

**SECRETARIAT GENERAL**

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
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**Date:** 20/01/2015

**DH-DD(2015)83**

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Meeting: 1222 meeting (10-12 March 2015) (DH)

Item reference: Action report (14/01/2015)

Communication from Romania concerning the case of Toma against Romania (Application No. 42716/02)

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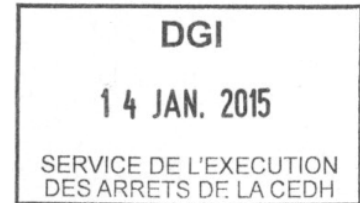
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Réunion : 1222 réunion (10-12 mars 2015) (DH)

Référence du point : Bilan d'action

Communication de la Roumanie concernant l'affaire Toma contre Roumanie (Requête n° 42716/02)  
(**anglais uniquement**)

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## Action report

### ***Toma v. Romania***

(Application no. 42716/02, judgment of 24 February 2009, final on 24 May 2009)

#### **I. Introductory case summary**

The case concerns the ill-treatment inflicted on the applicant by police officers upon his arrest on 10 September 2002 and the lack of any investigation into this aspect, despite the fact that the applicant raised a complaint before a competent authority and indicated some proofs in this regard (violation of Article 3, under the substantive and procedural limbs).

The case also concerns the fact that the applicant, whose detention was ordered by a prosecutor, was not brought promptly before a judge (violation of Article 5 § 3).

The case also concerns the lack of an expeditious examination by a judge of the applicant's complaint against the order of the prosecutor placing him in detention on remand (violation of Article 5 § 4).

The European Court also found a violation of the applicant's right to respect for private life on account of broadcasting of images and publishing a photo with the applicant at the police station, on 10 September 2002 (violation of Article 8). Concerning this aspect, the European Court considered that the interference with the applicant's right to respect for private life, represented by the behaviour of the police officers, who had called the journalists and authorised them to film the applicant at the police station, without his consent, with a view to publishing the images in the media, had not pursued a legitimate aim.

#### **II. Individual measures**

The European Court awarded the applicant just satisfaction for non-pecuniary damage, which was paid to the applicant in conditions that have not been contested.

**1) Investigation into the allegations of ill-treatment at the hands of police:** The Prosecutor's Office attached to the Constanta County Court informed the Agent of the Government that the limitation period for criminal responsibility for the facts allegedly committed on 10 September 2002 has expired and that the opening of a domestic investigation is no longer possible.

**2) Irregularities of detention on remand:** The period to be taken into account for the purposes of Article 5 had ended in 2002, thus before the Court delivered its judgment.

**3) Violation of Article 8:** The non-pecuniary damage awarded by the Court covered also the sufferings caused to the applicant for the infringement of his right to image as a part of his right to respect for private life.

Consequently, the Government consider that there is no need for further individual measures to be taken in order to comply with the European Court's judgment.

#### **III. General measures**

**1) Violation of Article 3: ill-treatment at the hands of police and lack of effective investigation:** These aspects are being examined in the context of the Barbu Anghelescu group of cases.

**2) Violations of Article 5: irregularities of detention on remand:**

**a) Right to be brought promptly before the judge:** The measures taken by the Romanian authorities are presented in the Final Resolution CM/ResDH(2011)149 adopted in the case of Nastase-Silivestru against Romania (judgment of 04/10/2007).

Consequently, the authorities consider that no further measure is necessary.

*b) Delay in resolving the request to be freed from detention on remand:*

The measures taken on this issue are exposed in the action report submitted in the Calmanovici group of cases.

Therefore, no additional measures are to be decided.

**3) Violation of Article 8:**

*a) normative evolution*

The presumption of innocence and the respect of one's private life are Constitutional principles since 1991. Since 2003, the presumption of innocence became also a leading principle for conducting criminal proceedings, stated as such in the Code for criminal procedure.

In addition, specific rules regarding the communication of information between the judicial authorities and the mass-media have been implemented with a view to the accused persons' right to respect for private life.

In this regard, the Order of the minister of administration and internal affairs no 319/19 September 2002 regulates the communication to the media of data and information obtained by the employees of the Police while performing their duties. This Order details the rules concerning the access to public information and the communication of this information to the media, emphasizing the need to respect the dignity, the private life and the right to one's image. According to Article 8 of the above mentioned Order, persons retained or arrested on the Police premises may be filmed, photographed or interviewed only if conditions set in the decision of the National Council of the Audio-visual on protection of one's dignity and image are met. The decision of the Nation Council of the Audio-visual no 220/24 February 2011, in force at this moment, prohibits the broadcast of images and recordings showing persons retained or arrested, without their consent, having regard to the presumption of innocence.

The above mentioned provisions are to be corroborated with the Statute of the Police (Law no 360/2002, in force since August 2002) that state that Police employees may communicate to the public data and information obtained while performing their duties only if conditions set by Order of the Ministry regarding presumption of innocence and respect to private life are met.

The Code of ethics and deontology of Police employees (in force since 7 September 2005) states that Police employees have to exercise their duties equitably and objectively, with due respect for the fundamental rights of persons, as set in the Constitution, the Universal Declaration of Human Rights, the European Convention of Human Rights, the European Code of Ethics of the Police and in the treaties to which Romania is a party.

*b) staff training*

The Court's judgment has been disseminated to the Prosecutor's Office attached to the High Court of Cassation and Justice and the General Inspectorate of the Romanian Police, with a view to organize trainings of prosecutors and police officers in order to prevent future similar violations. The General Inspectorate of the Romanian Police informed the Agent of the Government that measures have been taken in order to inform the personnel as to the applicable legal provisions and the Court's judgement and as to the necessity to verify all alleged violations of the abovementioned provisions. Also, in all retention and detention centres, the Inspectorate has made available materials containing warnings as to the areas that are under video-surveillance, as well as materials containing information about the rights of the persons deprived of liberty, including the right to respect of the private life.

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c) dissemination of the judgment

The judgment has been translated into Romanian and uploaded on the official site of the Superior Council of Magistracy (<http://www.csm1909.ro/csm/index.php?cmd=950301>) and of the European Institute of Romania ([www.ier.ro](http://www.ier.ro)).

#### **IV. Conclusions**

With regard to the general measures concerning the violations of Article 3, the Government will pursue the necessary efforts, in the context of the examination by the Committee of Ministers of the *Barbu Anghelescu* group of cases, with a view to preventing similar violations.

Having regard to the aforementioned submissions, the Government consider that no other individual or general measures are to be taken with regard to the violation of article 8 of the Convention and they conclude that they complied with the obligation imposed by Article 46 § 1 of the Convention. Consequently, the Government kindly ask the Committee of Ministers to decide the closure of the execution proceedings of the Court's judgment of 24 February 2009 in the case *Toma v. Romania*.