

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES



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

Meeting: 1318th meeting (June 2018) (DH)

Communication from the authorities on the general measures (22/03/2018) (update to the action plan of 25/01/2018) concerning the cases of BRAGADIREANU and Rezmives and Others v. Romania (Applications No. 22088/04, 61467/12).

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

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Réunion : 1318^e réunion (juin 2018) (DH)

Communication des autorités sur les mesures générales (22/03/2018) (mise à jour du plan d'action du 25/01/2018) concernant les affaires BRAGADIREANU et Rezmives et autres c. Roumanie (requêtes n° 22088/04, 61467/12) (*anglais uniquement*)

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



DGI

22 MARS 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

MINISTRY OF FOREIGN AFFAIRS

AGENT OF THE GOVERNMENT
BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

Ms Genevieve Mayer
Head of the Department
Department of Execution of Judgements
of the European Court of Human Rights

Bucharest, 22nd of March 2018

L1/ 2844

Case of Rezmiveş and others v. Romania (application no. 61467/12+)
4468 R/AG/ 43

Dear Madam,

Further to the Court's pilot judgment of 25 April 2017 in the case of *Rezmiveş and others v. Romania*, final on 25 July 2017, and in addition to the "*Timetable for the Implementation of measures 2018 – 2024 to resolve the issue of prison overcrowding and conditions of detention with a view to executing the pilot-judgment Rezmiveş and others against Romania delivered by the ECHR on 25 April 2017*" (the Timetable), which was submitted on 25 January 2018, the Romanian Government have the honour to address their **document containing further information, as well as a number of modifications in relation to the abovementioned Timetable**, translated in both English and French. The abovementioned document, containing supplementary information and modifications to the Timetable adopted by the Government on 17 March 2018 and submitted on 25 January 2018, was adopted by the Romanian Government **on 7 March 2018**.

The appended document **contains the following additional information and modifications** brought to the Timetable submitted on 25 January 2015:

- An analysis and reorganization of the information concerning the remedies available at the disposal of detainees complaining of detention conditions, including prison overcrowding.
- Statistical data and additional information on the number of complaints allowed by the judges charged with supervising the conditions of detention in the interval between 2014 and 2017, as well as on the number of such complaints allowed by the courts over the same time period.

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- Information on the issues of maintenance and repair works undertaken by the national prison authorities.
- An analysis of aspects concerning detention on remand in police arrest centers, including the analysis of the opportunity of amending existing laws in order to transfer the persons held on remand for more than 60 days in a penitentiary (with the consent of the case prosecutor), with a deadline for the said analysis set for the fourth trimester of 2018.
- Information on the impact of the new criminal law policies implemented in Romania
- An analysis of the possibility of establishing a pecuniary remedy for persons deprived of their liberty which have been incarcerated in inadequate detention conditions and have lodged complaints with the Court or have the possibility of lodging such complaints – with a deadline set for the first semester of 2018.
- The annexes of the Timetable submitted on 25 January 2018 have been expanded with a timetable of actions of the National Probation Directorate, which includes exclusively those measures which have been included in the Action Plan of implementing the Development Strategy of the Judicial System for the 2015-2020 interval, adopted through the Government's Decision no. 282/2016.

At the same time, **we have the honor of submitting the translation of the annexes appended to the Timetable that was transmitted on 25 January 2018**, which contain information on the investment plans to be carried out by the National Prison Authority and the General Inspectorate of the Romanian Police, as well as charts illustrating of the activities carried out by the National Probation Directorate.

The English and French versions of the documents, accompanied by a letter providing similar information – as the one contained in the present letter – were transmitted to the Section Registrar of the Fourth Section of the ECtHR.

I am taking this opportunity, Ms Mayer, to assure you of my highest consideration.



