

# Romania

## EXECUTION OF THE EUROPEAN COURT OF HUMAN RIGHTS' JUDGMENTS

### MAIN ACHIEVEMENTS IN MEMBER STATES

The present survey presents short summaries<sup>1</sup> of a selection of the main reforms and achievements reported in final resolutions since the Convention system was amended in 1998 by Protocol No. 11, with a clear focus on recent reforms referring, however, also to important earlier developments.

In view of the wealth of cases closed, the selection concentrates on those which have led to changes of legislation or government regulations or the adoption of new policies or general guidelines from superior courts. As a rule, the survey does not cover information on measures aiming at providing individual redress to applicants.

The presentation is organised country-by-country and reforms are, in principle, presented in the order corresponding to the thematic domains used in the Council of Europe's specialised database HUDOC EXEC and the Committee of Ministers' Annual Reports on the Supervision of the Execution of the European Court of Human Rights' judgments.

Many reforms address issues which appear to be on-going challenges in the member State. The effects of reforms adopted at one point in time may thus need to be monitored and possibly re-evaluated as conditions change.<sup>2</sup>

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<sup>1</sup> The summaries are the sole responsibility of the Department for the execution of the judgments of the European Court of Human Rights.

<sup>2</sup> The presentation is limited to the information provided at the time of the adoption of the final resolution. It is recalled in this context that the Committee of Ministers has issued [Recommendation \(2004\)5](#) on the verification of the compatibility of draft laws, existing laws and administrative practice with standards laid down in the European Convention on Human Rights.

### ► *Actions of security forces and effective investigations*

The independence and effectiveness of investigations into the actions of security forces improved, notably after the demilitarisation of the police in 2002. Now criminal investigations in cases involving police staff fall within the competence of the civilian prosecutor's offices and courts. Investigations into actions of members of the gendarmerie, which remained within the armed forces, are still carried out by military prosecutors, but a reform in 2004 guaranteed their statutory independence, as recognised by the European Court.

The General Prosecutor's Office adopted a strategy to enhance the effectiveness of investigations. Fundamental safeguards against ill-treatment were inserted in law (including the right to immediate access to a lawyer and a doctor). A 2006 legislative amendment introduced the ethnic/racial motivation as an aggravating circumstance, thus creating an obligation for the prosecuting authorities to verify it *proprio motu*.

*Barbu Anghelescu*  
(46430/99+)

[Final Resolution](#)  
[CM/ResDH\(2016\)150](#)

*Mocanu and Others,*  
(10865/09+)

[Final Resolution](#)  
[CM/ResDH\(2018\)229](#)

### ► *Protection against physical violence caused by private individuals*

To ensure effective investigations in cases of assault by private individuals, the Code of Criminal Procedure, as amended in 2003, provides that any person whose legitimate interests are affected by a prosecutor's decision to discontinue proceedings has a right to appeal to a court, which should base its judgment on the case-file and any new written evidence adduced.

Safeguards for the protection of vulnerable persons (such as children and mentally disabled persons) were included in the Code of Criminal Procedure in force since 2013. The investigative techniques used with regard to sex-related crimes were significantly improved. In 2017, the Prosecutor's Office, attached to the High Court of Cassation and Justice, decided to establish a mechanism for the protection of persons with mental disabilities.

*Macovei and Others*  
(5048/02)

[Final Resolution](#)  
[CM/ResDH\(2011\)21](#)

*M.B. (43982/06+)*

[Final Resolution](#)  
[CM/ResDH\(2018\)66](#)

### ► *Lawfulness of expulsion on national security grounds*

The Emergency Ordinance of 2002 was amended and established that the Bucharest Court of Appeal had competence to decide on an alien's undesirability for security reasons in adversarial proceedings against which a cassation appeal can be introduced within 10 days.

The Ordinance also provided that an alien may be placed in custody if there is a risk that they attempt to avoid removal, prevent their return or be subject to a deportation measure ordered by the criminal court. The risk of escape is presumed in cases in which an alien has not met the deadline for voluntary return, has been declared undesirable or has had their "tolerated" status lifted. Custody may be ordered only if it is not possible to proceed with immediate removal. The custody is decided by the prosecutor at the Court of Appeal of Bucharest, for a period of 30 days, upon request of the Inspectorate General for Immigration. Improved guarantees were introduced to secure the lawfulness of detention of aliens and the right to judicial review of expulsion decisions based on national security grounds. They include, in particular, an alien's right to be informed about the grounds on which the person's presence in the country is considered undesirable by the Ministry of Interior.

