowded. Relying on the data published by the NPA as of 22 April 2014, it indicates that the average living space available is a little over 2 sqm *per* prisoner. Overcrowding continues to affect even those prisons in which construction and renovation works were carried out in 2012 (Vaslui, Craiova, Iaşi), as the occupancy rate in these prisons on the

[3] See CM/Inf/DH(2012)13, §26.
[4] http://anp.gov.ro/dinamica-efectivelor.
[5] Out of a total prison population of 30,895 prisoners at that date, there were 1,790 prisoners on remand and 320 minors in detention.

same date reached between 162,80% and 186,87% (calculated based on 4 sqm of living space *per* prisoner).

23. During visits made in 2013 in a number of prisons, APADOR-CH thus found that prisoners had sometimes to share beds (at the Ploieşti prison), that their living space was limited to approximately 1 sqm (some cells at the Craiova prison) or else that the conditions remained precarious. APADOR-CH considers that this situation is all the more concerning because the prison population in Romania had been steadily increasing between 2007 and 2013, from 26,212 in 2007 to 33,434 prisoners by the end of 2013.

D. Assessment

24. The available information shows that penitentiary facilities in Romania continue to be severely overcrowded and to offer poor material conditions. The severity and the structural nature of these problems, revealed by the flux of repetitive applications[6], have prompted the European Court to address indications to the Romanian authorities on the measures that are to be adopted for the implementation of these judgments (case of *Iacov Stanciu*).

25. Between 2007 and 2013, there was a steady increase in the prison population in Romania. This trend was reversed in 2014, when the prison population decreased by 3,281 persons. However, the authorities have not been capable of offering a precise and complete explanation for the prison population inflation between 2007 and 2013 nor were they able to indicate if the downward trend noted in 2014 can be consolidated and if the rhythm can be maintained in the years to come. They have only indicated that a number of measures adopted as a part of the recent criminal law reform can contribute to reducing the size of prison population through a wider recourse to alternative measures to detention, supported by the reform of the probation system.

26. The detailed examination of the measures highlighted by the Romanian authorities shows that they cannot, by themselves, resolve problem of overcrowding or at least lead to a significant improvement, within a reasonable period. Indeed, the new alternative measures to detention on remand and to detention of minors target categories that are less represented in the prison population (as of 31 October 2014, these categories together represented approximately 7% of this population). With respect to deferred sentencing and the exemption of sentence, the new legislation submits the application of these measures to conditions that are globally more restrictive than those prescribed by the previous legislation, which is more likely to reduce than increase the use of these alternatives to sentencing. These measures do not appear therefore to be capable of contributing in a significant manner to a decrease in the size of prison population in the future. Lastly, as regards the provisions that extend the scope of pecuniary sentences, this measure can certainly contribute to limiting admissions to prison, but it is manifestly not sufficient to bring the prison population to a manageable level, within a reasonable period, considering the scale of prison overcrowding in Romania.

27. To resolve this problem in a lasting manner, additional measures are therefore necessary. In this respect, it is important to stress again that increasing the capacity of the prison system does not constitute such a solution and that it cannot be a substitute for measures aimed at limiting or adjusting the number of prisoners, which are the only ones that can contribute in a significant and sustainable manner to bringing and maintaining the prison population at an acceptable level.

28. Having regard to the above, based on their knowledge of the factors that contribute to prison overcrowding in Romania, it is for the Romanian authorities to define and implement rapidly additional measures, as a part of a targeted action against this phenomenon. In this process, the authorities should draw more inspiration from the numerous recommendations of the Committee of Ministers in the field of criminal law and prison policy[7] and from the concrete avenues explored during the exchanges organised within HRTF project No. 18:

[6] In 2014, the European Court communicated 64 new applications concerning these problems to the Romanian Government (source: www.echr.coe.int).

[7] Notably the Committee of Ministers' recommendations R(99)22 concerning prison overcrowding and prison population inflation, Rec(2003)22 concerning conditional release, Rec(2000)22 on improving the implementation of the European rules on community sanctions and measures and CM/Rec(2014)4 on electronic monitoring.

- diversify the range of alternative measures to a prison sentence and/or relax the conditions for the application of the alternatives to sentencing, to avoid the imposition or implementation of short prison terms;
- relax the conditions of access to conditional release, which are more restrictive under the new legislative framework, for instance by reducing the fraction of a sentence that must be executed in order to have access to this measure, currently set at two thirds, and by introducing more substantial remissions of sentence for work, school and professional training in detention; and
- ensure that the probation service has at its disposal all the resources required for it to be able to carry out efficiently all the functions assigned to it.

