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Meeting: 1259 meeting (7-9 June 2016) (DH)

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Communication from Romania concerning the Barbu Anghelescu group of cases against Romania
(Application No. 46430/99)

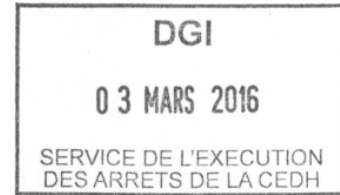
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Réunion : 1259 réunion (7-9 juin 2016) (DH)

Référence du point : Plan d'action

Communication de la Roumanie concernant le groupe d'affaires Barbu Anghelescu contre Roumanie
(Requête n° 46430/99) (**anglais uniquement**)



Action plan

Group Barbu Anghelescu v. Romania

(Application no. 46430/99, judgment of 5 October 2004, final on 5 January 2005)

I. Introductory summary of the cases

Most of these cases concern the ill-treatment inflicted on the applicants by members of the police (1995 – 2005), amounting to inhuman and degrading treatments or torture which did not lead to the victims' demise, save for the ill-treatment which had caused in the case of Carabulea (45661/99) the victim's death. All these cases concern the ineffectiveness of the investigations into the allegations of ill-treatment by the police, carried out between 1995 and 2010, on account in particular of the hierarchical or institutional bonds existing between the State officials in charge of the investigations and the agents involved and of shortcomings in the handling of evidence by the authorities. Some cases are related with the special services of the police. Some cases also concern the lack of an effective remedy to secure compensation for the damages sustained because of the ill-treatment. Other cases further concern the racist motives at the origin of the ill-treatment and/or the authorities' failure to investigate possible racist motives behind the abuse alleged by the applicants (violations of Articles 2, 3, 13 and 14 taken in conjunction with Articles 3 and/or 13).

In some of these cases, the European Court also found violations of Articles 5, 6, 8 and 34 of the Convention. The issues revealed by such findings are examined by the Committee of Ministers in the context of other groups of cases.

A. Substantive violations of Articles 2 and 3

The circumstances which gave rise to the violations found vary. In some cases, the ill-treatment was inflicted in police custody, while in other cases they consisted in an excessive use of force upon arrest.

In the case of *Stoica* (42772/02), the applicant was caught up in a clash between the local police force and a group of citizens of Roma origin, and was severely beaten by a police agent.

In the cases of *Georgescu* (25230/03) and *Iambor* (No. 1) (64536/01), the police agents involved had claimed that the applicants had been beaten by third parties prior to their arrest. The State was nevertheless held responsible under Article 3 on account of the inadequate reaction of the police to the applicants' injuries (failure to record the injuries in the arrest report and/or to bring the applicants promptly to a doctor in view of a medical examination), which prevented the defendant State from proving that the injuries had been caused prior to the arrest. The European Court underlined in this context the importance of securing a proper medical examination of the persons placed in police custody, as an essential safeguard against ill-treatment.

In the case of *Olteanu* (71090/01), the European Court found a separate violation of Article 3 on account of the delay of the police in securing the applicant's transport to the hospital, which deprived him of medical care for the gunshot wound inflicted upon arrest.

In case *Archip* (judgment of 27 September 2011) the Court held that there had been a violation of Article 3 of the Convention in respect of the handcuffing of the applicant in the courtyard of the police station.

B. Procedural violations of Articles 2 and 3

Criminal investigations into the ill-treatment alleged by the applicants were opened upon complaints filed by the interested parties. In most of the cases, they were discontinued without indictment of the police agents concerned.

The European Court noted that the investigations had been conducted or overseen by military prosecutors, whose independence was open to doubt in view of their status of active members of the armed forces, since at the material time, the members of the police had the same status. In some cases, the evidence had been gathered by the local criminal investigation department, even though the officers under investigation were serving in the police force of the same town. This state of affairs was found to contravene to the principle that there should be no hierarchical or institutional link between the persons under investigation and the persons called upon to conduct the investigation.

The European Court further found that the military prosecutors' decisions to close the criminal investigations were poorly reasoned. Thus, the findings of the forensic expert reports were not mentioned and crucial statements from eyewitnesses had been disregarded. In some cases, the prosecution had established the facts solely on the basis of the accounts given by the accused and/or their colleagues. The investigation carried out by the domestic authorities was further flawed by the failure of the investigative authorities to question certain key witnesses, to pursue lines of questioning which were decisive for the outcome of the investigations and their omission to clarify a number of contradictions in the investigation file.

In the case of *Carabulea*, which concerns the demise of the applicant's brother caused by acts of torture in police custody, the *post mortem* examination report drawn up in 1996 contained blatant flaws which hindered the criminal investigation and which the military prosecutor in charge thereof did not seek to redress.

While in some cases, upon complaints filed by the applicants, the domestic courts had quashed the prosecutor's decision to close the investigation and had ordered various investigation measures, the military prosecutor disregarded such instructions. This contributed to prolonging the criminal investigations to the point that in some cases the criminal liability of the police agents became statute barred with regard to the legal classification of the facts made by the prosecutor's offices.

Lastly, in more recent cases, the Court found shortcomings in the investigations carried out by ordinary prosecutors, with a view to the ineffectiveness of the respective inquiries. In addition, the Court criticised the way in which the national courts analysed the applicants' allegations.

C. Right to an effective remedy

The European Court found that the authorities' failure to conduct prompt and effective criminal investigations into the allegations of ill-treatment had rendered ineffective any other remedy available in theory to the applicants under the domestic law, in particular the action in tort against the police agents involved or against the State. Thus, while in theory the civil courts were not formally bound by the investigative authorities' assessment of the facts, the weight attached to a preceding criminal inquiry was such that in practice even the most convincing evidence to the contrary adduced by a plaintiff would have been disregarded (cf. the cases of *Cobzaru* (48254/99) and *Carabulea*).

D. Racial discrimination

In the case of *Stoica*, the European Court found that the applicant's ill-treatment had been motivated by his ethnic origin. The circumstances in the case of *Cobzaru* disclosed no *prima facie* indication of racist motives behind the applicant's ill-treatment. However, the prosecuting authorities were or should have been aware of the numerous acts of violence against Roma, often involving State officials, which had occurred in the past and of the public policies adopted to eradicate such discrimination. Against this background, the Court considered that the prosecuting authorities should have displayed special diligence in investigating possible racist motives at the origin of the violence inflicted on the applicants. Nevertheless, not only did the authorities fail to investigate such motives but they also displayed a racially-biased attitude by making tendentious remarks on the applicants' ethnic origin during the investigation

II. As to the individual measures:

A. Payment of the just satisfaction afforded by the European Court

The Government recall in this respect that the amounts afforded through the Court's judgments have been already paid in due course by the domestic authorities and the proofs of payment have been already submitted.

B. Reopening of the impugned proceedings

The Government wish to reiterate the information they submitted on July 2013 regarding the stage of the internal procedure in a number of cases pertaining to the group in question. Thus, in the cases of *Damian and Damian Burueană* (application no. 6773/02), *Georgescu* (application no. 25230/03), *Olteanu* (application no. 71090/01), *Roșca* (application no. 24857/03), *Șercău* (application no. 41775/06), *Stoica* (application no. 42722/02), *Iambor* (application no. 64536/01), *Dumitru Popescu* (49234/99), *Niță*

(application no. 24857/03), *Lupaşcu* (application no. 14526/03), *Melinte* (application no. 43247/02), *Cobzaru* (application no. 48254/99), *Rupa* (application no. 37971/02) and *Ianoş* (application no. 8258/05), the criminal liability became time-barred. In this context, the Government argued that no further individual measure could/should be taken in respect of the said cases.

Furthermore, regarding the rest of the cases, the competent Prosecutor's Offices informed the Government that criminal liability also became time-barred for the following applications: *Ghiga Chiujde*a (application no. 4390/03) - on 1 August 2009, *Archip* (application no. 49608/08) - on 7 November 2013, *Ghiţă* (application no.54247/07) - on April 2012, *Andreşan* (application no.25783/03) - on 30 September 2008 and 2 October 2008 respectively, *Iacob* (application no. 13524/05) - on 4 October 2006, *Birgean* (application no. 3626/10) - on 16 July 2014 and *Stoian* (application no. 33038/04) - on 19 February 2007.