Catrinel Brumar
Agent of the Government



MINISTERUL JUSTIȚIEI

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22 MARS 2018

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

**TIMETABLE FOR THE IMPLEMENTATION OF MEASURES
2018 - 2024 TO RESOLVE THE ISSUE OF PRISON OVERCROWDING AND CONDITIONS OF
DETENTION WITH A VIEW TO EXECUTING THE PILOT-JUDGMENT REZMIVEȘ AND OTHERS
AGAINST ROMANIA DELIVERED BY THE ECHR ON 25 APRIL 2017, according to the Memorandum
adopted by the Romanian Government on 17 January 2018**

[Amendments according to the Memorandum adopted by the Romanian Government on 17
March 2018]

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A. Section B.2 Analysis of options shall be reorganised and shall have the following structure: B.2.1 Legal remedies that may be pursued pertaining to the complaints related to overcrowding, B.2.2 Placement in the custody of the remand and pre-trial arrest centres, B.2.3 Impact of the criminal reform in Romania;

B. SECTION B.2.1 LEGAL REMEDIES THAT MAY BE PURSUED PERTAINING TO THE COMPLAINTS RELATED TO OVERCROWDING, [the paragraphs below shall be inserted and shall read as follows]:

10¹ With regard to the issues raised in the ECHR Judgement in paragraph 47, on the remedies that can be pursued in relation to complaints related to overcrowding and improper material conditions, an analysis of the court minutes admitted by the judges in charge of the supervision of deprivation of liberty, as well as of judgments admitted by the courts was carried out, subject to the exercise of rights during the period 2014-2017, including persons deprived of their liberty who were released.

10² In the period 2014-2017, in the prison system 1,770 court minutes admitted by the supervisory judges and 570 admitted judgements subject to the exercise of rights, were registered. Out of these, 984 court minutes and 408 judgements were admitted by the courts, subject to the non-observance of the accommodation conditions (overcrowding and its subsequent effects). These were executed by the National Prison Administration through its subordinated units.

Number of complaints ADMITTED by the judges in charge of the supervision of deprivation of liberty

	2014	2015	2016	2017	Total
Freedom of conscience, opinions and religious freedom	0	0	5	0	5
The right to information	5	2	5	6	18
The right to consult personal documents	8	7	3	5	23
The right to legal assistance	0	0	0	0	0
The right to petition	0	1	2	0	3
The right to correspondence	4	1	1	1	7
The right to telephone calls	2	4	4	1	11
The right to on-line communication	0	0	4	5	9
The right to daily walks	4	4	2	4	14
The right to receive visits	22	31	38	19	110
The right to be informed of the family situations	0	0	0	1	1
The right to conjugal visits	22	75	95	52	254
The right to receive, purchase and hold goods	16	16	20	54	106
The right to medical assistance, treatment and care	17	21	33	35	106
The right to diplomatic assistance	0	0	0	0	0
The right to marry	0	0	0	0	0
The right to vote	1	0	0	0	1

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The right to rest and to weekly rest periods	0	1	0	0	1
The right to work	4	8	6	12	30
The right to education	2	2	3	2	9
The right to food, clothes, bedding	13	13	35	17	78
The right to minimum conditions of accommodation (undertaking to provide 4 square meters)	48	331	397	208	984
TOTAL	178	514	653	422	1770
Number of enforced court minutes	170	494	591	371	1634

Number of complaints ADMITTED by the courts of law

	2014	2015	2016	2017	Total
Freedom of conscience, opinions and religious freedom	0	0	2	0	2
The right to information	0	1	2	1	4
The right to consult personal documents	1	1	2	1	5
The right to legal assistance	0	0	0	0	0
The right to petition	0	0	0	1	1
The right to correspondence	2	0	0	1	3
The right to telephone calls	0	1	1	0	2
The right to on-line communication	0	5	2	1	8
The right to daily walks	0	0	0	0	0
The right to receive visits	2	4	7	5	18
The right to be informed of the family situations	0	0	0	1	1
The right to conjugal visits	6	8	9	5	28
The right to receive, purchase and hold goods	1	4	6	15	26
The right to medical assistance, treatment and care	6	11	18	6	41
The right to diplomatic assistance	0	0	0	0	0
The right to marry	0	0	0	0	0
The right to vote	0	0	0	0	0
The right to rest and to weekly rest periods	0	1	0	0	1
The right to work	3	6	4	2	15
The right to education	2	0	0	0	2
The right to food, clothes, bedding	1	1	3	0	5
The right to minimum conditions of accommodation (undertaking to provide 4 square meters)	21	85	257	45	408
TOTAL	45	128	313	84	570
Number of enforced court minutes	45	121	306	81	553

10³. As of the date of the pilot-judgment, measures of administrative and legislative nature detailed in B.3.2.1 and B.3.2.2 have been implemented, so that in January 2018, with reference to 3 square meters / prisoner, there is a deficit of 1,206 places of accommodation exclusively in the semi-open detention regime, and with reference

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to 4 square meters / prisoner, there is a deficit of 4,100 places of accommodation in closed and semi-open detention regimes.