*Lupsa (10337/04+)*

[Final Resolution](#)  
[CM/ResDH\(2015\)50](#)

*Al-Agha (40933/02+)*

[Final Resolution](#)  
[CM/ResDH\(2016\)110](#)

### ► *Conditions of detention / remedies*

The automatic classification of life-sentenced prisoners as “prisoners who pose a risk to the safety of the penitentiary facility” with ensuing restrictions (including isolation) was abolished. Most of these prisoners are now held in collective cells, with other prisoners similarly classified, and have effective access to out-of-cell activities.

In addition, measures were taken to enhance the effectiveness of investigations into allegations of ill-treatment by prison staff. Special protective measures were adopted for vulnerable prisoners (e.g. with mental or physical disabilities), including their accommodation in a separate cell, the assignment of experienced staff to guard, escort and monitor them, and the provision of adequate psychological and social assistance.

The preparation and distribution of food in line with the prisoners’ religious beliefs was ensured as from 2013.

*Barbu Anghelescu No. 1  
(46430/99+)*

[Final Resolution  
CM/ResDH\(2016\)150](#)

*Predică (42344/07+)*

[Final Resolution  
CM/ResDH\(2017\)291](#)

*Pantea (33343/96+)*

[Final Resolution  
CM/ResDH\(2017\)164](#)

*Vartic No. 2 (14150/08)*

[Final Resolution  
CM/ResDH\(2014\)221](#)

### ► *Right to liberty and security*

#### ▢ *Lawfulness of detention*

Following an amendment of the Code of Criminal Procedure in 2003, detention on remand can only be ordered by a judge.

Further reforms in 2006 ensured access of the accused and his representative to the investigation file and respect for the adversarial principle.

Moreover, appeals on points of law against decisions prolonging detention on remand after committal to trial became possible.

The Code of Criminal Procedure of 2014 brought significant changes as regards the non-voluntary confinement for compulsory treatment and committal to a psychiatric institution for expert examination during criminal proceedings. The prosecutor is no longer competent to order such psychiatric committals. Such competence lies exclusively with the courts according to a procedure providing safeguards for the liberty and security of the persons concerned.

*Nastase-Silivestru  
(74785/01)*

[Final Resolution  
CM/ResDH\(2011\)149](#)

*Petra (27273/95)*

[Final Resolution  
CM/ResDH\(2007\)92](#)

*Varga (73957/01)*

[Final Resolution  
CM/ResDH\(2011\)23](#)

*Filip (41124/02+)*

[Final Resolution  
CM/ResDH\(2017\)165](#)

### ► *Functioning of justice*

#### ▢ *Fairness of proceedings*

Civilians are no longer subject to military courts’ jurisdiction in criminal cases involving both civilians and the military.

The right to be heard in person in appeal proceedings is granted in cases in which the defendant had not been heard previously or had been acquitted.

Reforms in 2004 provided detailed rules about the use of undercover agents and of the evidence so gathered, and introduced safeguards, including judicial authorisation, in respect of telephone tapping in criminal proceedings.

*Maszni (59892/00)*

[Final Resolution  
CM/ResDH\(2013\)168](#)

*Niculescu-Dellakeza  
(5393/04)*

[Final Resolution  
CM/ResDH\(2014\)242](#)

*Constantin and Stoian  
(23782/06+)*

[Final Resolution  
CM/ResDH\(2013\)40](#)

A reform of 2014 ensured that, when *in absentia* proceedings are reopened, the person concerned is released from custody unless ordinary preventive measures apply.

The consistency of case-law has been improved through the adoption of a Code of Civil Procedure in 2013, introducing the possibility for appeals in the interest of the law and for preliminary rulings by the High Court of Cassation and Justice upon request of one of its sections, an appeal court or a tribunal.

The adversarial nature of proceedings was strengthened and included in the fundamental principles of civil procedure, entailing the mandatory communication of pleadings filed by the opposing party.

#### Access to court

The possibility to challenge before a court, administrative decisions concerning rights of persons who had been persecuted on political grounds was re-established in 1998.

Access to court in civil matters was improved by extending exemptions from court fees as well as simplifying procedures for the granting of legal aid and judicial review of legal aid decisions.

The obligation to pay a fixed, excessive, security deposit to introduce an action against enforcement proceedings was declared unconstitutional in 2004.