In what concerns the cases of *Şerban* (application no. 11014/05) and *Roşioru* (application no. 37554/06), criminal liability also became time-barred. In the first case, the Bucharest County Court determined in a judgment of 8 April 2010 that criminal liability had become time-barred since the extended time allowed in this respect by law had expired (*a intervenit prescripţia specială a răspunderii penale*).

As for the case of *Roşioru*, according to the Ploieşti Court of Appeal's judgment of 3 October 2008, criminal liability became time-barred on 26 January 2005 for the offence of abusive behavior (*putare abuzivă*) and on 26 January 2008 for the offence of torture.

In respect of the case of *Carabulea* (application no. 45661/99), the Government wish to remind the course of the criminal investigation carried out so far. On 3 May 1996, the Military Prosecutor's Office attached to the Military Bucharest County Court opened a case file regarding the circumstances that lead to the demise of Mr. Carabulea Gabriel, while he was in police custody. Following the applicant's family's complaint against the decision of non-institution of criminal proceedings in the case, the re-opening of criminal proceedings was ordered on 12 February 1997. As a result of a new complaint submitted by the applicant's family against a second decision of non-commencement of criminal proceedings, the Military Section of the Prosecutor's Office attached to the High Court of Cassation and Justice ordered the re-opening of criminal proceedings and the sending of the file to the Prosecutor's Office attached to the Bucharest Court of Appeal. The file was subsequently declined to the Bucharest County Court.

On 5 September 2013, the file was sent back to the Bucharest Court of Appeal so that allegations of intellectual forgery (*fals intellectual*) and use of forged documents (*uz de fals*) committed by the investigating prosecutor in the file be examined. On 10 September 2015, the termination of criminal investigation (*clasare*) in this respect was ordered, since the claimed offences did not exist and the criminal responsibility had become time-barred and consequently the case file was sent back to the Prosecutor's Office attached to the Bucharest County Court to continue the investigations concerning the circumstances that lead to the demise of Mr. Carabulea Gabriel. Investigation is undergoing at present.

In this context, the Government hereby undertake to inform the Committee of Ministers about further developments in the case of *Carabulea*.

Concerning the cases *Flaminzeanu, Doiciu, Chinez, Ciorcan and others, Poede, Veres, Anton, Samachisca, Andrisca* and *Ion Balasoii*, more recently included in this group, the Government will provide information as soon as possible.

III. As regards the general measures

A. Preliminary aspects

Firstly, it is to be mentioned that the regulatory and statutory framework in force relevant for the examination of the issues raised by these cases has undergone several amendments following the date of the most recent action plan submitted by the Government.

The Government remind that a far-reaching reform undertaken in 2002 resulted in the demilitarization of the Romanian police. The organizing and functioning of the police are now governed by **Law No. 218/2002**¹ while **Law No. 360/2002**² regulates the status of its members. The police lost their status of active officers of the armed forces, having acquired that of civil servants. The Code of Criminal Procedure (the “CCP”) was modified accordingly so that the criminal investigations and trial in cases involving members of the police fall henceforth within the province of civil prosecutor’s offices and courts.

A number of amendments were made in 2015 to the law governing the statute of police officers in what the disciplinary procedure is concerned. **Law no. 364/2004**, regulating the organization and running of the judicial police was also amended accordingly.

A new Criminal Code (the “CC”) (**Law no. 286/2009**) and a new CCP (**Law no. 135/2010**) entered into force starting 1 February 2014 and special penal legislation was aligned with the provisions of the new Codes.

Moreover, it is worth noting that a new law on the execution of custodial sentences and measures ordered by the judicial authorities in criminal proceedings was adopted – namely **Law no. 254/2013** of 19 July 2013.

Also, **Law no. 35/1997**, governing the activity of the Ombudsman was amended by Government’s Emergency Ordinance no. 48 of 26 June 2014, which designated the Romanian Ombudsman as the national preventive mechanism under the Optional Protocol to the United Nations Convention against Torture.

¹Published in *Official Journal* No. 305 of 3 May 2002.

²Published in *Official Journal* No. 440 of 24 June 2002.

B. Measures aimed at preventing ill-treatment/death under the responsibility of law enforcement officers

B.1. Fundamental safeguards against ill-treatment by law enforcement officers

Preliminary aspects regarding the legal framework on the activity of law enforcement officers

In terms of the legal framework that regulates the activity of law-enforcement agents regarding the authorized use of force and the interrogation of suspected persons, the Government wish to point to a number of relevant provisions that ensure a legal and proportional use of these instruments.

Law no. 218/2002 states as follows:

- In the exercise of their legal duties, police officers (...) are authorized to use force;
- The Romanian Police can intervene using force, under legal conditions, against those who pose a threat on the life, physical integrity and health of persons or of law enforcement agents, as well as against those persons that threaten with the destruction of buildings or any other public or private goods;
- The use of the supplied equipment can only be made after a clear audible warning regarding the necessity to respect the law and public order. If, after the warning, law and public order are still being infringed, the police officer in charge of conducting the police forces on the field will address the warning "Attention, we ask you to leave the area/square/etc.! We will make use of force!", followed by lighting and audio signals; In case the persons in question still oppose the orders, a last warning is to be used before intervening in force: "Leave the area/square/etc.! We will use force!";
- All use of restraint and detention measures will stop when public order has been reinstated.

Further provisions regarding abusive investigation, torture and abusive behavior are comprised in the Criminal Code. The Code of Criminal Procedure also provides sanctions for cases where evidence has been obtained through the use of torture, violence, threats or any other measures of constraint, as well as any promises and incentives. Any evidence obtained during criminal proceedings using any of these means will not be taken into consideration.

In respect of the use of force, the *Code of ethics and deontology for police officers* also provides a series of limitations to this end:

- Police officers perform actions using force only as an exceptional measure, in strict conformity with the law and only when it is absolutely necessary for attaining a legitimate purpose;
- Actions carried out by police officers where force is used are to be subordinated to the principles of necessity, gradually action and proportionality;

- All equipment that is being used when force is employed, including firearms, is only to be made use of in cases of absolute necessity and legal provisions shall be strictly respected;
- Whenever the legitimate purpose is being attained, the use of force shall stop;
- In the execution of all actions where force is used, police officers need to permanently respect human dignity;
- When confronted with physical violence or with real threats of use of physical force against them or any other persons, police officers have the obligation to intervene firmly, in respect of legal limitations, for the installment of public order.

Apart from the above mentioned regulations, there are a number of specific provisions governing the activity of the Romanian Gendarmerie:

- Articles 29-38 from Law no. 550/2004 regarding the organization and the functioning of the Romanian Gendarmerie
- Articles 18-24 from Law no. 60/1991 regarding the organization of public gatherings
- Articles 8-9 from Law no. 4/2008 regarding the prevention and fighting of violence during competitions and sportive games
- Articles 46-52 from Law no. 17/1996 regarding the regime of firearms and ammunition
- Article 61 from the Code of Criminal Procedure

Access to a doctor while in (pre-trial) detention

The Romanian Government give due recognition to the importance of the right to have access to a medical doctor as a fundamental safeguard which applies from the very outset of the deprivation of liberty, regardless of how it is described under the Romanian legal system (apprehension, arrest, etc.). The Government further recall that this matter is covered by Rule 18 for the application of Order no. 988/21 October 2005 issued by the Minister of Administration and Interior.

According to this rule, “In case the bodily searched arrested person bears marks of violence, he/she will be promptly examined by the prison doctor and the prosecutor who deals with the case will be informed. It is for the doctor to endorse the confinement by drawing up a record with the relevant elements following the check-up. When hospitalization is deemed necessary, the prosecutor and the chief of the Police Unit will be promptly informed.”

As to the general legal framework governing this matter, Law no. 254/2013 of 19 July 2013 rules as follows:

Article 71 guarantees the right to medical assistance, treatment, medication and care to all detained persons, free of charge, upon request or whenever necessary. All detained persons can request to be examined, upon payment of a certain fee, by a doctor outside the police detention facility medical system.

