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Date: 23/06/2015

DH-DD(2015)660

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Meeting: 1236 meeting (22-24 September 2015) (DH)

Item reference: Action report (17/06/2015)

Communication from Romania concerning the Pantea Alexandru group of cases against Romania
(Application No. 33343/96)

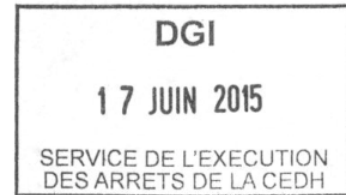
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Réunion : 1236 réunion (22-24 septembre 2015) (DH)

Référence du point : Bilan d'action

Communication de la Roumanie concernant le groupe d'affaires Pantea Alexandru contre Roumanie
(Requête n° 33343/96) (**anglais uniquement**)



ACTION REPORT

5 cases against Romania

Case Name	Case Number	Date of Judgment	Final on
Pantea	33343/96	03/06/2003	03/09/2003
L.Z.	22383/03	03/02/2009	03/05/2009
Radu	34022/05	21/07/2009	21/10/2009
Antochi	36632/04	12/07/2011	12/10/2011
Boroanca	38511/03	22/06/2010	22/09/2010

I. SUMMARY

This group of cases mainly concerns the applicants' ill-treatment (between 1994 and 2005) by their co-detainees and/or the omission by the staff in penitentiary detention facilities to take the necessary measures to protect the physical integrity of the applicants (substantial violations of Art. 3). It also concerns the failure by the authorities to conduct effective investigations into the applicants' allegations of ill-treatment (procedural violations of Art. 3).

The case of *Pantea* also raises several issues related to the detention on remand (between 1994 and 1995): the illegality of the applicant's remand in custody and the fact that the applicant's deprivation of liberty continued after the expiry of the remand warrant (violations of Art. 5§1); the failure to bring the applicant, whose detention was ordered by a prosecutor, rapidly before a judge (more than three months) (violation of Art. 5§4) and the lack of a clear possibility under Romanian law to obtain compensation for illegal detention in the applicant's situation (violation of Art. 5§5). Lastly, the case of *Pantea* also concerns the excessive length of criminal proceedings brought against the applicant in 1994 (violation of Art. 6§1).

II. DESCRIPTION

The case of *Pantea* concerns the failure of the prison authorities to protect the applicant during his detention on remand at the prison of Oradea in 1995, by placing him in a cell with dangerous convicted prisoners and by not intervening while the applicant was severely beaten by his co-detainees. The European Court further found that the investigation into the applicant's allegations of ill-treatment had not been effective particularly on account of the prosecutor's delay in ordering the applicant's medical examination, which was essential for the legal qualification of the facts alleged by the applicant and consequently for the admissibility of his criminal complaint against the co-detainees and the military prosecutor's failure to take steps to clarify certain inconsistencies in the statements in the file and factual circumstances and to give a reasoned decision on the applicant's criminal complaint against the penitentiary staff involved in his supervision.

The case of *Radu* concerns the failure of the authorities of the Jilava Penitentiary to take appropriate steps to protect the applicant's integrity during his detention on remand in 2005, despite the fact that the authorities were aware of a real danger to his physical integrity due to his previous assault by his cell mates; the authorities' failure to investigate the applicant's allegations that he had been coerced in withdrawing his criminal complaint against his cell mates and the failure of the medical staff to properly fill in the applicant's medical record in February 2006, when the applicant was brought for examination following complaints of ill-treatment by the prison staff on a different occasion.

The cases of *L.Z.*, *Boroancă* and *Antochi* concern the authorities' failure to conduct an effective investigation into the applicants' arguable allegations of ill-treatment by cell mates (rape and assault and battery) between 2003 and 2004, due in particular to the authorities' omission to submit the applicants to a timely and thorough medical examination. In the case of *L.Z.*, the European Court challenged the fact that the investigative authorities justified their omission by the fact that the applicant could not afford to pay the costs of the medical examination.