29. At the same time, the authorities should put in place, as rapidly as possible, the monitoring of the application of the measures already adopted in the context of the reform. This monitoring should allow an assessment of their actual impact on the size of prison population and defining, if necessary, complementary measures to increase this impact. Since the effectiveness of such monitoring depends, above all, on the collaboration of all the authorities concerned by this problem, the Romanian authorities might wish to associate other authorities (such as the probation service and the NPA) to the envisaged monitoring mechanism.

30. Lastly, the Romanian authorities should be encouraged to continue with the projects for the modernisation of the prison system, as they meet the need to improve the material conditions in penitentiary facilities in Romania.

II. Police detention facilities

A. Legislative measures

31. The Romanian authorities underlined that the new alternative measures to detention on remand (home arrest and release under judicial supervision), introduced by the new Code of Criminal Procedure, should contribute to reducing the number of prisoners on remand in police detention facilities.

B. Measures aimed at increasing detention capacity and at improving the material conditions in police detention facilities

32. The General Inspectorate of the Romanian Police (hereinafter the "GIRP"), which is responsible for police detention facilities, set up a Department for the coordination of these facilities, which assessed the conditions in each of them. Based on this analysis, the GIRP adopted measures aimed at:

- informing the territorial police services of the requirements of the Convention as regards conditions of detention and relevant standards of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment;
- reducing the number of beds available in cells[8];
- reducing the number of cells in the basement;
- improving the material and hygiene conditions and the equipment in these facilities.

33. In 2012, the Romanian authorities announced to the Committee of Ministers that new detention facilities would be built in the capitals of the counties of Arad, Giurgiu, Prahova, Vaslui, Mureş and Neamţ and that a single detention facility would be made available in Bucharest[9]. The revised action plan does not provide updated information on the progress of all these works. The authorities only indicate generally that major investment projects are still underway in the facilities in the capitals of the counties of Arad, Giurgiu and Vaslui and in those of Alba, Covasna, Iaşi and Maramureş. In addition, the GIRP is implementing in collaboration with the Council of Europe a project funded by the Norway Grants[10] which aims to improve the practical training of staff in police detention facilities on

[8] Currently, the capacity of police facilities is established based on the number of beds available in cells.
[9] See information document CM/Inf(DH)13, §75.
[10] This programme established and funded by Norway, aims to reduce the economic and social disparities and to reinforce bilateral relations with 16 Central and South-Eastern European countries, members of the European Union.

the protection of human rights and to bring the material conditions in the 52 existing facilities in compliance with European standards. This project is to be implemented between 2014 and 2016.

C. Current situation in police detention facilities

34. Since 2013, the GIRP has been monitoring the occupancy rate in these facilities on a daily basis and it ensures the transfer of prisoners as soon as their capacity is exceeded. The results of this monitoring however do not appear to be available to the public.

35. The annual activity report of the Romanian police, available on the website of the GIRP[11], indicates that during 2013, 26,549 persons in total were placed in detention on remand in police detention facilities at some point. The authorities did not provide data enabling an estimation of the average duration of a detention in such premises, but under the relevant domestic rules, detention on remand during the investigation phase cannot exceed 180 days (Art. 236, §4 of the new Code of Criminal Procedure).

36. The authorities indicated that as a result of the measures adopted in 2012, presently, out of 1,795 places available in these facilities, 992 places observe the minimal standard of 4 sqm individual living space and 510 places ensure an individual living space of over 3 sqm.

37. In addition to the severe overcrowding in these facilities, which sometimes leads to a shortage of individual beds, the European Court's judgments and the information provided in the context of the execution of these judgments[12] revealed that most of them are situated in the buildings which serve as headquarters to the county police inspectorates and are often located in the basement of these buildings. As a result, they cannot provide sufficient ventilation and access to daylight and the activities outside the cells are limited.

38. In its communication of 26 May 2014, APADOR-CH underlined that in the facilities visited by this NGO in 2013, the material and sanitary conditions were precarious; in some facilities (Cluj, Tulcea, Timis), prisoners did not have regular access to toilets and in the facility in Cluj, the cells did not have windows nor artificial light. On a general note, APADOR-CH considers that the conditions in police detention facilities are, in most cases, even more precarious than in prison.

D. Assessment

39. The situation in police detention facilities continues to give rise to very serious concerns. In addition to overcrowding, some of these facilities are structurally unsuitable for longer-term detentions, as they are situated in the basement and/or offer only very limited possibilities for activities outside the cells. This situation prompted the European Court to conclude that even a four-day detention period in such conditions attained the level of severity required to fall within the scope of Article 3 of the Convention[13].

