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Meeting: 1362nd meeting (December 2019) (DH)

Communication from a NGO (Association for the Defence of Human Rights in Romania – Helsinki Committee (APADOR-CH)) (21/10/2019) in the cases of Rezmives and Others and BRAGADIREANU group v. Romania (Applications No. 22088/04, 61467/12)

Information made available under Rule 9.2 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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Réunion : 1362^e réunion (décembre 2019) (DH)

Communication d'une ONG (Association for the Defence of Human Rights in Romania – Helsinki Committee (APADOR-CH)) (21/10/2019) dans les affaires Rezmives et autres et groupe BRAGADIREANU c. Roumanie (requêtes n° 22088/04, 61467/12) (**anglais uniquement**).

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



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DGI

21 OCT. 2019

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

21 October 2019

**Submission before the Committee of Ministers on the implementation of general measures
in respect to the cases of Rezmiveş and Others and Bragadireanu group v. Romania**

The cases of Rezmiveş and Others and Bragadireanu group v. Romania (Applications No. 6146712, 22088/04) placed under enhanced supervision before the Committee of Ministers of the Council of Europe, concern the overcrowding and poor conditions of detention in prisons and police detention facilities, lack of an effective remedy in that regard, inadequacy of medical care and several other dysfunctions regarding the protection of prisoners' rights.

In respect of these cases, on 25 January 2018 Romania submitted an action plan aimed at solving the problem of prison overcrowding and the improvement of detention conditions. Subsequently, on April 2019 the Romanian Government sent out to the Committee of Ministers of the Council of Europe an informative note on the progress achieved by December 2018 in the implementation of the calendar of measures 2018-2024.

Through the present submission we would like to provide the Committee of Ministers with additional information on these issues.

The Government's action plan

I. Prisons

According to the action plan, **8095** new places for detainees will be created along with the modernisation of **1,351** places, over the span of **7** years. The creation of these new places will be done by the construction of 2 penitentiaries (the Berceni Penitentiary and the Unguriu Penitentiary) which will also ensure an extra 1,900 places (paragraph 47 of the action plan).

APADOR-CH has submitted several freedom of information requests to establish whether the implementation of this plan adheres to its timetable.

The answer received from the Ministry of Justice in April 2019 states that **70 new detention places** were finalized between January 2018 - February 2019 (30 at the Giurgiu Penitentiary and 40 at the

Deva Penitentiary) and **282** detention places were modernized (Deva Penitentiary). We can already see a negative deviation from the plan, both regarding the creation of new detention places (there should have been **316** new detention places at the end of 2018) and the modernization of existing places (**by the end of 2018 500 detention places should have been modernized**).

Regarding the building of Unguriu and Berceni Penitentiaries, the answer received by the Association from the Ministry of Justice stated that as of 27 March 2019 none of the planned activities for 2018 had been carried out.

Thus, there are significant delays of more than one year in the construction of the Berceni and Unguriu Penitentiaries due to the failure to carry out the necessary formalities (feasibility studies etc.), and the actual construction hasn't even started yet, not even the first steps of the action plan to build the two new penitentiaries had been taken yet.¹

The periodic overview of the prison occupancy rate published by the National Authority for Penitentiaries² shows that prisons have the same **overcrowding rate** throughout 2019, there is a constant of **11%**, exceeding the total number of detention places, which fulfil the 4 sqm/per person standard (= thus the occupancy index equals to 111%). According to the analysis done by APADOR-CH, overcrowding is no longer an issue in prison hospitals, pre-trial detention centres or detention centres for juveniles.³

II. Police arrests and pre-trial detention centres

The action plan also establishes the creation of new places and the modernization of the existing places in the pre-trial detention centres. The action plan establishes the creation of 1,596 new places and the modernization of 187 places over the span of 6 years (2018-2023) (paragraph 55 of the plan).

The answer received by the Association from the Romanian General Police Inspectorate in March 2019 states that no new places have been created between January 2018 – February 2019, but 147 places have been modernized.

Thus, the target for stage 1 (2018), i.e. 114 modernized places, was achieved, together with the modernization of a part (33) of the total number of 153 places established under stage 2 (December 2021).