- 10⁴. The *current repair and maintenance works*¹ which are conducted annually within the prison system aim at keeping the detention conditions in line with the standards both in detention rooms and in auxiliary spaces (section hallways, clubs, dining rooms, medical practices, educational spaces etc.). For this purpose, starting 2015, the National Prison Administration awarded to prisons the budget necessary for the improvement of the conditions of detention by *painting, repair of installations, replacement of sanitation items, repair of floors etc.* Following these actions, in the period 2015-2017, a number of about 3,832 places of accommodation were refurbished/repared. The amounts provided in the NPA budget, until December 31, 2019, will allow all places of detention, which on January 1st, 2018, need current repairs, to enter into a current repair cycle that extends for a 4 year period and will be completed on 31.12.2019.

C. SECTION B.2.2 PLACEMENT IN THE CUSTODY OF THE REMAND AND PRE-TRIAL ARREST CENTRES, [a new paragraph shall be inserted and shall read as follows]:

- 10⁶. Regarding the issues raised in the ECHR Judgment in paragraph 117, an analysis of the average custody time in remand and pre-trial arrest centres was carried out. At present, the transfer of persons deprived of their liberty to prison is ordered after arraignment and verification of the legality and validity of the preventive measure according to the provisions of Article 348 (2) in conjunction with Article 207 (2) - (4) of the Penal Procedure Code. According to national analysis, the average custody time in remand and pre-trial arrest centres for persons deprived of their liberty (pre-trial arrest) is 60 days. Thus, in 2016, out of the 18,565 persons deprived of their liberty, only 1,311 were held in custody for more than 60 days, representing 7%, and in 2017 out of 18,489, only 1,182, which is 6,3%.

¹ Current repair works aim to keep the buildings (premises) in line with the necessary requirements and to ensure their functionality. Current repair works consist of carrying out, periodically or as necessary, repairs or repair works on the visible parts of the building components or on the installations and equipments, including the replacement of some of their parts. Current repair and maintenance works do not change or affect the structural strength of the building, it does not interfere with its initial characteristics in terms of quality requirements. Current repair and maintenance works are mainly minor works (painting, repairs the wall and floor tiles, replacement of sanitary items with others of the same type, window repairs, door repairs, etc.) consisting of periodic restoration or maintenance in operation of the component elements of the building until the investment works or capital repairs are carried out;

Intervention works (modernisations works) in existent buildings refer to construction, rebuilding, partial dismantling, consolidation, repair, modernisation, modification, extension, rehabilitation, thermal rehabilitation, energy performance improvement, renovation, major or complex renovation as appropriate, destination change, restoration, conservation, total demolition.

Intervention works (modernisations works) are carried out on the basis of a technical expertise drawn up by a certified technical expert and, where appropriate, on the basis of an energy audit drawn up by an certified energy auditor for buildings, and include the planning (feasibility study / investment documentation, technical project, execution details), the execution of the works and the reception of the works.

Intervention works (modernisations works) require the issuance, under the law, of the building or demolition permit, as the case may be.

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D. SECTION B.2.3 IMPACT OF THE CRIMINAL REFORM IN ROMANIA, [this section includes paragraphs 11-15 and the following new paragraphs shall be inserted]:

13¹. According to the analysis of data held by the National Prison Administration, the average number of persons held in custody decreased in the period 2013-2017 by 9,984 prisoners. This evolution is due both to the legislative reform (*the new Penal Code, the new Penal Procedure Code*) and to the enforcement of Law no. 169/2017 on compensatory remedy.

In the period 2013-2016 the average number of persons held in custody decreased from 33,053 prisoners to 27,455 prisoners. Starting with February 2013, with the entry into force of Law no. 286/2009, there is a constant negative relation between the number of persons entering the prison system by reference to the number of persons being released from the NPA subordinate units. Thus, if in 2013 the entry / exit ratio recorded a positive value (3448 - as the difference between the 17482 entries compared to 14034 released persons), starting with 2014 this relation becomes negative, the number of entries being on average lower than the number of entries by 1279 persons (*this calculation is kept negative throughout*).

