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Item reference:	Action Report (09/07/2025)

Communication from Romania concerning the case of ENACHE v. Romania (Application No. 10662/06) - *The appendices in Romanian are available upon request to the Secretariat.*

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Réunion :	1537e réunion (septembre 2025) (DH)
Référence du point :	Bilan d'action (09/07/2025)

Communication de la Roumanie concernant l'affaire ENACHE c. Roumanie (requête n° 10662/06) ***(anglais uniquement)*** - *Les annexes en roumain sont disponibles sur demande au Secrétariat.*

L/ 2614 / 7th July 2025

2929 R/AG/ 66

Action Report

Enache v. Romania

(application no. 10662/06) of 1 April 2014, final on 1 July 2014

Outstanding questions as regards the measures adopted to implement the judgment

I. Description of the case

The case raises issues related to the detention conditions in the Romanian prisons, notably concerning the way in which persons sentenced for extremely violent crimes are automatically classified as dangerous, classification that entails a specific regime of detention (i.e. the applicant was placed in a single occupancy cell, being thus isolated for long periods of time, he had been systematically handcuffed whenever he was taken out of his cell). The Court also noted that the applicant had not benefited from a minimum personal space and he had not been involved in educational out-of-cell activities (violation of Article 3).

In addition, it has been held that the difficulties encountered by the applicant in receiving the Court's letters, together with the failure of the Government to prove the unsubstantiated character of applicant's accusations of pressure from State agents, regarding his statement in which he declared that he no longer wished to correspond with the Court, amounted to an interference with the applicant's right of individual petition (violation of Article 34).

II. Individual measures

Payment of just satisfaction

On 25 September 2014, before the time-limit for the payment of the just satisfaction, the amount granted by the Court was transferred in a bank account at the applicant's disposal.

Changes to the applicant's detention regime and material conditions of the applicant's detention and their compliance with the Convention's and Court's standards to date

The detainee is currently serving his sentence in a maximum-security regime and is included in the category of persons who pose a risk to the security of the prison, according to the Commission's for the Individualisation of the Detention Regime latest report, dated 8 January 2025 - hereby attached. The next deadline for the reassessment of the security risk of the place of detention is 7 July 2025.

As regards the use of means of immobilization, from the information provided by the Giurgiu prison, it appears the applicant is not subject to any when removed from his cell.

The applicant's classification as posing a risk to the security of the prison was based on his aggressiveness towards other detainees, as well as his attempted prison escape. Moreover, the attached report for the reevaluation of the risk posed by the detainee (dated 8 January 2025) **takes into account the numerous disciplinary sanctions applied to the detainee for his misconducts**.

With regard to the material conditions of detention and their compliance with the Court's standards, we forward the submission of the National Prison Administration between 1 January 2017 and present. As such, the applicant has been detained in Giurgiu, București – Rahova, Constanța – Poarta Albă, Craiova, Gherla, Slobozia, Constanța Hospital – Poarta Albă and Tulcea prisons.

As such, from 11 April 2024 to 30 June 2025, the applicant has been placed in a cell measuring 9,33 sq m alongside one other person at the Giurgiu prison.

III. General measures

The competent domestic authorities (the National Prison Administration – NPA – and the Ministry of Justice- MJ) have presented a series of information on the normative framework applicable in the assessment of a detainee's degree risk.

Observations regarding the breach of Article 3 found by the Court

The detainee's risk assessment

In light of the recommendations issued by the European Committee for the Prevention of Torture (CPT), in its 2022 report, the inclusion of the persons deprived of liberty in the category of those who pose a risk to the security of the prison is not made considering only the crime committed and/or the length of the sentence, rather, it requires an individual assessment of the risks associated with the detainee's behaviour and the threat to the safety and security of the staff and other detainees.

Specifically, article 27 of the new Rules for the implementation of Law no. 254/2013, approved by the Government's Resolution no. 157/2016, which have been adopted and published in Romania's Official Gazette no. 850/2023 on 14 September 2023, stipulates that:

"(...)