Regarding the occupancy rate of pre-trial detention facilities, the Romanian General Police Inspectorate declared that on 19.03.2019 the total number of detainees was 779 out of the 1398

¹ According to the answer received from the Ministry of Justice on March 27th, 2019

²<http://anp.gov.ro/wp-content/uploads/2019/05/21.05.2019-Capacitatea-de-cazare-a-unitatilor-si-efectivele-acestora-ef-20598-CC-18299-SITE.pdf>, <http://anp.gov.ro/wp-content/uploads/2019/06/25.06.2019-Capacitatea-de-cazare-a-unitatilor-si-efectivele-acestora-ef-20509-CC-18262-pentru-site.pdf>

³ Analysis available at: <https://www.apador.org/en/cum-rezolva-romania-supraaglomerarea-din-penitenciare-la-doi-ani-dupa-condamnarea-la-cedo/>

places which fulfilled the 4 sqm per person standard. Thus, there was an average of 55.7% occupancy rate on 19.03.2019.

Detention conditions in prisons

In order to improve the life of the inmates in prisons, in 2019 the food allowance was doubled from 3.5 lei / day / prisoner to 7 lei / day / prisoner and the value of hygienic-sanitary materials received monthly by each prisoner increased substantially. According to administrative estimations, the monthly expenses with a prisoner are 505 lei, plus the amount representing the salaries of the staff. A third row of overlapped beds was removed in order to create a less crowded space to existing rooms. Despite these changes, the following problems persist (based on APADOR-CH monitoring visits during January-June 2019⁴):

- Poor hygiene in many of the detention rooms or food blocks;
- Disabled or insufficient bathrooms for the number of inmates per room and a hot water program too short for everyone to shower;
- Few or no medical staff (except for the Galati Prison, all the other visited prisons had a deficient number of physicians or did not have at all – Miercurea Ciuc case);
- Lack of testing programs when entering the prison system for sexually transmitted diseases and generally lack of methods to prevent the spread of these diseases, eg condoms;
- Lack of effective programs for qualification of inmates, to facilitate their reintegration after release;
- Insufficient staff to carry out socio-educational activities that most inmates say they need;
- Insufficient jobs for inmates, with or without payment. Given that the Romanian labor market lacks staff and the prisons have people wanting to work, it would be desirable for the Ministry of Justice to find solutions together with the Labor Ministry to link the two segments.

Detention conditions in police arrests and pre-trial detention centres

Although extensive investments have been made in many units, there are still issues to be resolved regarding the hygiene of premises, the placement of too many beds in rooms related to their surface or other aspects that resulted from APADOR-CH monitoring visits⁵, such as:

⁴ APADOR-CH representatives visited 10 units of detention (police arrests and penitentiaries) during January-June 2019, namely: Prisons and Police Arrest and Pre-trial Detention Centres from Giurgiu, Miercurea Ciuc, Galati, Craiova, Bucharest and Târgu Jiu; Observations during monitoring visits in prisons available at: <https://www.apador.org/en/cum-rezolva-romania-supraaglomerarea-din-penitenciare-la-doi-ani-dupa-condamnarea-la-cedo/>

⁵ APADOR-CH' s Observations during monitoring visits in police arrests and pre-trial detention centres available at: <https://www.apador.org/en/cum-rezolva-romania-supraaglomerarea-din-penitenciare-la-doi-ani-dupa-condamnarea-la-cedo/>

- There are still rooms without toilets in which inmates use the classical bucket during the night for their needs, while during the day they have to resort to the goodwill of the officers to be taken to the toilet or shower;
- In some police arrests that are located in the basement there is still the problem of illumination and insufficient ventilation of the rooms. Even though air conditioners have been installed, in some places they do not work and they do not replace natural light and fresh air anyway;
- In most police arrest centres there is no medical assistance dedicated to the detainees. The same medical staff of the County Police Inspectorates, which provides medical assistance to the police staff, also sees the inmates. And this assistance is not always assured;
- Psychiatric or psychological assistance is still lacking, although a significant percentage of the arrested population has mental health problems;
- In most arrest centres, the right to shop is solved by sending police officers to the market, which reduces the dignity of their function, being practically turned into a messenger for the inmates.