13². In order to create legal mechanisms to allow the court to choose the most appropriate form of criminal liability, the new Penal Code (Law 286/2009) sets out a new regulation in the field of judicial personalization. The mechanism of judicial personalization has as its main concern the establishment of the way in which the convict will endure the coercion imposed as a result of the offense committed, a sensitive operation because it has the ability to influence directly and in a significant proportion the process of social recovery of the offender. The proportionality of the penalty in relation to the seriousness of the offense and the threat posed by the offender must not be reflected only in the nature, duration or amount of the offense, but also in the manner of the sentence execution, otherwise there is a risk that the effort made to reintegrate the offender will have an effect contrary to the intended purpose.

Thus, in matters of judicial personalisation, two institutions were regulated, namely the *waiver of sentence enforcement* and *postponement of sentence enforcement*, and there was a rethinking of the institution pertaining to the *suspension of a sentence on probation*, these institutions being designed in a progressive sequence determined by the gravity of the offense committed, the threat posed by the offender, the degree of interference to correct the sentenced person and the consequences thereof.

The social reintegration of the offender by alternative means to the execution of the sentence is conditioned at the same time by the evaluation of his/her conduct during the criminal proceedings and by the attitude towards the act of justice. Thus, the offender who has fled and evaded criminal prosecution or trial or attempted to discourage finding the truth or the identification and prosecution of the perpetrator or the participants cannot benefit from the waiver of sentence enforcement, postponement of sentence enforcement or suspension of a sentence on probation,

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since there is a clear incompatibility between the conduct of the offender during criminal proceedings and the nature and purpose of these measures.

- 13³. *The institution referring to the postponement of sentence enforcement*, newly created and regulated in Articles 83-90 of the new Penal Code, may be ordered by the court where the specific sentence is a fine or imprisonment for no more than two years, taking into account the person of the offender and his/her conduct previously and after the offense has been committed, that in relation to the defendant's personal situation, the immediate application of a sentence is not necessary, but the his/her conduct must be supervised for a fixed period of 2 years. The postponement of sentence enforcement cannot be ordered if the sentence provided for by the law for the committed offense exceeds 7 years. The person is subject to a supervision process, with a flexible and varied content, which allows the person's conduct to be checked.
- 13⁴. *The institution referring to the suspension of a sentence on probation*, reformed by new regulations under Articles 91-98 of the new Penal Code may be ordered by the court when setting and imposing a prison term of up to 3 years, also applicable in case of concurrent offences. The supervision term in case of suspension is variable, ranging from 2 to 4 years but not less than the length of the imposed sentence, and the supervision system applied to the sentenced person is similar to that provided for in case of sentence postponement.
- 13⁵. In practice, referring to the above mentioned institutions, the situation in 2016 is the following: out of 33,325 sentenced persons (32,314 natural persons, 932 minors and 79 legal persons), 9,541 persons are serving a custodial sentence, 3,498 persons received a sentence consisting in a criminal fine, 13,217 persons had their sentences suspended, and 6,146 persons had their sentences postponement. In cases pertaining to minors, 522 persons were imposed non-custodial measures and 401 persons were imposed custodial measures.
- 13⁶. The situation in 2017 is the following: out of a total of 34,164 sentenced persons (of which 33,292 are natural persons, 738 minors and 134 legal persons), 8,676 persons are serving a custodial sentence, 4,101 persons received a sentence consisting in a criminal fine, 14,477 persons had their sentences suspended, and 6,187 persons had their sentences postponement. In cases pertaining to minors, 460 persons were imposed non-custodial measures and 263 persons were imposed custodial measures.

E. SECTION B.3.3.5 LEGISLATIVE MEASURES TO ENSURE AN EFFICIENT REMEDY FOR THE DAMAGE CAUSED SUCH AS A PREVENTIVE REMEDY AND A COMPENSATORY REMEDY, [paragraph 70 was amended, and a new paragraph 70¹ was inserted]:

70. The Ministry of Justice is looking thoroughly at the adoption of some legislative amendments with a view to awarding a financial compensation to persons *who have applications pending with the ECHR or who can legitimately lodge an application with the ECHR*.

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In drafting this legal act, in order to grant financial compensation, the existing rulings in this field in some Member States of the European Union will also be taken into account, where there is the problem of overcrowding in prisons.

