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Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1507th meeting (September 2024) (DH)

Communication from the authorities on the individual measures (09/08/2024) concerning the SOARE AND OTHERS group of cases v. Romania (Application No. 24329/02).

Information made available under Rule 8.2a of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1507^e réunion (septembre 2024) (DH)

Communication des autorités sur les mesures individuelles (09/08/2024) relative au groupe d'affaires SOARE ET AUTRES c. Roumanie (requête n° 24329/02) **[anglais uniquement]**.

Informations mises à disposition en vertu de la Règle 8.2a des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

L/ 4522 / 09 August 2024

334 R/AG/ 60
8450 R/AG/ 33
3304 R/AG/ 78
9239 R/AG/ 53



Information Note on individual measures
in the *Soare and others against Romania* group of cases

Cases analysed in this group:

- *Soare and others v. Romania* (application no. 24329/02)
- *Ciorcan and others v. Romania* (applications nos. 29414/09 and 44841/09)
- *Andreea-Marusia Dumitru v. Romania* (application no. 9637/16)
- *Pârvu v. Romania* (application no. 13326/18)

I. Summary

The case of *Soare and Others* concerns a violation of Article 2 consisting of life-threatening injuries which occurred in May 2000 as a result of unjustified and disproportionate use of firearms by a police officer as well as the lack of an effective investigation. The Court also found a violation of Article 3 in connection with the conditions under which two witnesses were retained to be placed at the disposal of the investigative bodies to make statements concerning the said incident (deprivation of food and water for more than nine hours).

The case of *Ciorcan and Others* concerns a substantive violation of Article 2 due to the lack of justification for involving special intervention forces in routine police operations carried out in 2006 and the lack of preparation of these operations so as to avoid, as far as possible, the risk to life or the use of force, and a violation of Articles 2 and 3 in their procedural limb due to the ineffectiveness of the investigations. Moreover, a violation of Article 14 in conjunction with Articles 2 or 3 was found regarding the failure of the authorities to investigate possible racist motives at the origin of the treatment suffered by the applicants at the hands of State agents during an operation in which several persons of Roma origin were victims of gunshot injuries, resulting in the death of one of the applicants.

The case of *Andreea - Marusia Dumitru* concerns a breach of Article 2 of the Convention, due to the circumstances in which the applicant was injured by rubber bullets fired by the police and to the lack of an effective investigation of the incident.

The case of *Pârvu* concerns a breach of Article 2 of the Convention under both its substantive and procedural limbs on account of the unnecessary use of force by a police officer resulting in the death of the applicant's husband, the lack of preparation of the police operation and the ineffectiveness of the investigation regarding this incident.

II. Individual measures

1. *Soare and others v. Romania*

In the case of *Soare and others v. Romania*, the national authorities have provided additional information regarding the investigation following the reopening of the domestic procedures and in particular regarding the means of clarifying the circumstances of the case.

As previously stated, the file no. 260/P/2017 was formed on 17.05.2017 and the investigation was taken over by the Criminal Investigation and Forensic Section within the Prosecutor's Office attached to the High Court of Cassation and Justice – P-HCCJ). **The case was closed on 05.02.2018, after it was established that the suspect D. L. N. did not commit the alleged crime (attempted murder) with the form of guilt required by law.**

After the reopening of the investigation in 2017, the prosecutors proceeded to the interrogation of the suspect, D.L.N., and the rehearing of the witness testimonies of B.N. and M.C. (the two other policemen who took part in the mission), C.S., B.D., V.A. and L.C. The only witness that has not been reheard is Mr. S.V., who lives abroad and whose localization was not possible.

Attempts have been made to obtain a new deposition from Mr. Mugurel Soare, but to no avail due to his speech-impairment caused by the gunshot wounds and his inability to read, write or communicate through sign-language.

New witnesses testified as well – V.E.M, S.N. (father of the victim), S.L.G. and S.A. (the victim's sisters), in order to clarify the order of the events, the nature of the relation between C.S. and Mr. Soare Mugurel and his brother S.V., as well as the reason why the two brothers were in possession of white weapons at the time of the incident. The prosecutors have also made efforts in identifying more people who could testify in this case, but difficulties arose due to the time-lapse between the date of the incident and the reopening of the proceedings, some of the potential witnesses being deceased.