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III. EXECUTION MEASURES

1. INDIVIDUAL MEASURES

Just satisfaction

All the sums granted by the Court as just satisfaction were paid in due time, with the exception of the *L.Z* case, where the delayed payment has been made in conditions that were not contested by the applicant.

Domestic investigations into the allegations of ill-treatment

Pantea case

Criminal investigation - The General Prosecutor's Office (competent on the investigation in the current case) indicated that the statute of limitation for the investigated offences (5 years as of the date of the commission of the offences) had expired before the Court's judgement. Thus, the General Prosecutor's Office concluded that the statute of limitation was an obstacle to any further investigation.

Disciplinary proceedings - Under Law No. 293/2004 on the statute of the civil servants employed with the National Prison Administration, the statute of limitation in respect of disciplinary offences perpetrated by prison staff is of 6 months as of the date the impugned facts. So, the statute of limitation had expired before the Court's judgement. In any event, the Government would like to stress that currently, the National Prison Administration no longer employs any of the prison officials and staff involved in the events at the origin of this case.

L.Z., Radu, Boroancă and Antochi cases

According to the information provided by the investigative authorities, the statute limitation of the criminal responsibility of the persons suspected for having aggressed the applicant in *L.Z.* case was reached on 4 July 2014, and therefore no investigation could be pursued in this respect.

In *Radu* case, according to the information submitted by the authorities, the investigations could not be re-opened as the criminal responsibility for abusive conduct and abuse in office became time-barred on 9 September 2010. Moreover, the disciplinary procedure became time-barred after 6 months from the incident.

In *Boroanca* case the criminal accountability became time-barred on 8 September 2011.

In *Antochi* case, the Government are of the opinion that no investigation could be reopened, as the shortcomings found by the Court, which based the judgment holding the violation of Article 3 of the Convention were related only to the delay by the authorities in administering specific evidence in order to find the truth. Or, the respective evidence is currently all the less capable to ground a conclusion as to the criminal responsibility of the defenders as the time passed and the traces vanished.

The Government is of the opinion that no further individual measure can be taken in the aforementioned cases, due to the significant lapse of time passed from the impugned acts, and the domestic provisions governing the limitation of criminal responsibility.

Detention on remand (*Pantea case*)

The applicant was released in 1995. The Government consider that, in these circumstances, the just satisfaction awarded by the European Court in respect of pecuniary and non-pecuniary damage erased all the consequences of the violations found in the case.

Length of criminal proceedings – (*Pantea case*)

By a decision of 30 May 2007 the Dolj tribunal decided to close the criminal proceedings as time barred.

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The applicant appealed against this decision. The proceedings were suspended between 28 November 2007 and 31 October 2008, when the High Court of Cassation and Justice decided to transfer the case to the Court of Appeal of Bacau. The Court of Appeal of Bacau gave a final ruling in the applicant's case on 29 November 2010.

2. GENERAL MEASURES

a) Violations of Article 3 (substantial and procedural)

Origin of the violations

The Government are of the opinion that the origin of the violations found in the current cases is to be found both in a lack of an adequate legal framework for the protection of the physical and psychological integrity of prisoners and the inadequate attitude of prison officials. ...

The Government would like to underline from the outset that these cases raise some common issues with the *Barbu Anghelescu* group of cases, especially as regards the procedural safeguards against ill-treatment: the delay or the refusal of the authorities to order medical examinations; the failure to take steps to clarify the inconsistencies in the investigation file and the factual circumstances of the cases and to give a reasoned decision on the applicant's criminal complaint against the penitentiary staff involved in his supervision; the authorities' failure to investigate the applicant's allegations that he had been coerced by the inmates in withdrawing his criminal complaint.

Thus, the relevant measures taken/envisaged for remedying these deficiencies are examined in the *Barbu Anghelescu* group of cases, to which the Government would like to make reference.