The following criteria shall be taken into account when determining the risk posed by the prisoner to the security of the prison:

(a) committing the offense by use of firearms or cruelty;

(b) escape or leaving the place of work during the present or previous sentences;

c) attempted escape, tampering with security devices or destroying security systems;

(d) unjustified absence of the prisoner on the date and at the time stipulated in the prison exit permit;

e) introducing, possessing or trafficking weapons, explosive materials, drugs, toxic substances or other objects and substances that jeopardize the security of the prison, missions or persons;

(f) instigating, influencing or participating in any way in the occurrence of riots or hostage-taking;

g) membership to organized criminal groups, coordination of criminal or terrorist activities;

(h) acts of violence resulting in injury or death against staff or other persons;

(i) information on the psychosocial profile resulting from the assessments laid down by the regulations in force."

Additionally, as per Law no. 254/2013 and the Rules for the implementation of Law no. 254/2013 and in accordance with the European Committee for the Prevention of Torture recommendation, the Commission for the Individualisation of the Detention Regime ("the Commission"), established according to article 32 of Law no. 254/2013, re-evaluates the initial risk posed by the detainee. Subsequently, in line with article 28 para. (2) of the Rules for the Implementation of Law no. 254/2013:

"*Once the risk to prison security has been established, the commission provided for in article 32 of the Law, until the execution of the fractions of the sentence provided for in article 40 para. (2) of the Law, shall meet once every 6 months and re-evaluate the situation of persons in this category on the basis of the criteria laid down in Article 27 with a view to maintaining or terminating the measures specific to the risk to prison security. In the case of sentences of less than 2 years and 6 months, the period for reassessment of the risk to prison security is determined in accordance with Article 40 para. (2) of the Law."*

Moreover, according to article 28 para. (6) of the Rules for the implementation, the decision of the Commission may be appealed to the judge supervising the deprivation of liberty and, subsequently, to the court in whose district the prison is located.

Pertaining to the application of the aforementioned legal provisions in practice, as expressly stated by the NPA, the judges supervising the deprivation of liberty have dealt with several such appeals. Particularly, in practice, it appears the judge thoroughly and soundly analysed the applicants' appeals against the Commission's decisions. Moreover, the judge's decision could be further appealed before the Court of First Instance.

As such, in file no. 580/2025, by interlocutory judgment no. 616/24.06.2025, the judge supervising the deprivation of liberty at the Giurgiu Prison allowed the plaintiff's request to be removed from the category of detainees posing a risk for the security of the prison.

Furthermore, a recent decision of the Romanian Constitutional Court (no. 505/2024 in file no. 521D/2021, published in Part I of the Official Journal no. 180/28 February 2025) rejected a claim of unconstitutionality with regard to article 40 (5) letter b and (8) of Law no. 254/2013, which regulate the change of prison regimes.

In order to reject the complaint, the CCR noted the following aspects:

15. The Court notes that the change of the regime for the execution of custodial sentences to the regime immediately lower in severity may be ordered by the aforementioned commission, taking into account the nature and manner of committing the crime, in compliance with two cumulative conditions, namely if the convicted person has had good conduct, established by reference to the rewards granted and the sanctions applied and has not resorted to actions that indicate a negative constant of behavior and if he has undertaken the necessary efforts within the framework of the work performed or has been actively involved in the activities established in the Individualized Plan for Evaluation and Educational and Therapeutic Intervention. At the same time, the Commission provided for in art. 32 of Law no. 254/2013 is obliged to periodically analyze the situation of the convicted person in order to change the regime of execution of custodial sentences, and the decision of the Commission, which orders the maintenance or change of the execution regime, will also include the review period, which cannot exceed one year.