Article 72 states that the medical examination is effectuated upon receipt of the detainee in the police detention facility and periodically during its detention time, in conditions that guarantee confidentiality and respect safety measures. In case the detainee has a medical condition, the police detention facility takes all necessary measures to ensure medical assistance for him/her.

Accordingly, the Government point to the fact that the presence of police officers at the medical examination is only ensured in those cases where the medical personnel specifically requests it or when there are clues that the detainee would attempt to escape or would act violently against the medical staff.

Also, article 72 provides that when the examining doctor finds any trace of violence on the detainee's body or the detainee himself complaints of any violence inflicted upon him/her, the doctor has the obligation to make mention of the findings and record the detainee's statement in his medical chart and to notify the competent prosecutor.

Supplementary measures that would help ensure an adequate framework for the awarding of medical assistance to detainees were proposed by the Ministry of Internal Affairs (MAI). The MAI drafted a proposal for "*Regulation for the implementing of Law 254/2013*", which also comprises the recommendations made by the CPT following its visit in Romania in June 2014.

Furthermore, following June 2014, the "*Procedure regarding the medical activity in the detention centers*" was amended and measures like the planning of a continuous medical service within the detention units were introduced.

The most prominent regulations are as follows:

- The right to medical assistance, treatment and care for incarcerated person is ensured by specialized personnel, free of charge, according to law;
- Throughout their detention period, arrested persons are provided medical assistance by the detention center's doctors, either upon request of the former or whenever necessary;
- The medical examination of arrested persons is being carried out in a specially allocated place within the detention center, or, where the case be, at the surgery of the Ministry of Internal Affairs' medical center, where medical assistance for all persons placed in a police detention center is ensured;
- **Throughout the effecting of any medical checkup, human dignity, intimacy of persons and confidentiality of data is respected;**
- In order for medical checkups to be carried out in safety conditions, the medical personnel which effects the examination calls on the members of the escort [that have taken the arrested person to the surgery], or, in other cases, on the chief of the detention center, to take adequate measures, **in cases where there are clues that the detainees may act aggressively or may injure themselves**. A mention will be made in the medical chart regarding this situation;
- The examining doctor establishes the clinical diagnosis, recommends clinical investigations to be carried out, as well as the treatment and any measures regarding hygiene or diet;

- If the examining doctor considers that the admission of a detainee into a hospital is of absolute necessity for his/her health, he requests his/her admission into a hospital from the public health system;
- If, following a medical examination, either upon admission to the detention center or while being incarcerated, the doctor finds that a specialty medical checkup is required, he releases a sending ticket (*bilet de trimitere*) to a medical services provider;
- After the specialized medical checkup is carried out and results are released, the detention center's doctor prescribes medication according to the specialist's doctor recommendation and takes all necessary steps to ensure fulfillment thereof;
- The medical personnel performing a medical examination fills up the detainee's medical chart and any other medical documents that are required in a given situation with information regarding the medical examination and the prescribed course of treatment;
- **Every patient will have his medical chart filled out in one single copy, which will be kept, during his incarceration, in a specially allocated place, within the detention center, in conditions that guarantee safety and confidentiality of the documents;**
- **Following every medical examination, detainees are being informed, by the medical personnel, of their health condition and the prognosis thereof, as well as the recommended medical treatment. The detainee signs a written declaration of acknowledgement accordingly;**
- **Any detainee can request to be examined at the premises of the detention center, in the specially allocated medical surgery, by a certain doctor from outside the MAI's medical system. In these cases, the examination is paid by the detainee.** The diagnosis, the course of treatment and any recommendations made by the requested doctor are being recorded in the person's medical chart and it is afterwards the detention center's doctor who decides on the course of action to be followed;
- In the situation where the detainee requests the carrying out of a specialized medical examination, the detention center's doctor evaluates the advisability or the necessity of the examination and, if the case be, sends the detainee to a specialized consult in a medical unit;
- Incarcerated persons who suffer from a chronic medical condition are registered in an index, are ensured adequate treatment and, if necessary, an alimentary regime is recommended;
- When the detainee is not transportable, the detention center's doctor carries out the examination in the place where the person is accommodated, upon request from the security personnel of the center;
- Detainees who have been incarcerated for more than 90 days and who have not benefitted from or requested any medical assistance since the date of the incarceration, when they were submitted to the compulsory medical checkup, are appointed for a medical consult;
- Incarcerated persons benefit from services of primary medical assistance upon their placement in the detention center;
- **The medical consult upon admission of a person to the detention center is compulsory.** The consult will entail a general clinic examination. On this occasion, an informed consent regarding the examination is signed by the detainee and a document regarding any traumatic marks that he/she may bear is drafted;

- **If, following a medical examination of a person that is going to be placed in a detention center, the doctor observes any signs of torture, inhuman or degrading treatment or any other signs of violence, he notifies the prosecutor;**
- **In any circumstance where the doctor finds any trace of violence on the detainee's body, at any stage of his incarceration, he will only make those inquiries that are necessary for the filling up of the dedicated fields in the medical chart and will not perform any supplementary investigation. The doctor is obliged to inform the prosecutor of his findings, irrespective of the detainees' declarations in relation to the cause of the marks;**

In relation to the issue of access to the medical file of a detainee, the Government reiterate the relevant provisions³ regulating this field, which state:

- Information regarding the medical condition of a detainee can only be shared in cases where the detainee expresses his/her formal consent to this end or in cases expressly provided by law
- Information resulting from medical examinations will be archived in the detainee's medical file, who has the right to consult it or to receive, upon request, copies thereof. A detainee can also request and receive, upon his release from hospital, a written resume regarding the investigations carried out, the diagnosis, the treatment and medical care provided throughout his stay in the hospital.

The amended version of the "*Procedure regarding the medical activity in the detention centers*" was disseminated in all medical units within the MAI and all personnel took note of it under signature.

A series of supplementary measures are also envisaged to be implemented by the MAI in order to eliminate any deficiencies within the medical care system:

- The drafting of a "*Regulation for the organization and functioning of detention centers*", that would also comprise aspects signaled by the CPT in this area;
- The carrying out of evaluations of detention centers, in order to verify the way medical assistance is ensured, of the way medical documents are being filled in and of the manner in which specific legislation regarding the prevention of ill-treatment is being enforced;
- Consideration will be given to the drafting and annexing of anatomical sketches to the medical file of a detainee, that would clearly show the location of the lesions found;
- Proposals will be made for the introducing of an informative-educational curricula in the annual professional training scheme of the medical personnel within the penitentiaries;
- The revision of the "*Procedure regarding the medical activity in the detention centers*" whenever it shall be considered necessary.

³ The Implementing Regulation for Law no. 275/2006 regarding the execution of punishments and measures ordered by judiciary bodies throughout the criminal trial, approved by Government Decision no. 1897/2006 (which, according to Law no. 254/2013, which replaced Law no. 275/2006, applies in so far as it does no rule contrary to the former law).

The Romanian Government also place great importance on conferring adequate guarantees of independence regarding the medical staff practicing their activity in police detention facilities. Following a continuous preoccupation in this area, further paths have been explored in trying to eliminate the risk of conflict of interests that may arise in the case of doctors that form part of the Romanian Police personnel and have to attend victims of allegedly ill-treatment inflicted by police officers.

Guarantees in this respect took the form of an initiative that started to be implemented through the setting up of a number of offices in every county-level medical center for doctors that will only attend detainees. In this manner, there will be a division of duties between those doctors pertaining to the MAI that will attend police officers and those pertaining to the same ministry that will only attend detainees (including those that claim to have been aggressed by police officers). This solution came following the CPT's visit to Romania in June 2014, when the case of the doctor serving the Central Arrest center in Bucharest was pointed out as an example of good practice for the entire detention system.

Moreover, in order to increase the capacity of its own medical system, the MAI has made arrangements for 40 new offices to be filled up with personnel, many of which are to be occupied by doctors that will handle the detention facilities. Up to the present date, nine of these positions have already been occupied.

Forensic examination

In what the forensic examination of persons that are accommodated in different detention centers is concerned, there are a number of aspects that the Government would like to point out.

Firstly, it is to be noted that the legislative framework specifically provides the rights every detainee enjoys in terms of access to a forensic examination.