Moreover, new forensic medical examinations were conducted, including the direct physical examination of both the victim and the suspect by a forensic doctor and additional medical investigations, such as a CT for the victim, Mr. Mugurel Soare. These examinations were necessary in order to establish beyond the shadow of a doubt the distance and the position from which the bullet was shot, as well as whether the wounds on the suspect's abdomen could have been self-inflicted.

With regard to the perjury accusations concerning two of the witnesses, the authorities wish to clarify that in the context of extending the investigation to the suspect C.S., the latter provided false information during his interrogations of 07.12.2016 and 09.12.2016 and did not disclose all the information he possessed in reference to being stopped by the police agents on the evening of the incident. After being accused of perjury, C.S. retracted his previous declarations.

2. *Ciorcan and others v. Romania*

On the question of the reopening of domestic procedures in the case of ***Ciorcan and others v. Romania***, the national authorities inform that the Prosecutor's Office attached to the High Court of Cassation and Justice analysed the decisions to not prosecute issued by the Prosecutor's Office attached to the Mureş County Court (file no. 704/P/2006) and by the Prosecutor's Office attached to the Reghin Court of First Instance (file no. 221/P/2007).

File no. 704/P/2006, investigating the alleged attempted murder, was closed in 2007 by The Mureş County Court prosecutor's office after reaching the conclusion that the required form of guilt for this crime was not met based on the fact that the shooting was not directed at the victim or intended to kill the victim, the ammunition consisted of 12 mm caliber rubber bullets, and the victim was the only person in the crowd whose life was endangered.

With regard to file no. 704/P/2006, **the P-HCCJ conveyed on 17 January 2024 that the reopening of the investigation for attempted murder was not justified, since the shortcomings identified by the ECHR could no longer be remedied, due to the long time passed since the acts were committed.**

The same acts were later investigated under a different legal classification, namely abusive behavior, bodily harm and aggravated assault by the prosecutor's office attached to the Reghin First Instance Court in file no. 221/P/2007.

Concerning the file no. 221/P/2007, the P-HCCJ noted that prosecution for abusive behavior, bodily harm and aggravated assault had become time-barred.

3. *Marusia Dumitru v. Romania*

With regard to the investigation for use of force in the case of ***Marusia Dumitru v. Romania***, the Government **reiterate that the reopening of the procedure is no longer possible, due to the long period of time passed since the acts were committed and due to the fact that the alleged crimes have become time-barred.**

The P-HCCJ **underlined in its latest communication of 17 January 2024 that even during the first investigation for attempted murder, opened after 8 and a half months after the acts were committed, material evidence from the scene of the incidents could not be retrieved. From this perspective, reopening the procedure at present would not be possible.**

As mentioned in our previous communications, **the P-HCCJ has also evaluated the possibility of investigating the acts under a different legal classification, such as bodily harm and professional negligence, but arrived at the conclusion that criminal liability for those crimes has become time-barred under both the old and the current Criminal Code.**

On the question of whether or not the commanders of the police unit where the suspect I.F.C. was active could be held criminally liable for the lack of planning for police operations which falls within the ambit of **professional negligence** (art. 249 of the 1969 CC or art.298 of the new CC), **the P-HCCJ indicated that the prescription term was already fulfilled (these crimes became time-barred within the 5 years general prescription term).**

The term of prescription was also fulfilled regarding the criminal liability for the crime of **bodily harm**, and, thus, the reopening of the criminal investigation can no longer be ordered.

4. *Pârvu v. Romania*

Concerning the case of ***Pârvu v. Romania***, the Government wish to inform that the investigation in file no. 534/P/2010 was reopened and taken over by the Criminal Investigation and Forensic Section within the Prosecutor's Office attached to the P-HCCJ, following the decision no. 13/28.09.2023 of the Brăila County Court in file no. 330/113/2023.

III. Conclusions

On the subject of individual measures, the Government respectfully ask the Committee to note that, **following the reasoned conclusions of the P-HCCJ on the reopening of investigations in the cases of *Soare and others* and *Ciorcan and others*, as well as in the case of *Marusia Dumitru*, no further individual measure is either possible or required and, thus, decide to close the supervision of these cases with regard to this issue.**

Additional details regarding on the progress of the reopened procedure in the case of *Pârvu v. Romania* will be provided as they will become available.

The Government will further inform the Committee regarding the general measures adopted by national authorities in view of limiting the use of firearms by state agents as much as possible and thoroughly planning police operations in order to prevent the loss of lives or the injury of individuals, and ensuring the effectiveness of domestic investigations of such incidents.