During the meeting with the representatives of the European Court of Human Rights and the Department for Execution, certain situations were found, that are not covered by the provisions of Law no. 169/2017, as follows:

- i) The situation of persons who have been held for less than 30 days (consecutive or not) in improper conditions and who are excluded from the remedy laid out by the provisions of Law no. 169/2017, which provides 6 days earned for 30 days of detention.
- ii) Persons who were held in inappropriate conditions before 24.02.2012 and cannot benefit from days earned for that period, because the law only takes into account the time served in improper conditions after that date.
- iii) The issue concerning persons who were held in pre-trial arrest in improper conditions, and later were acquitted or sentenced to a non-custodial sentence (or suspension of the imprisonment sentence) and who cannot, in their turn, benefit from a reduction in the length of the sentence.
- iv) The issue concerning persons who are released early from prison without being able to benefit from all the days earned on the basis of the remedy provided under Law no. 169/2017.
- v) Persons who were held in improper conditions only at the end of the detention period and who therefore can no longer benefit from the days they earned given that immediately after the time served in improper conditions they were released.
These situations, which may entitle persons to legitimate lodge potential new applications with the European Court of Human Rights will be covered by rules provided in the draft law on financial remedy if they will be accommodated in improper conditions.

The financial compensation in case of improper accommodation will be made by granting a sum of money to the person deprived of his / her liberty for each day of the sentence served in improper conditions of detention- **time limit: 1st semester 2018**

- 70¹ *Analysis on the opportunity concerning law amendments*, so that the transfer to the prison of the persons deprived of their liberty be carried out after 60 days, with the consent of the prosecutor who carries out or supervises the prosecution. Currently, the transfer of the persons deprived of their liberty to prison is ordered after arraignment and verification of the legality and validity of the preventive measure according to the provisions of Article 348 (2) in conjunction with Article 207 (2) - (4) Penal Procedure Code- **time limit: 4th semester 2018**.



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Annex 3 TIMETABLE OF ACTIONS - NATIONAL DIRECTORATE FOR PROBATION - [the following measures were added]:

Measure provided by the Government Decision no.282/2016	Specific activity	Time limit
B.3.6. Strengthen the probation system by: - promoting legislation on the organisation and functioning of the probation system, as well as the on the status of the probation staff	Promoting the status of the probation staff	2 nd Trimester 2018
	Approval by Government Decision of minimum working standards for community institutions	1 st Trimester 2018
	Completion and promotion of the Framework Programme on civic training through joint order of the Minister of Justice and the Minister of National Education	2 nd Trimester 2018
	Elaboration of the Rules on the organisation and functioning of the national probation system	2 nd Trimester 2018
B.3.6. Strengthen the probation system by: - completing the NDP functioning process by filling in the operational and managerial positions B.3.8. Increasing the capacity of the probation system to implement the new provisions in criminal matters by gradually extending and filling in the organisational chart of the probation services	Introducing a Code of Ethics for probation staff	4 th Trimester 2018
	Funding and gradual employment of existent vacant positions in the organisational chart - 106 probation counsellor positions and 84 positions for staff under contract in the local services and 17 staff positions in the central NDP structure	4 th Trimester 2018
	Funding and gradual employment of existent vacant positions in the organisational chart - 150 probation counsellor positions and 42 positions for staff under contract in the local services and 15 staff positions in the central NDP structure	4 th Trimester 2019
	Continue human resources development by supplementing, financing, and gradual employment of 150 new probation counsellors, 42	4 th Trimester 2020

	positions for staff under contract and 5 staff positions in the central NDP structure	
B.3.9. Strengthen the probation system through management tools at the disposal of the local services, the IT module for managing and processing data concerning cases in the records of the probation services, as well as personnel training	Providing the IT equipment necessary to carry out this activity by the national probation system	4 th Trimester 2020
B.3.7. Approval of the Strategy for the Development of the Probation System 2016-2020 and the elaboration of the National Rehabilitation Strategy for persons subject to penalties and community measures	Adoption of the Strategy for the Development of the National Probation System in Romania for the period 2018-2020	1 st Trimester 2018
	Elaboration of the National Rehabilitation Strategy for persons subject to penalties and community measures	3 rd Trimester 2018