40. Having regard to the serious problems that affect these facilities, the Secretariat considered it advisable in its previous assessment[14] to encourage the authorities to review the system of detention on remand in police detention facilities in order to ensure that in the short term, remand prisoners are no longer detained in such facilities for extended periods and in the medium term, that all remand prisoners are detained in penitentiary facilities.

41. The authorities chose nevertheless to maintain the system of detention on remand in police facilities and to continue with their initial approach which aimed to reduce the occupancy rate in these facilities and to ensure that the accommodation in such facilities is compatible with the requirements resulting from Article 3 of the Convention, through construction, renovation and modernisation works.

42. To reach the first objective, the new Code of Criminal Procedure introduced two new alternative measures to detention on remand (home arrest and release under judicial supervision). As

[11] http://politiaromana;ro/files/pages_files/Activitatea_2013.pdf.
[12] See information document CM/Inf(DH)13, §68 – 81.
[13] See the case of Căşuneanu (No. 22018/10), which concerns a 4-day detention period in the facility attached to the Bucharest police.
[14] See information document CM/Inf(DH)13, §89.

maintained by the authorities, these measures have the potential to limit the number of remand prisoners and thus to reduce the occupancy rate in police detention facilities. The authorities have not yet provided conclusive data in this respect, but it appears that the courts do resort in practice to home arrest. To assess the real effectiveness of these measures, it is however necessary to obtain complete and precise data on their application and impact on the number of remand prisoners held in police detention facilities. For this reason, the authorities should be encouraged to put in place as rapidly as possible the envisaged monitoring of the impact of the reform.

43. As regards the second objective, which is to ensure that these facilities offer appropriate living conditions, it is important above all to remedy the structural deficiencies which make some of them unsuitable for detention. The authorities provided information on the investment projects that are underway, but they are too general and do not offer a clear picture of the current situation and the authorities' strategy to reach this objective. To obtain such a picture, it is important to receive the conclusions of the assessment of the detention conditions in each police facility made by the GIRP and more detailed information on the measures defined by the authorities in response to these conclusions. In this respect, the authorities should provide information:

- on the status of implementation and the time-frame set for completing the construction of new facilities, announced in 2012;
- the content of the investment projects announced in 2014 and the time-frame set for their implementation; and
- the works envisaged in the framework of the project funded by the Norway Grants.

44. Information is also necessary on the measures envisaged to remedy the structural deficiencies that may affect other police facilities, which are not covered by the construction/renovation works announced in 2012 and 2014, such as the facilities in the capitals of the counties of Bacău, Craiova, Constanţa, Mehedinţi, Oradea and Sălaj and the facilities in Bucharest, to which the judgments of the European Court refer[15].

45. In addition, it should be noted that unlike the measures aimed at combatting overcrowding in these facilities, which can yield results in the short term, those which aim to remedy their structural deficiencies can only be implemented in the longer term (since this requires in most cases the building or adjustment of new premises, which are to be all situated at ground level). In these circumstances, interim measures appear necessary to limit, to the extent possible, the duration of detention in facilities that are not structurally suitable to long detentions. Based on the analysis of the conditions in each facility made in 2012 by the GIRP, the authorities should be able to readily identify these facilities and to rapidly adopt the appropriate measures, for instance by ensuring the transfer of the persons detained in these facilities to penitentiary facilities situated in the proximity. Information is therefore awaited on the measures thus defined and adopted.

REMEDIES

I. Findings of the European Court

46. In many judgments, the European Court noted the absence in Romanian law of an effective remedy for the complaints related to overcrowding and to material conditions of detention. In the *Iacov Stanciu* judgment, it underlined that in order to comply with the obligations stemming from its previous judgments in similar cases, it was necessary to put in place an adequate and effective system of domestic remedies and gave indications on the features of such a system.

47. The Court indicated in particular that the remedy, which at that time (2012) relied mainly on the judge responsible for the execution of sentences, should allow the judge to put an end to a situation found to be contrary to Article 3 of the Convention and to grant compensation if such findings are made. As to the review on the merits of a complaint under Article 3, according to the Court, the relevant authority should take into account the fact that substandard material conditions are not necessarily due to problems within the prison system as such, but may also be linked to broader issues of penal policy; moreover, even in a situation where individual aspects of the detention comply with the domestic regulations, their cumulative effect may be such as to constitute inhuman treatment.