Thus, Article 72 of Law 254/2013 provides as follows:

In the case when the examining doctor finds any trace of violence on the detainee's body or the detainee himself complains of any violence inflicted upon him/her, the detainee has the right to request to be examined by a coroner. Such a request is addressed to the examining doctor. The forensic report is appended to the detainee's medical chart, after the detainee has been made aware of its content under signature.

Expenses incurred as a result of the forensic examination of a detainee carried out in these conditions are paid by the detainee, except for the case where the person does not afford such expense. In the latter case, expenses will be bore by the police detention facility and will be recovered by it, throughout the detention period, from the detainee, when sufficient funds will be available on his/her part.

Also, according to Article 8 of the Government Ordinance no. 1/2000 regarding the organization of the activity and the functioning of the forensic institutions, expenses

generated by reports, expert reports and any other works in the forensic field commanded by the criminal investigative bodies or by the courts represent judiciary expenses, which are supported from the public budget and are paid as follows:

- from the budget of the Ministry of Justice when works have been ordered by courts;
- from the budget of the Public Ministry for works ordered by prosecutors;
- from the budget of the MAI when works have been carried out following the investigative bodies' request;

As regards the independence of the forensic doctor in relation to the head of the detention center, the Government underline that all activities comprised within the field of forensic medicine are being carried out in respect of the principles of independence, which characterize forensic doctors in their professional activity, and impartiality of the scientific opinions advanced by the expert doctor in forensic medicine.

It is also important to underpin that, according to provisions in the national legislation, mentioned within the content of the present plan, the administration of the detention center does not have a saying regarding the medical situation of a detainee nor in respect of the recommendations/sending notes issued by the detention center's doctor or by the specialist doctor. The tasks within the center's administration competence are limited to ensuring the detainee's presence, under escort, before the doctor the detainee received a sending note for.

Administrative custody

According to provisions comprised in Law 218/2002, police officers have the right to take to police premises, in order for them to take the legal measures required, all persons that, by way of their actions endanger the life of other persons, public order and other social values, persons who have committed or are suspected of having committed offences and those persons whose identity could not be established.

These persons are not restricted the right to be assisted by a lawyer or to inform their family or any other person of their situation, while being in the police precinct.

Regarding these persons' right to have access to a doctor, Article 39 of Law 218/2002 provides a general obligation on the part of any police officer to take all necessary measures to protect the life, health and physical integrity of the persons he guards and, in particular, to take all required measures that medical care is awarded to them every time it is necessary.

In what concerns the measures adopted in order to extend the securing of fundamental safeguards against ill-treatment to persons that have been conducted to the police premises for the above mentioned reasons (the measure of "administrative custody" can only be taken for a maximum of 24 hours), the Government wish to point out that the Romanian Police has brought on 3 March 2014 a series of amendments to the "*Proceedings regarding the conducting of persons to the premises of police units*", which

applies to all structures within the Romanian Police. The procedure entails a number of aspects of novelty:

- any person who was conducted to the police precinct has the right to a lawyer of their own choice and to inform a member of their family regarding their situation, in the case where criminal proceedings are being carried out against them;
- on the above mentioned occasion, the police officer will draw up a report, which will comprise the date and time when the person was found and all measures that were taken against her, which will be signed by the person in question;
- when a person is taken to the police station by a certain police officer and later on handed over to other police officers for further activities, mention will be made about this in a special register;
- in the case where the person conducted to the police section shows signs of any conditions that may require medical assistance, the police officer will request the assistance of medical personnel.

The amendments also provided for the institution of an especially allocated register where all persons taken to the police precinct will be recorded, register which will also comprise the following data: the date and the time when the person entered and exited the police station, the rank and name of the police officer who has brought the person in, identification data of the person in question, the reason for the person's conduction to the precinct, the measure taken against him/her and observations regarding any suspicious behavior or physical visible lesions, both at the entrance as well as when exiting the police station. Moreover:

- the register is recorded at the section's secretariat and is filled in by the officer on duty based on the data provided by the police officer who conducted the person to the precinct, or by the latter, in case the officer on duty is not available;
- if the person taken to the police justifiably requests to be issued a document proving the time spent within the section, the police officer who performed the conduction will hand him/her a written proof to this end.

The above mentioned procedure was disseminated at national level and is available for consultation on a permanent basis.

Turning to the matter of one's right to be informed of his rights from the very outset of his deprivation of liberty (that is, from the moment a person is deprived of his liberty to come in and walk out while under the control of law enforcement officers), the Government wish to point to the provisions comprised in the *Code of ethics and deontology for police officers*. According to article 10 of the Code, persons who are deprived of their liberty (while under the control of law enforcement officers) need to be informed on the reasons of their privation of liberty, the procedure applicable in their case and to be given the possibility to exert their rights according to their status in that particular situation.

Moreover, the MAI collaborates with the Public Ministry in a common initiative to implement an administrative mechanism to diligently inform the suspect on their legal rights by handing them a leaflet-type document where all their rights would be

mentioned. The initiative is being currently analyzed at the level of all police structures, in order to determine the effective manner in which it should be best implemented.

Further measures shall be adopted by the Romanian Police in order to establish the most effective manner in which persons taken to police precincts can be informed of their rights from the outset of their deprivation of liberty. In this respect, the possibility to place in each police station informative posters and bilingual (English and Romanian) leaflets containing the above mentioned rights is being taken into consideration.

B.2. In-service training of law enforcement officers

As regards the Romanian authorities' strategy in the field of awareness-raising amongst law enforcement officers, with a view to effectively preventing and combating ill-treatment/death under their control, the Government wish to point to the measures taken in order to improve the initial and continuous training system.

In what concerns the formation of police officers (both commissioned and non-commissioned), the Government wish to remind that all training institutions within MAI, either at graduate, post-graduate or master level place great accent on preparing future police officers in *a culture of respect for human rights*. The curricula for each of these institutions include themes pertaining to the human rights domain and a wide range of subjects teaching the principles of use of force: "Conduct in relation to citizens", "The handling of tense and risky situations", "Means for the immobilization of persons used in the police activity", "Handcuffing of persons", "Conducting and escorting persons to police precincts" etc.

The Police Academy, the main initial and continuous training institution within the MAI, prepares police officers in the area of human rights, both on graduate and post-graduate level: 56 hours of course are allocated to studying "*The judicial protection of human rights*" during the bachelor's degree program and 42 hours of course are awarded to the studying of the protection of human rights during master programs. Moreover, a dedicated post-university course is organized within the Police Academy called "*Human rights in the public order and public safety institutions*", which aims at consolidating general knowledge on the subject and creating competences in the field so that principles of human rights protection can successfully be applied by every police officer in their work. Thus, starting April 2013, a *Center for formation in the field of human rights* functions within the Police Academy, which aims at creating a professional community of trainers and specialists in the field of human rights. Up to present, the center's network has grown to 50 permanent experts and a number of 271 specialists, all of which represent a resourceful reservoir for the promotion of principles and good practice within all structures of the MAI.

Furthermore, in respect of the **practical in-service training** of police officers, the Government submit that, according to the information provided by the Ministry of Internal Affairs, the Institute of Studies on Public Order – the largest training institution of in-service police officers - has since 2010 organized courses on the prevention of

torture and ill-treatment (two such courses have been organized during 2015: "Prevention of torture and inhuman and degrading treatment or punishment", "Prevention and combating of discrimination"). Thus, the trainees had the possibility to learn about the legal framework governing the protection against torture. They also became aware of the European Court's relevant case-law, which is permanently disseminated by the Agent of the Government.

In the meantime, the Training Centre for Police officers from Slatina, which deals with the permanent instruction of police officers, has organized training activities on apprehension in the context of the human rights' requirements. Beside the theoretical aspects, the main task of the training is to ensure a good practical approach during the police's missions. In particular, the issues regarding the permitted use of force upon arrest and conduct for questioning have been addressed.