16. Therefore, ***the Court finds that the classification/change in one or another regime of execution of the custodial sentence constitutes an administrative possibility of individualizing the manner of execution of the sentence, taking into account the nature and manner of committing the offense and taking into account the behavior of the detainee and his capacity for correction and social reintegration, both Law no. 254/2013 and its implementing regulation, mentioned above, establishing sufficient objective criteria in this regard****. In other words, it cannot be argued that, within the procedure for changing the regime for the execution of custodial sentences, the phrases "necessary efforts" and "active involvement" would have a specific meaning for this last phase of the criminal process, different from the usual one, such that it would be necessary to define them through the provisions of Law no. 254/2013. Consequently,* ***the Court finds that the requirement regarding the quality of laws thus enshrined in art. 1 paragraph (5) of the Constitution is fully respected****.*

Thus, the CCR's decision no. 505/2024 stresses both the lawful nature of the rules involved in this procedure, as well as the objective nature of the criteria used and the quality of the normative text.

In the same vein, by Article 48 of the *Order of the Minister of Justice no. 2188/2022, published in the Romania's Official Gazette no. 507/2022 of 24 May 2022 for the approval of the Instructions on the nominal and statistical record of persons deprived of their liberty determined by admission, enforcement of sentences and measures deprivation of liberty, determination and change of enforcement regime, release and communication of procedural documents* were regulated the following specific procedures for the aforementioned risk assessment procedure:

"(1) At the first meeting of the Commission for the Individualisation of the Detention Regime, prior to the analysis for the determination of the execution regime, the person deprived of liberty shall be assessed in terms of the degree of risk for the safety of the place of detention, based on the criteria provided for in Article 27 of the Regulation.

(2) Once the risk to the safety of the place of detention has been established, the Commission for the Individualisation of the Detention Regime shall meet and re-evaluate the situation of the persons in this category.

(3) The procedure laid down in Article 28 of the Regulation shall be applied for the assessment and reevaluation of the risk posed to the security of the prison.

(4) The result of the evaluation and reevaluation of the risk to the security of the prison shall be recorded in a report signed by the members of the Commission for the Individualisation of the Detention Regime."

The adoption of the tertiary provisions aims to consolidate the principles of periodic assessment of the risk posed by detained persons to the safety of the place of detention, from a multidisciplinary perspective. As such, the Commission for the Individualisation of the Detention Regime is composed of the prison director, the head of the prison regime service and the head of the education service or office or the head of the psychosocial assistance service.

As of 1 July 2025, the NPA informed that there are 405 detained persons who posed a risk for the safety of the prison, of which only 33 (less than 10 percent) were the subject of specific means of immobilization when removed from their cell.

Information on the use of measures of restraint

By Order of the Minister of Justice no. 4800/2018, published in the Romania's Official Gazette no. 106/2018 of 17 December 2018, which approved the Regulation on the security of places of detention subordinated to the National Prison Administration ("NPA"). Article 110 of the above-mentioned normative act provides that:

"*(3) Detained persons to whom the maximum security regime is applied and for whom it is considered that increased security measures are necessary, persons deprived of liberty subject to disciplinary isolation, persons placed in the protection room, as well as those who pose a risk to the security of the prison, shall be removed from the room, as a rule, in the presence of the head of the section/shift commander or a person designated by the director of the place of detention and, as a rule, in the presence of a sufficient number of staff members, properly equipped with means of immobilization, alarm and communication.*

(4) On the basis of the authorization of the director of the place of detention, the categories of persons deprived of their liberty referred to in para. (3) may be restrained in accordance with the legal provisions.

(…)

(6) Periodically, but not later than 7 days from the date of application or from the date of the last analysis, the situation of the persons for whom the means of restraint have been applied inside the place of detention, on the occasion of removal from the room, shall be reviewed by the head of the detention section, who, after consulting the psychologist and the educator of the section, shall propose the termination/continuation/modification of ***the security measures applied****.* ***The analysis is carried out for each individual person deprived of liberty*** *and includes the legal and disciplinary situation, the reason for the application of the means of restraint, the way they are applied on the trails and, for the activities in which they participate, the proposals for the termination/continuation/modification of the security measures applied and is kept with the head of security.*

(7) The measures proposed by the Chief of the Detention Section in accordance with para. (6) ***shall be endorsed by the Head of the Prison Enforcement Service, the Head of the Detention Security Service, the Deputy Director for Detention Security and Prison Rules and approved by the Director of the Prison.****"*

In this context, the tertiary provisions aim to ensure that the application of means of immobilization is carried out considering the specific situation of each detainee who poses a risk to the security of the prison, taking into account the conclusions of the multidisciplinary assessment conducted by the operational and social reintegration staff.