[15] See, *inter alia*, the judgments Mihăilescu, Marin Vasilescu, Florin Andrei, Ciolan, Pop Blaga, Onaca, Radu Pop.

48. As regards the compensation, the Court considered that the relevant domestic rules must reflect the existence of the presumption that substandard conditions of detention have occasioned non-pecuniary damage to the aggrieved individual. The level of compensation awarded for non-pecuniary damage by domestic courts when finding a violation of Article 3 must not be unreasonable taking into account the awards made by the Court in similar cases. The authority dealing with the matter will have to provide compelling and serious reasons to justify their decision to award significantly lower compensation or no compensation at all in respect of non-pecuniary damage.

II. Information provided by the authorities

49. Relying on an evolution of the domestic legislation and case-law subsequent to the *Iacov Stanciu* judgment, the Romanian authorities consider that prisoners now have at their disposal an effective system of remedies, which combines in a complementary manner a preventive and a compensatory remedy.

A. Preventive aspect

50. In the action plan provided on 23 October 2014, the Romanian authorities noted an evolution in the practice of some domestic courts as regards prisoners' complaints related to overcrowding and the material conditions of their detention, brought under Law No. 275/2006, in force until 1st February 2014. The authorities expressed the opinion that this evolution shows that this procedure became an effective preventive remedy.

51. In support of this statement, the authorities presented a synthesis of court decisions concerning prisoners' complaints denouncing violations of various rights in detention[16]. Fifteen such decisions, given between 2011 and 2013, upheld prisoners' complaints about the failure to observe the national standards on minimal living space and, in some cases, the lack of appropriate equipment of the cells. These decisions were handed down by the judges responsible for the execution of sentences attached to the prisons of Codlea (2 decisions) and Botoşani (1 decision) and by the first-instance courts of Bucharest (fourth district) (10 decisions) and Brăila (2 decisions), the latter upon appeals lodged against decisions of the judges responsible for the execution of sentences attached to the prisons of Bucharest – Jilava and Brăila. According to the authorities, in response to these decisions, the administration of the concerned penitentiary facilities took measures to ensure to the complainants the statutory living space, including by organizing collective transfers to other penitentiary facilities.

52. The authorities also indicated that the new law on the execution of custodial sentences and measures (Law No. 254/2013) introduced provisions that allow the consolidation of the case-law developments presented above. Indeed, this Law now includes among the rights guaranteed to prisoners the right to accommodation conditions that observe the national minimal standards, which makes it mandatory for the judges to review the compatibility of the conditions of detention with the relevant standard.

53. Similar to the previous legislation, the new law enables prisoners to challenge any measure of the administration which affects the exercise of their rights recognized by this law. This review falls now within the remit of the judges who supervise the deprivation of liberty (hereinafter "supervisory judges"), who replaced the judges responsible for the execution of sentences. The supervisory judges shall decide upon the complaint within 15 days, by a reasoned decision taken in respect of the adversarial principle. If the complaint is upheld, the judge cancels or modifies the measures taken by the administration or orders the latter to take the necessary measure. These decisions can be appealed before the first-instance court which has territorial jurisdiction over the detention facility. Once they are final, these decisions are mandatory for the administration.

B. Compensatory aspect

54. Relying on more recent examples of case-law, the authorities consider that an action brought under the rules governing the liability in tort enables prisoners to file compensation claims for the

[16] This synthesis is presented in the annex to the revised action plan of 23 October 2014. The authorities summarised in this document several other court decisions which concern aspects other than overcrowding and material conditions of detention (personal hygiene, medical assistance, nutrition, conjugal visits).

period spent in detention conditions that do not comply with Article 3 before the civil courts, and represents therefore an effective compensatory remedy. These actions are exempted from legal costs. When such an action is brought before them, the national courts carry out a review on the merits of the complaints raised, often apply a presumption that these circumstances have caused non-pecuniary damage to the complainant and provide redress. The authorities rely, as examples, on four decisions, one concerning medical treatment, two others the hygiene and sanitary conditions and the last one[17] overcrowding and precarious sanitary conditions in a police detention facility.

III. Assessment

Preventive aspect

55. Law No. 254/2013 allows prisoners to challenge the measures that affect the rights recognized under this law before the judge who supervises the deprivation of liberty. Nevertheless, this law limits the scope of the review made by the judge to the compliance with the national minimal standards on prisoners' accommodation. This limitation appears *a priori* incompatible with the requirements of an effective preventive remedy: it does not allow the judge to carry out a global review of the denounced aspects in accordance with the criteria applied by the European Court and prevents him from ordering corrective measures when the national standard is incompatible with the requirements resulting from the Court's case-law (which is the case for the standard currently applied to persons assigned to the open or semi-open regime, which prescribes 6 cubic meters of air *per* prisoner[18]).