A monitoring mechanism has been implemented by the IGPR - "Mechanism for the periodic evaluation and monitoring of the efficiency of the training programs graduated by the personnel of the Romanian Police in the field of human rights". The mechanism envisages, amongst others: the training of police officers who have received administrative sanctions following misconduct regarding the infringements of human rights, the monitoring of results and progress obtained by students and teachers throughout in-service training programs carried out in the training institutions of the MAI, obtaining relevant feedback from the participants in training courses and ensuring the dissemination of the acquired information.

Also, on 22 May 2015, the IGPR (as initiator of program) signed a financing contract with the Ministry of Justice regarding the financing, from non-reimbursable funds, of the program "Consolidation of the capacity of the detention system to come in line with the relevant international instruments in the field of human rights". The program entailed the organizing, by the end of 2015, of training stages for 771 police officers from arrest and detention centers. Experts designated by the Council of Europe are amongst the trainers.

Meanwhile, the IGPR has re-launched its "Zero tolerance" program entailing the constant distribution of messages, through the Intrapol - the internal police network and during meetings with chiefs of the central and territorial structures of the Romanian Police, regarding the need for a strict respect of human rights.

Finally, it is to be noted that, during April 2014, MAI has disseminated throughout its central and territorial structures the "Informative guide for public servants in the member states of the Council of Europe regarding the members states' obligations according to the Convention for the protection of human rights and fundamental freedoms – Annex 5", adopted by the Council of Europe on 18 September 2013.

In-service training programs are being developed for all types of personnel within the forces of the Romanian Police.

Thus, during 22 September – 5 November 2014, 20 police officers working in the detention centers have benefitted from a training program financed by Norwegian funds and have thus become trainers in the field of human rights and methods of combating discrimination. The program envisaged that 750 police officers working on field and 62 police officers with managerial duties shall be trained in the field of human rights by the end of 2015. Also, by the end of the project – 22 April 2016 – two training sessions in Romani language will be organized for 52 police officers and a guide for good practices and brochures will be released, in the field of human rights and discrimination.

Training programs are also being carried out for members of the special intervention units within the MAI.

Thus, the Institute of Studies on Public Order has carried out, throughout 2010, a training program called “*Training of trainers in the field of prevention of discrimination*”, developed with the financial support of the UN Bureau for Drugs and Criminality. The program entailed a theoretical part on the international standards for the protection of human rights and a session regarding the relation between the police officer and persons pertaining to vulnerable groups, conducted by representatives of the main NGOs activating in this field.

Furthermore, between August and September 2015, 173 police officers pertaining to the Romanian Gendarmerie have participated in a training course for experts in the field of equality of chances.

The General Inspectorate of the Romanian Police (IGPR) promoted a project aiming to determine a better relationship between the police forces and the community in the rural areas, with an accent placed on those communities with a numerous Roma minority population. The project has been accepted for financing within the Cooperation Program Romania –Switzerland.

By the end of 2013, 250 police officers with managerial duties and a total of 650 police officers with executional tasks have been trained within a national project carried out by the Department for the equality of chances between men and women in the field of combating domestic violence, equality of chances, human trafficking.

C. Measures aimed at guaranteeing the effectiveness of investigations

Course and solutions of criminal investigations

The Government firstly wish to show that, at the level of the Public Ministry, there is a complex strategy in place that seeks to bring further efficiency to the criminal investigations in case files where law enforcement officers have been accused of ill-treatments.

Firstly, as regards the authorities’ obligation to open an investigation on their own motion, when there are precise enough indications of torture or ill-treatment, even in the

absence of a formal complaint, the Government underline that the provisions of the new CCP impose an adequate reaction of the judicial authorities (prosecutors and judges) when they become aware of allegations/indication of ill-treatment.

Thus, article 3 of the CCP indicates that *“judiciary functions are to be exerted on the competent authorities’ own motion, except for cases where the law provides otherwise”*.

Article 7 further provides: *“The prosecutor is obliged to commence criminal proceedings in the case on his own motion, whenever there is evidence that a crime has been committed and there is no legal motive that would impel it”*

Article 100: *“Throughout criminal proceedings, the investigative body collects and administers evidence both in favour and against the suspect, on their own motion or at request”. “During trial, the court administers evidence at the request of the prosecutor, the parties and, subsidiary, on its own motion, when it considers necessary.”*

In what concerns the control over the investigation, the CCP expressly provides the possibility, for any of the parties in the file, to challenge all actions and measures taken in the case file. The competence for solving the complaints against the measures taken during criminal investigation pertains either to the prosecutor or to the court. Moreover, according to the new CCP, the court has the possibility to effect acts of criminal proceedings in the pre-trial stage of the investigations as well.

Furthermore, accountability of the criminal investigation bodies is guaranteed to a better extent by the possibility conferred to the parties, by law, to study the documents in the file and to ask for copies thereof at any moment of the criminal investigation.

Regarding the results of the investigations concerning allegations of ill-treatment committed by state agents, falling within the scope of Article 3 of the Convention, the Ministry of Internal Affairs informed that, between 2007 and the present moment, within the Romanian Police, a number of 44 policemen (7 officers and 37 agent) were convicted for crimes of conducting an investigation in an abusive manner and abusive behaviour, and for another 2 (officer and agent) the courts ordered an adjournment in the application of the punishment.

Concerning the Romanian Gendarmerie, in the same period of reference, a number of 17 persons (one officer and 16 non-commissioned officers) were sentenced for crimes of abusive behaviour, and another non-commissioned officer was convicted for torture.

In addition, the Public Minister informed that a number of 21 police officers have been sent to trial on counts of abusive behaviour in 2014 and the first semester of 2015 (15 persons in 2014 and 6 in the first semester of 2015).

Disciplinary actions

Regarding the provisions which apply to the disciplinary actions brought against law enforcement officers, the Government show that a detailed procedure concerning this aspect is referred to in Law 360/2002 regarding the statute of the police officers. Chapter IV, Section 2 of the said law, regarding Rewards, liability and sanctions has recently been amended (through Law 81/2015 of 17 April 2015).

The main amendments brought to Law 360/2002 in terms of disciplinary measures are as follows:

- All available rewards for police officers were exhaustively provided, as well as the procedure to be followed for their awarding;
- Disciplinary sanctions available for police officers have been defined, together with the principles governing them, the procedure for their awarding, the procedure for grave disciplinary sanctions and the role of the Superior Council of Discipline in this case.

Further aspects regarding the disciplinary liability of police officers are provided by Government Ordinance no. 725/2015 regarding the establishment of enforcement norms for Chapter IV of Law 360/2002 – The statute of police officers, regarding the awarding of rewards and the disciplinary liability of police officers.

Thus, according to the said legal provisions, the procedure applied to disciplinary actions that can be brought against law enforcement officers entails the following:

The disciplinary procedure is ordered by the person who has the legal right to appoint the police officer in office, when he has found out about the commission, by the police officer, of one or more offences that constitute disciplinary misdemeanors and it is being carried out within the police unit to which the former pertains.

Police officers who handle the procedure are part of the judicial police and are usually of at least the same rank as the police officer who is being investigated. Throughout the procedure, the police officer in question is being summoned and heard by the investigative officer and has the right to submit any evidence he considers appropriate.

After the conclusion of the disciplinary procedure, the investigative officer handles the case file to the person that ordered the procedure, who decides whether the imposing of a disciplinary measure is needed.

During the disciplinary procedure, the investigated police officer cannot be moved or delegated to a different police unit, neither can he be empowered to a managerial function in a different unit nor deployed to any international missions.

In the case where, during the disciplinary procedure, suspicions arise that the police officer has committed an offence, the investigative police officer notifies the competent criminal investigative body and the disciplinary procedure is suspended until a solution is passed regarding the alleged offence. Once criminal action has been taken against the police officer (*a fost pusă în mișcare acțiunea penală*), he is being partially suspended

from activity (*pus la dispoziție*), except for the case where he is suspected of having committed an unintentional offence and it is considered that the prestige of the profession is not affected by keeping him in service. A partially suspended police officer only fulfils those tasks that are specifically designated to him, in writing, by his chief and he is being paid a reduced wage. If the police officer is arrested, he is automatically suspended, he is not paid his wage and he is obliged to hand over his gun, badge and identification card (*legitimație*).