Even though police arrests and pre-trial detention centers don't deal with overcrowding issues, it is clear that there is still significant room for improvement when it comes to detention conditions. Furthermore, some of the centres would need a total relocation in order to assure the Convention-compliant conditions as there are no conditions for a reorganization of the existing detention space.⁶

Adequate and effective system of domestic remedies

The action plan also mentioned the law on compensatory measures as one of the actions which will contribute to solving the problems related to penitentiaries (paragraph 34 of the action plan).

The compensatory measures introduced by **Law no. 169/2017** consist in the reduction of sentences with 6 days for every 30 days executed in unsuitable conditions. Thus, **for every 30 days executed, 36 days are counted** (for one actual month, one month and 6 days are counted, thus almost one month and one week, and 5 months for every 4 actual months etc.).

APADOR-CH's concern regarding the **"law on compensatory appeal"** is that it was applied with no differentiation whatsoever (for all inmates) as we will further explain.

In most cases, the compensatory appeal did not have the effect of the automatic release of the person, but the shortening of the term in which the person can appear before a judge to determine whether he meets all the legal criteria to be released before the term (= conditional release). Theoretically, the release requires a filter from the judge. But, practically, due to the overcrowding of the penitentiaries and the concern of the state to release the places from the penitentiaries, this filter of the judge did not work properly anymore and the conditional releases were made with

⁶ APADOR-CH's Report on the Police arrest Pre-Trial Detention Centre of Giurgiu, June 2019, available at: <https://www.apador.org/en/raport-privind-vizita-in-centrul-de-retinere-si-arestare-preventiva-giurgiu/>

greater ease. Since the reduction applies to all the inmates that were subjecte to the same conditions of imprisonment throughout their sentence, for non-discriminatory reasons, offenders sentenced for serious and very serious crimes were set free.

The law on compensatory appeal practically led to the accelerated release of all offenders and it made the judge's filter for conditional release ineffective/inefficient.

For this reason, the society and even parliamentary parties reacted vehemently, especially when the "beneficiaries" of the law on compensatory appeal committed new serious offences after their release (murders, rapes, robberies etc.), requesting the Government to abolish the law on compensatory appeal.

APADOR-CH expresses concerns about the effects of the law as well and suggests the Government to find other solutions to solve the problem of overcrowding. For example, legislative measures could have been taken to accelerate the release of first-time offenders and for the release of prisoners convicted for less severe offences. This would have freed up new places in the penitentiaries and would have enabled the relocation of the prisoners detained in substandard facilities, without the accelerated liberation of repeat offenders and the prisoners sentenced for serious or very serious offences.

Moreover, APADOR-CH recalls that the Romanian Civil Code (art. 1349 and following) contains provisions which allow the payment of injuries, either moral or material, suffered by a person regardless of the circumstances in which these injuries occurred. Thus, the courts have the ability, to judge every individual case within the legal statute of limitations and to evaluate whether or not an injury existed, the nature of the injury, what the exact injury was and to determine the best remedy.

Conclusions and recommendations

Despite the Government promises in the action plan and the actions taken so far there are still problems with overcrowding in prisons and with detention conditions both in prisons and in police arrests and pre-trial detention centres.

In the light of these issues, APADOR-CH suggests the Government the following:

- **To accelerate the construction and modernization of 2000 prison places and abolish the law on compensatory appeal.** It is the ideal solution in order to eliminate the accelerated release of repeat offenders and in the same time to drop the population of inmates with 11% (the surplus of prison population at this moment). This will also improve the detention conditions (hygiene, more space per person, appropriate health care etc.).
- **To relocate the police arrests and pre-trial detention centres that are basement placed in order to provide sufficient illumination, water supply, toilets etc.**

Concerning the presented information, APADOR-CH recommends the Committee of Ministers to continue working with the Romanian Government in order to urge the actions for creating new detention places and to offer Convention-compliant detention conditions for inmates.