56. Moreover, the authorities did not show in what manner, this limitation notwithstanding, the procedure at issue provides redress when the aspects that are challenged are not covered by national minimal standards (for instance, structural deficiencies, such as age of the buildings and of the installations, insufficient ventilation, insufficient natural light etc.).

57. Further questions arise as regards the effects of the decisions given by supervisory judges when the detention conditions challenged are due to structural deficiencies (overcrowding, age of the buildings and of the installations, failure to separate the sanitary facilities, insufficient ventilation, insufficient natural light). The authorities did not provide details on the content of the measures adopted in response to the court decisions they relied on as examples and did not explain in what way these measures had ensured the complainants a satisfactory redress of their situation, in an environment characterized by structural overcrowding[19]. It is important to underline in this context the link established by the European Court in its case-law between the practical effectiveness of a preventive remedy and that of the measures adopted to resolve the problems of overcrowding and precarious material conditions of detention, when the latter have a structural character[20].

58. These considerations which apply to the legislative framework now in force do not prejudge on any account future evolutions in the practice of the competent courts, due in particular to the direct application of the Convention and of the criteria which result from the relevant case-law of the European Court. The examples presented by the authorities so far do not however show in a conclusive manner that such an evolution has already occurred.

Compensatory remedy

59. In Romanian law, the general tort liability is subjective[21]: it can only be engaged if a fault is proven on the part of the alleged tortfeasor. However, as the European Court noted in the *Iacov Stanciu* judgment, overcrowding and precarious material conditions are not necessarily due to problems within the prison system, but may also be linked to broader issues of penal policy. As a consequence, a remedy which can only prosper if the plaintiff is able to prove the defendant's fault

17 Decision No. 96 of 25 April 2012 of the Vrancea County Court.
18 See CM/Inf/DH(2012)13, §36 and CM/Inf/DH(2011)26, §8.
19 See Stella and others (dec.), 16 September 2014, §50.
20 See Stella (déc), above-mentioned, §§50 – 53 and §55.
21 For a presentation of the rules applied under the previous Civil Code, see the Eugenia Lazăr judgment, Application No. 32146/05, judgment of 16 February 2010, final on 16 May 2010. The new Civil Code, in force since 1st October 2011, maintains the principle of subjective tort liability.

cannot offer an adequate framework for the examination of the compensation claims for detention in conditions contrary to Article 3 of the Convention[22].

60. The four examples presented by the authorities do not allow a conclusion that the national courts have, through consolidated and generalized practice, developed different rules when examining actions that seek to engage the State's liability on account of overcrowding and precarious material detention conditions. Nor do they allow a conclusion that a consensus has been reached at the level of these courts on the application of evidentiary and compensation criteria that are consistent with the Court's case-law and the specific indication it gave in this respect in the *Iacov Stanciu* judgment (see §§47 – 48 above). These examples therefore do not prove with the required level of certainty that a compensatory remedy exists in this field[23].

Conclusions

61. Additional measures are required to fully respond to the indications the European Court addressed to the Romanian authorities in the *Iacov Stanciu* judgment as regards the putting in place of an adequate and effective system of remedies. To define such measures, the authorities could usefully draw inspiration from the activities carried out within HRTF project No. 18, which have largely addressed the issue of effective remedies required by this group of judgments. More specifically,

- as regards the preventive aspect, these measures should allow for the widening of the scope of the judicial review laid down by Law No. 254/2013 so that the judges have the power to examine the complaints related to overcrowding and material conditions of detention in accordance with the same criteria applied by the Court. The authorities should also provide the Committee with more details on the measures taken so far by the penitentiary administration to comply with court decisions which outlined structural deficiencies related to overcrowding and precarious material conditions and explain how these authorities could provide the complainants with satisfactory redress of their situation, considering the current situation of the prison system.
- as regards the compensatory aspect, the measures to be adopted should ensure that a remedy is put in place in domestic law to allow for the provision of adequate compensation in respect of any violation of the Convention which has already occurred on account of insufficient living space and/or precarious material conditions. As to the features of such a system, the domestic rules should take into account all the principles which result from the relevant case-law of the European Court.

[22] See Ananyev, judgment of 10 January 2012, final on 10 April 2012, §113.
[23] On this issue, see, *inter alia*, Orchowski, judgment of 22 October 2009, final on 22 January 2010, §105 and Ananyev, above-mentioned.