Regarding the administrative and disciplinary measures adopted in the cases of law enforcement officers pertaining to the IGPR that have been accused of ill-treatment, it resulted that from 2010 up to present date, there have been three cases of police officers that have been disciplinary sanctioned for this reason:

- in 2011, two police officers have been sanctioned for applying a degrading treatment on a person accused of rape. One of the police officers had his salary rights diminished and the other one received a written reprimand;
- in 2014, one police officer was sanctioned for acting violently against one person, in the line of his duties. The officer was moved to a lower function. (*trecere într-o funcție inferioară*).

Length of the investigations

In relation to the length of the investigations in those cases where allegations of ill-treatment inflicted by law enforcement agents have been analysed, the Prosecutor's Office attached to the High Court of Cassation and Justice (PICCJ) has provided the following update:

As a general rule, cases of this kind are being investigated in less than one year since the date of the complaint. The statistical data provided in this respect, appended to the present action plan, shows a good rate of efficiency. Thus, in what the offence of torture is concerned, in 2012, 81 case files have been solved, out of which 45 were solved within 6 months from the date of the complaint, 18 files in one year from the same date and only a number of 17 case files in over one year. Out of the total number of case files in 2012, only one became time barred. Further information on the efficiency of the criminal investigations in case files of this type is comprised in the appended table.

According to the PICCJ's address, it resulted from the data submitted that case files of this type are solved within a reasonable time and situations where the criminal liability has become time barred are of insignificant amount in comparison to the total amount of case files.

Moreover, those solutions that were passed as a result of the criminal liability becoming time-barred have been verified and analysed both by the supervising prosecutors and by the Judiciary Inspection, for the case where disciplinary misdemeanors would have been committed. In this regard, it is to be noted that in the second part of 2014, the Judiciary Inspection within the Supreme Council of Magistrates has carried out a controlling activity with regard to the measures taken by prosecutors and chief prosecutors in order

to diligently solve those case files regarding crimes of ill-treatment committed by police officers, gendarmes or personnel from the National Administration of Penitentiaries, that have been on the docket for more than one year. The result of the control was that, as a general rule, there is a constant preoccupation on the part of the prosecutors to take the most appropriate measures in order to solve these case files. A thorough analysis and monitoring of these files have been performed, constant controlling activities have been performed, case files have been transferred from prosecutor's offices with a heavy load of files to prosecutor's offices attached to the courts of appeal.

Independence of investigative officers from persons investigated

The Government wish to make a series of notes on the rapports between the authorities called upon to conduct the investigations in case files of the type in question (e.g. prosecutors and agents of the local criminal investigation department) and the persons investigated.

Firstly, as regards the independence of military prosecutors, an issue raised by the Court's judgments concerning Romania on many occasions, the Government wish to remind that, following the Romanian Police's demilitarization in 2002, the investigation of offences committed by police officers in their line of duty fell under the competence of civil prosecutors.

There is, yet, one structure within the MAI which was not demilitarized following the 2002 legislative amendments – the Romanian Gendarmerie. For this category of personnel, criminal proceedings are still carried out by military prosecutors.

In this context, the Government wish to emphasize two important aspects. Firstly, the forces of the Romanian Gendarmerie have not been involved in incidents which constitute the subject of case files within the present group of cases, but for one exception (case of *Birgean*, no 3626/10). On a second note, the Government remind that the issue of the independence of military prosecutors is addressed by the "*21 December 1989*" *Association v. Romania* group of cases.

Following this reasoning, the Government will only address, under the present action plan, the issue of Romanian Police forces (either ordinary police officers or special intervention forces) in relation to allegations of torture and inhuman or degrading treatment inflicted while in their line of duty.

Furthermore, the Government wish to refer to the PICCJ's observations on the rapports between investigative authorities and investigated law enforcement personnel:

Article 131 from the Romanian Constitution states as follows: "*The Public Ministry exerts its duties through its prosecutors, which function within the prosecutor's offices. Prosecutor's offices are attached to the courts (...), conduct and supervise the criminal investigation activity carried out by the judiciary police*"

According to Law 364/2002, the judiciary police represents a body of commissioned and non-commissioned police officers, specially appointed by the Ministry of Internal Affairs, with the approval of the Prosecutor General, to carry out the criminal investigation activity in criminal case files. The statute of a police officer within the judicial police body entails a double subordination: a professional subordination, exclusively in what the investigative activity is concerned, which entails that this type of activity is exclusively conducted and controlled by the prosecutor, and a second type, a both administrative and professional subordination (regarding all other activities except for the criminal investigation), which entails hierarchical subordination to the police officer's superiors within the police structures.

The institutional relation between the Public Ministry, on the one side, and the judiciary police on the other side, is characterized by the following:

- prosecutors supervise the criminal investigation activity of the police officers (by guiding it and controlling it); over 90% of the criminal investigation activity carried out by police officers is developed under the supervision of the prosecutors from the prosecutor's offices attached to the district courts;
- the Prosecutor General grants and withdraws his approval for any police officer that enters or leaves the judiciary police respectively;
- prosecutors evaluate police officers' activity strictly regarding their activity of criminal investigation.

Police officers in the judicial police, representing approximately 55 % of the personnel within the Romanian Police, carry out their activity as follows: 70 % of their activity entails administrative activities, specific to the police work and 30 % is dedicated to the criminal investigation activity.

In respect of the repartition of attributions between the prosecutor and the officers of the judicial police called to conduct investigations in cases of ill-treatment applied by police officers, the legal framework regulating these aspects should firstly be taken into account. Thus, the CCP states as follows:

Article 56: *"The prosecutor conducts and controls the criminal investigation activity of the judicial police. (...) The prosecutor can carry out himself any criminal investigation activity that he conducts and supervises."* According to the same article, it is mandatory that the criminal investigation is carried out by the prosecutor for a number of crimes, amongst which for acts prohibited by Article 3 of the Convention: murder, murder in aggravating circumstances, abusive investigation, submission to ill-treatment, torture, unjust repression and in cases where one's actions have resulted in a graver outcome than the one intended (*infracțiuni săvârșite cu intenție depășită*) and have resulted in the death of one or more persons.

Article 57 provides that police officers pertaining to the judicial police carry out criminal investigation activities in the cases of any crime that is not, by law, within the competence of the special investigative bodies or of the prosecutor.

On the other hand, article 201 provides for the possibility, for the members of the criminal investigative body (namely police officers pertaining to the judicial police and prosecutors) to order the carrying out of certain investigative actions by way of delegation.

At the same time, order no. 216 of 10 September 2009 of the Ministry of Internal Affairs stipulates that the criminal investigation of offences committed by the personnel of the MAI is being carried out by prosecutors and by police officers pertaining to the judicial police, specially appointed in this respect, (except for the cases where the investigation concerns militaries or civilians in respect of their military duties).

It results, corroborating the legal provisions mentioned, that police officers carry out their criminal investigation duties under the supervision of a prosecutor which coordinates and controls their activity. In practice, prosecutors (mostly those pertaining to prosecutor's offices attached to the district courts) carry out a vast majority of the tasks entailed by the criminal investigation work with the help of police officers, whose activity they guide and supervise. This practice sometimes applies in the cases of those crimes given by law in the competence of the prosecutor, in which cases the prosecutor will delegate the police officers to execute a number of clearly specified activities, mentioned in the delegation order.

In this context, in order for the principle of impartiality to be met to higher standards in criminal investigations where law enforcement officers are being accused of inhuman or degrading treatments, the PICCJ suggested a practical measure to be implemented in the attempt of ensuring a better adherence to the principle of independence of the investigator and made concrete steps to this end.

Thus, the PICCJ argued that a number of advantages would arise if the case files regarding the offences of ill-treatment committed by police officers would be investigated by prosecutors attached to the county courts or the courts of appeal:

- at the level of prosecutor's offices attached to the courts of appeal, there are no case files where criminal investigation is carried out, in a generic manner, by police officers pertaining to judicial police; this way, criminal investigation in all case files that may be instrumented by prosecutors at this level is carried out by the prosecutor himself, without any other exterior influence;
- at the level of the prosecutor's offices attached to the county courts, there are prosecutors that carry out their criminal investigation activity by way of delegation of activities to police officers, but also prosecutors which, in the vast majority of cases, effect the criminal investigation on their own; the PICCJ suggested that case files concerning the offences committed by police officers in violation of Article 3 of the convention be exclusively allocated to the latter type of prosecutors, which would, in this case, exclusively be allocated case files where they would carry out criminal investigation on their own;
- prosecutor's offices attached to county courts and courts of appeal benefit from ample human resource - specialized prosecutors with adequate professional experience –which could better respect the principles of an effective investigation in these particular cases.