Moreover, it is worth noting the very short period of time between assessments, of no more than 7 days, which enables the prison administration to order the removal of security measures quickly if they are no longer necessary. Periodically, but no less than once every seven days, the situation of persons for which immobilization measures have been ordered will be reassessed by the chief of the detention section who, with the assent of the psychologist and the educator if the section, will propose the ceasing, maintaining or modifying of the applied measure. The proposal will be confirmed by the chief of the service of the penitentiary regime and deputy manager for safety of detention and penitentiary regime, and subsequently forwarded to the manager of the penitentiary for approval.

As of 1 July 2025, there were 405 detained persons who posed a risk for the safety of the prison, of which 33 were the subject of specific means of immobilization when removed from their cell.

Observations regarding the breach of Article 34 found by the Court

As expressly stated by the authorities, the Romanian penitentiary system guarantees the possibility of the detainees to complain to national and international bodies on any issues arising from their detention without any repercussions. Furthermore, the prison's administration aims to improve and remedy the areas resulting from the analysis and verification of the detainee's complaints.

In this light, in May 2025, the NPA reiterated to all subordinated units that the needs of detainees must be addressed in a professional manner, by identifying the best solutions according to the law, never by concealing possible complaints.

Particularly, the Romanian prison system guarantees to detained persons, based on the Romanian Constitution and Law no. 254/2013, the unrestricted and unlimited right to formulate requests/complaints/referrals to any institution that the detained persons consider competent to deal with their issues, such as:

- The prison where the detained person is held;
- The National Prison Administration;
- The judge supervising the deprivation of liberty;
- The National Preventive Mechanism of the National Ombudsman's Office;
- Governmental or non-governmental, national and international organizations;
- Criminal investigation bodies or courts.

Detained persons can make use of numerous ways to complain regarding possible acts of aggression perpetrated against them by prison staff, such as:

- Confidential telephone calls, as set out by article 133 of Government Resolution no. 157/2016. As such, telephones are installed in the cells, school, prison yard and/or other areas which prisoners can access throughout the day;
- Permanent program of audiences with the detained persons – both daily, with the heads of section or weekly, with other senior staff, as well as with the judge supervising the deprivation of liberty;
- The detainee's unrestricted right to petition, which includes sending written requests to the prison administration and the supervising judge, enshrined in article 129 of the Rules for the implementation of Law no. 254/2013, approved by the Government's Resolution no. 157/2016. In this regard, the NPA underlined that there is a considerable number of requests and petitions submitted by detained persons, which further shows the efficiency of this channel of communication between prisoners and prison's administration;
- The detainee's unrestricted right to correspondence, as per article 130 of the Rules for the implementation of Law no. 254/2013;
- The detainee's right to visits by family members and other persons, as per article 138 of the Rules for the implementation of Law no. 254/2013;
- The detainee's right to legal counsel, as such, the detained person is allowed to receive visits from his counsel at any time, in conditions of confidentiality, as per article 128 of the Rules for the implementation of Law no. 254/2013.

The measures required to improve the poor material conditions of detention in Romania continue to be examined in the context of the *Bragadireanu* group of cases (No. 22088/04).

IV. **Conclusion**

To conclude, the Government is of the opinion that, given the present circumstances, the individual and general measures taken by Romanian authorities have ensured its compliance with its obligation under Article 46, paragraph 1 of the Convention and respectfully asks the Committee to close its supervision in the case of *Enache* v. Romania.