Measures taken

Legislative measures

- concerning deficiencies in the surveillance of the detainees and in the protection of vulnerable detainees

On 1st February 2014, a new law on the execution of safety measures and jail sentences came into force (Law no. 254/2013). According to this law, vulnerable inmates may be placed in specially assigned prison wings, according to several criteria, including the special safety measures necessary for them (Article 11 paragraph 4). If there is any suspicion that a detainee tends to be self-aggressive or to commit suicide, to hurt another inmate, destroy goods, or to severely disturb the order within the prison, the prison management may decide to place the respective person in a protection cell. The measure shall be taken until the danger ceases, but the period cannot last more than 24 hours. During the seclusion the inmate benefits from psychological counselling (Article 23). The law regulates the application of reinforced measures concerning the guard, surveillance and escort of detainees that represent a risk for the prison safety (Article 24).

Moreover, the National Penitentiary Administration has the obligation to ensure the protection and assistance of vulnerable detainees. The criteria concerning the vulnerability of the detainees and the special measures necessary for their protection will be established by the implementing rules of the law (Article 28).

- concerning the deficiencies in the medical examination of the detainees

Law no. 254/2013 provides for the obligation of the prison doctor to register in the inmate's medical record any sign of violence he/she might find on his/her body, and to send the case to the prosecutor. In such cases, the inmate has the right to be examined by a forensic specialist. The forensic report thereof will be appended to the medical record, after the detainee is given notice of its content, under his/her signature. The detainee will cover the costs of the forensic examination, save for the case in which he/she has no money in the bank account, in which case, the costs are beard by the prison authorities (Article 72).

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Awareness-raising measures

- Publication and dissemination

The findings of the European Court in the *Pantea* case have been disseminated among the staff of the National Penitentiary Administration. Furthermore, the judgment in the *Pantea* case was published in the Official Journal of 6 December 2004 and summaries and analysis thereof were published, among others, in widely circulated private legal journals and case-law reports. *Pantea, L.Z., Radu and Boroanca* judgments were also translated in Romanian and published on the Superior Council of Magistrature internet site: <http://www.csm1909.ro/csm/index.php?lb=ro>.

- Strategy for decreasing the aggressive conduct within the prison system

Since 2014, the National Penitentiary Administration implements the Strategy for decreasing the aggressive conduct within the prison system. The main purposes of the strategy are the following: to implement a unitary assessment system, in order to find out the causes of the aggressive behavior within penitentiaries; to implement trans-disciplinary policies to approach both self-aggressive and hetero-aggressive conduct; to improve the safeguards and to promote the physical safety for the inmates, the personnel and other persons working in this field.

- Current administrative practice in case of aggression between inmates

According to the information submitted by the National Penitentiary Administration, following any kind of aggression between inmates, regardless its consequences, the inmates are taken to the doctor. In case of serious consequences on the physical integrity of the person concerned, a disciplinary procedure or a criminal procedure is initiated ex officio. The medical staffs is legally bound to note any findings concerning ill-treatment inflicted on prisoners, as well as their statements, in their medical records and to inform the prison's director of such findings.

- Placement of the prisoners in detention on remand in the same cells with convicted offenders

According to the information submitted by the National Penitentiary Administration, as a general rule, persons held in pre-trial detention are not placed together with the inmates serving a final sentence. Only on very rare situations persons in custody on remand are placed for short periods of time together with detainees, namely when they have to be brought before the judicial organs.

b) Violations of Article 5 §§ 1, 3, 4 and 5 and of Article 6 § 1

These matters are examined in the framework of the *Calmanovici* (Resolution CM/ResDH(2014)13), *Stoianova and Nedelcu* (77517/01) and *Tase* groups of cases. The Government therefore refers to the general measures taken and/or envisaged in these groups.

IV. CONCLUSION

Having regard to the above, the Government considers that no other individual or general measures are to be taken in the present cases. As Romania complied with the obligations imposed under Article 46, paragraph 1 of the Convention, the Government invites the Committee of Ministers to close the surveillance of the execution of these cases.