In the light of the above, in October 2015 the PICCJ issued the *Strategy for increasing the effectiveness of investigations conducted in cases of ill-treatment applied by state agents (police officers, penitentiary staff, gendarmes) in connexion with the exercise of their professional duties.*

In the context of this Strategy and taking into account the possibility conferred by article 325 of the CCP (“*Prosecutors from a hierarchically superior prosecutor’s office can take, in order to carry out the criminal investigation, case files that are within the competence of hierarchically inferior prosecutor’s offices*”), the PICCJ released Order no. 214/9 October 2015 by which it organised the activity of taking cases from hierarchically inferior prosecutor’s offices to superior ones in criminal investigations where law enforcement officers are being accused of inhuman or degrading treatments.

According to Article 1 of the said order, prosecutor’s offices attached to the courts of appeal will take the cases involving police officers, regardless of whether they are in the judicial police or not, as well as involving officers within the penitentiaries. Article 2 of the same act states that prosecutor’s offices attached to the county courts will take the cases involving police agents, regardless of whether they are in the judicial police or not, as well as involving agents within the penitentiaries.

Due to the large activity volume of the prosecutor’s office attached to Bucharest Court of Appeal and the prosecutor’s office attached to Bucharest County Court, the order was amended so as the two prosecution units will take the cases at matter only if the victim was in the state’s custody or if the wounds are confirmed by medical documents.

The order also regulates the appointment of certain prosecutors within each prosecutor’s office that will mainly deal with this type of cases.

Moreover, the manner in which criminal investigations are carried out in case files where police officers and police agents are being accused of having committed offences that violate the provisions of article 3 of the Convention are monitored by a prosecutor appointed by the heads of prosecutor’s offices attached to the courts of appeal. The designated prosecutor will monitor all cases registered at his own unit as well as at the prosecution units under the latter’s authority and annually informs the PICCJ concerning the investigations in the analysed cases.

The monitoring envisages the diligence of the investigations and, in this respect, each prosecutor dealing with this type of cases forwards, every three months, relevant punctual information in the form instituted in the annex of the order.

It is important to underline that, separately from the measures mentioned above, the monitoring also entails the extent to which the ECHR’s standards regarding the effectiveness of the investigation are being followed.

The provisions of the order apply also to military prosecution units as regards the cases of ill-treatments involving gendarmes in connexion with the exercise of their professional duties.

As regards other measures taken in the purpose of improving criminal investigations, it should be mentioned that in November 2015 the PICCJ controlled the activity of two prosecutor's offices attached to the county courts and the units under their authority. This action was carried out due to the fact that the former two did not send any case in this field before the courts in the last three and a half years. The conclusions and measures envisaged for remedy of the observed shortcomings are presently pending.

Concerning activities envisaged in the near future in the same respect, the heads of the prosecution authorities intend to notify the Ministry of Justice, as organism with legislative initiative, with the view to modify the special laws or the Romanian Criminal Procedure Code, so as the competence to investigate cases of ill-treatments involving state agents be allotted to prosecutors within hierarchical superior units.

In addition, the organizing of training courses in the field of effectiveness of criminal investigations in this particular type of case files will be suggested to the National Institute of Magistrates –the competent institution in the training of magistrates.

Binding character of the court's instructions

Regarding the prosecutors' failure to comply with the courts' instructions on the measures found necessary to advance the investigations (both in the case of military and civil prosecutors, after the demilitarization of the Romanian police), the PICCJ asserted that these cases are entirely isolated.

It is to be noted that the prosecutor's obligation to comply with the court's orders provided in the old CCP has been inscribed in the new CCP text in a similar manner "*In cases when the case file was closed (clasat) or when the criminal investigations were given up to (renunțarea la urmărirea penală), criminal investigations will be reopened for the investigation to be supplemented if the preliminary chamber judge (judecător de camera preliminară) admitted the complaint against the solution. The orders of the preliminary chamber judge are compulsory for the investigative body*".

The PICCJ considered that, since the obligation is imposed on the prosecutors by law, there is no need for secondary norms to be instituted by the Prosecutor General.

Yet, according to the PICCJ's order, monitoring measures will be taken by Prosecutor's Offices attached to the Courts of Appeal for those case files regarding police officers who are being accused of having committed offences that violate the provisions of articles 3 and 2 of the Convention and where orders of the courts have not been followed by the addressee prosecutors. A global analysis of the collected data will be carried out by the Prosecutor's Office attached to the High Court of Cassation and Justice.

Additional measures

Concerning the results of the measures implemented so far, the PICCJ considers that there is no basis for concluding that they have failed to bring the expected results. In this regard, it is to be mentioned that such measures requires a long term monitoring. Nevertheless, the PICCJ point on the constant efforts made for the adequate implementation of the Court's principles for an effective investigation in these particular cases.

The right to inform a close relative

With regard to the prisoners' information on their rights, in particular as regards the prosecutor's power to delay the information of a close relative or third party of the remand in police custody, article 210 of the new CCP provides as follows:

"(1) Immediately after the remand in police custody (reținere), the detained person has the right to inform, personally or through the criminal investigation officer, a member of his family or any other person that he chooses about his arrest and the place where he/she is being detained".

"(6) Only in exceptional circumstances and for justified reasons, the information can be delayed for a maximum of 4 hours"

D. Specific aspects related to the actions of special intervention groups

On a first note, the Government wish to point to the fact that, within the MAI, there are two distinct special intervention structures:

- The Service for Special Interventions and Actions (the SIAS), a central unit within the organizational structure of the General Inspectorate of the Romanian Police, which also coordinates the activity of its subordinate territorial structures – the Services for Special Actions;
- The Special Gendarmerie Intervention Brigade, functioning within the Romanian Gendarmerie, which comprises a central structure of command and two special intervention battalions. The personnel carrying out their activity within these structures is represented by gendarmes – commissioned and non-commissioned police officers - with a similar initial training like that of all the other police officers, but which, as opposed to the latter, are still militarized police forces.

Taking into account that this group of cases does not comprise any case where special intervention forces of the Romanian Gendarmerie have been involved, the Government will only address, under this chapter, issues regarding the activity of special intervention forces within the SIAS.

Firstly, the Government wish to refer to the claim of impunity conferred to these special police officers by the masks they wear during operations. Special intervention forces' police officers wear, throughout their activity on field, a distinctive uniform from the one worn by other police officers and are equipped with masks.

In this respect, the Government firstly wish to point to the fact that every member of the special forces is allocated an identification number and that, moreover, it is compulsory for them to wear it during actions they participate in. This allows an adequate identification when necessary.

Thus, by the IGPR's General Inspector order (*dispozitie*) no. 37 of 28 July 2009 regarding the organization of the activity of special police forces for quick intervention, it was established that a unique identification number will be inscribed on the uniforms used by these forces when intervening on the field (i.e. whenever they use masks). At present, this order is implemented for all of the 42 (central and territorial) Special Action Services of the Romanian Police.

As regards the legislative framework governing the activity of the special intervention forces within the MAI, provisions to this effect are comprised in the following acts:

- Law 218/2002 regarding the organization and the functioning of the Romanian Police;
- IGPR's General Inspector order no. 37 of 28 July 2009 regarding the organization of the activity of special police forces for quick intervention;
- the an operational standard regarding the execution of missions by the structures if intervention of MAI;
- a procedure regarding the collaboration between units/structures of intervention and operative structures within the Romanian Police – which provides the manner in which special intervention forces are requested to intervene, based on the risk analysis carried out by the operative structure and the manner in which the allocation of forces is approved.

Following the above mentioned provisions, there is a well-established legal framework regulating the activity of the special intervention forces of the Romanian Police:

- Special structures for quick intervention function within the structure of the Bucharest General Police Department and of territorial Police Inspectorates in order to carry out those tasks incumbent to the Romanian Police that entail an elevated degree of danger and which require a quick intervention;
 - In complying with their tasks, the special intervention forces can cooperate with other police units within the IGPR or the MAI, as well as with any other structures which are empowered to protect public order;
 - The special intervention forces comply with the following **general tasks**:
 - they intervene in those events which, because of their complexity, require supplementary forces from those already allocated;
 - they carry out interventions, controlling actions and filters in areas with a high degree of criminality;
 - they participate, together with other police units, to the carrying out of raids and specific police actions in those situations where, according to the existing data, the activities entail a high degree of peril;

- ensure protection and support for police officers pertaining to other structures, upon their request, while the latter carry out activities that entail an elevated degree of danger;
 - they take the first measures, before the arriving of gendarmerie units, in spontaneous protest, turbulent actions or in any other situations when events develop instantly and cannot be anticipated;
 - they participate in limiting the effects of extensive road accidents, natural disasters and catastrophes, in saving human lives, goods and highly valuable assets;
- the special intervention forces comply with the following **specific tasks**:
- they capture and neutralize dangerous or armed criminals;
 - they perform specific actions in areas where grave crimes have been committed, thus supplementing the initial measures taken by the regular police forces;
 - they take the first measures in order to free hostages and injured or sequestered persons in cases where objectives or persons have been attacked by extremely dangerous or armed criminals;
 - upon request from specialized units, they take the first measures to locate, isolate and guard suspect objectives and objects which may contain explosive or dangerous materials;
 - they ensure, according to law, the protection of police officers, magistrates and their families, witnesses, police informers, victims and other categories of persons involved in criminal investigations, if pressure or threats have been exerted upon them or if their lives or their families' are in danger;
 - they carry out escort activities of prominent persons;
 - they escort detained or arrested persons which are known to have evaded or to have tried to evade, which are suspected of intending to evade or persons with a violent behaviour;
 - they intervene in the rejection and counteracting of attacks against police headquarters;
- in cases where, during the interval allocated for effective on field actions, personnel of the special intervention groups is not involved in carrying out specific activities, they are used as intervention reserves for police units, in those environments with high criminality, so they can intervene promptly in supplementing additional measures already taken by police forces, in order to fight violent offences, turbulent actions or any other complex situations which require supplementary forces;
- whilst in the carrying out of their duties, all measures will be taken to ensure the respecting of individual and collective rights of the community's members and to eliminate any form of discrimination.

The use of special intervention forces upon request from regular police units is made following the provisions of the an operational standard, which regulates the execution of missions by special intervention forces, a document which aims to avoid overlapping of prerogatives between different police structures at the time of intervention, the

application of the criteria of gradual competence amongst different police structures, according to the type of mission and the associated risk level, to the level of professional training of personnel and endowment.

In order to obtain the support of a special intervention team, the chief of the unit requiring support must firstly inform the chief of the structure he pertains to of the activity to be carried out and to present him the action plan and the rationale for the necessity of a special intervention team, which should be supported by an analysis regarding the degree of risk entailed. Upon receipt of approval, the chief of the requesting police unit must address the solicitation to the envisaged special intervention structure, presenting the supporting documentation. The two chiefs agree on the necessary forces to be deployed on the field, according to the available data. In his turn, the chief of the special intervention unit must obtain approval for carrying out the requested action from the chief of the unit he pertains to.

E. Racially-motivated ill-treatment and investigations into possible racist mobiles

Law No. 278/2006 amending the Criminal Code introduced the ethnic/racial motivation as a statutory aggravating factor. This entails an obligation for the prosecuting authorities to verify, on their own motion, its incidence in a given case. The new Criminal Code provides an aggravating factor with a similar scope. Thus, article 77 of the CC states as follows: *"The following circumstances constitute aggravating circumstances: (...) h) the committing of an offence on motives related to race, nationality, ethnicity, language, religion (...)"*

Up to present, there were no cases where this aggravating factor regarding ethnic/racial motivation was retained by the prosecutor's office and by the domestic courts, respectively.

On the other hand, the CP provides, as a distinct offence, the incitement to hatred or discrimination, also introduced by Law no. 278/2006: *"The incitement of public, using any means, to hatred or discrimination against a particular category of persons, is punished by 6 months to 3 years imprisonment or by fine"*.

In what concerns the training policy within the educational institutions of the MAI in respect of the Roma and other minorities access to study, the Government wish to reiterate their interest in the promotion of education for all persons interested in becoming a member of the Romanian Police and their constant preoccupation in offering an adequate framework to this end.

The Government remind that ever since 2006, the Police Academy has reserved places for students of Roma origin, the distribution of which, throughout the past years, can be observed in the annex to the present plan. It is to be mentioned that, the institutions allocated, for the academic year 2015-2016 a number of 54 places for ethnic minorities, out of which 39 have been occupied. Also, it is of importance to mention that the minimum admission grade in the case of the specially reserved places for minorities is 5,

as opposed to the case of regular places, where applicants need to obtain a minimum grade of 7.

All students who have graduated from the MAI's educational institutions have been incorporated in one of the ministry's police units, following an allocation procedure based on the criteria of grades obtained throughout their study years.

F. Domestic monitoring and preventive mechanisms

The monitoring of the impact of the measures taken for the execution of the judgments in the present group of case is currently ensured at domestic level by a national preventive mechanism, settled in compliance with the international obligations undertaken by Romania following the ratification of the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment ("the Optional Protocol").

The national preventive mechanism was set in motion by the amendment, on 30 June 2014, through the Government's Emergency Ordinance no. 48/2014, of Law 35/1997 regarding the organization and functioning of the Ombudsman.

Under this mechanism, a commission of independent experts was set in motion within the institution of the Ombudsman, which has as main duty the carrying out of regular inspections in the detention facilities. The authority of the commission in this regard will stretch over the following: penitentiaries, educational centers, detention centers, pre-trial detention centers, services providing residency (*servicii de tip residential*) for minors that have committed crimes and have no criminal liability, psychiatric hospitals and psychiatric and safety measures hospitals, transition centers, centers for the accommodation of foreigners taken into public custody, centers for asylum seekers and centers of assistance for drug consumers .

Commission members carry out visits to detention facilities (including unannounced visits) and perform private interviews with detainees either based on an annual visiting plan or based on private complaints or on any other manner in which they come to find out about violations in this respect. The personnel of detention facilities is under an obligation to provide the commission members with full and unrestricted access to detention premises, to documents and to detainees themselves for interviews.

It is to be noted that all interviews will be carried out under strict confidentiality and no member of the detention center will be allowed to participate thereto except for cases where commission members will request it for safety reasons. No detainee can be made accountable for information communicated to the commission members.

A visit report containing any shortcomings identified, as well as proposals, suggestions and recommendations will be drafted and adopted within 30 days. The detention facility shall respond to the visit report within 30 days. Both the visit report and the response are to be published on the website of the detention facility.

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In cases of violations of human rights which may endanger a person's life or health, a preliminary report procedure is envisaged, 30-day delay being replaced by 3-day delays.

In case acts falling within the scope of criminal law are identified, an obligation to notify the judicial authorities is provided for.

The commission will publish an annual report comprising an analysis of visit reports, its suggestions, in particular those not adopted by the authorities, as well as legislative proposals.

In 2015, the Ombudsman issued a special report concerning the detention conditions in penitentiaries and detention centers, presented in detail the situation of the above in terms of occupancy and general detention conditions and drafted a series of recommendations for the improvement of the present situation.

In addition, it is to be mentioned that the judges mandated to oversee the deprivation of liberty (*judecătorul de supraveghere a privării de libertate*), in exercising their legal functions, have visited some police detention facilities and discussed with the detainees.

Moreover, according to a protocol of collaboration concluded in 2013, the NGOs have the right to visit the police detention facilities.

Furthermore, since 2012, a Service of coordination of the police detention facilities was created within the IGPR. The main purpose of this Service consists in overseeing the activity of the police detention facilities, including the respect of the internal legislation and of the international recommendations in the field of the conditions of detention.

Conclusion

The Government will keep the Committee of Ministers informed of any subsequent developments in the present group of cases.