In criminal cases, the prosecutors' decisions to discontinue proceedings became subject to judicial review by a criminal law reform in 2003. Notification procedures were improved to ensure parties are always informed in due time of proceedings that they are engaged in.

#### Enforcement of final judicial decisions / legal certainty

The prosecutor's right to lodge extraordinary nullity appeals in civil matters was abolished in 2003, and in criminal matters in 2004.

The new Civil Procedure Code of 2013 contains provisions according to which, it is no longer possible for public prosecutors to question the final character of court judgments in civil cases. In revision proceedings, final cases may only be reopened if public authorities have not been legally represented or their legal representation deemed defective due to misconduct of their lawyer.

*Sancaian (71723/10)*

[Final Resolution  
CM/ResDH\(2014\)245](#)

*Beian No. 1 (30658/05+)*

[Final Resolution  
CM/ResDH\(2015\)4](#)

*Grozescu (17309/02)*

[Final Resolution  
CM/ResDH\(2013\)55](#)

*Muncaciu (12433/11)*

[Final Resolution  
CM/ResDH\(2017\)82](#)

*Crisan (42930/98)*

[Final Resolution  
CM/ResDH\(2011\)20](#)

*Iorga (4227/02)*

[Final Resolution  
CM/ResDH\(2011\)24](#)

*Iosif and Others (10443/03)*

[Final Resolution  
CM/ResDH\(2011\)254](#)

*Macovei and Others  
(5048/02)*

[Final Resolution  
CM/ResDH\(2011\)21](#)

*S.C. Raisa M. Shipping S.R.L.  
(37576/05)*

[Final Resolution  
CM/ResDH\(2017\)248](#)

*Brumarescu (28342/95+)*

[Final Resolution  
CM/ResDH\(2007\)90](#)

*Bota, Sergio Popescu and  
Precup (16382/03+)*

[Final Resolution  
CM/ResDH\(2011\)27](#)

*Androne (54062/00)*

[Final Resolution  
CM/ResDH\(2013\)232](#)

➤ Remedies for excessive length of court proceedings

A wide-ranging judicial reform was completed in 2013 in order to reduce the length of civil and criminal proceedings by diversifying the serving of judicial acts, simplifying the contentious proceedings and improving the system of evidence-taking. An effective acceleratory remedy was also introduced and, in parallel, a compensatory one has been developed by court practice.

*Nicolau (1295/02+)*

[Final Resolution  
CM/ResDH\(2016\)151](#)

➤ Protection of private and family life

➤ Access to former communist secret service registers

In 2008, the processing of information contained in the archives of the former communist secret service was transferred to a civilian body, the National Council for the Study of the Archives of "Securitate". Interested persons can apply for access to and rectification of information contained in the registers while decisions taken are subject to judicial review.

*Rotaru (28341/95)*

[Final Resolution  
CM/ResDH\(2014\)253](#)

➤ Filiation / paternity actions

The position of the courts on the questions of reopening paternity proceedings in the light of new evidence linked to new scientific methods (DNA) has evolved in line with the requirements of the Convention.

*Ostace (12547/06)*

[Final Resolution  
CM/ResDH\(2017\)249](#)

According to new legal provisions of 2007, the paternity action is imprescriptible throughout the child's life. However, the Constitutional Court specified in 2008 that the imprescriptibility was applicable only to children born after the entry into force of the new legislation. In 2016, the Constitutional Court changed its case-law, holding that the institution of the limitation period of one year from the birth of the child is only applicable in the case of actions brought by the mother or the legal representative of the child and not to actions brought by the child him/herself.

*Calin and Others  
(25057/11+)*

[Final Resolution  
CM/ResDH\(2018\)418](#)

➤ Protection of correspondence

Prison staff was instructed to respect the principle of confidentiality of prisoners' correspondence and complaints addressed to public authorities, judicial bodies or international organisations or courts and to take practical measures for the effective exercise of these rights.

*Cotlet (38565/97)*

[Final Resolution  
CM/ResDH\(2010\)180](#)

➤ Freedom of expression

➤ Defamation

In 2002 and 2005, prison sentences for insult, and subsequently for defamation, were abolished. In 2006, defamation and insult were decriminalised.

*Dalban (28114/95+)*

[Final Resolution  
CM/ResDH\(2011\)73](#)

➤ Protection against discrimination

➤ on the grounds of gender

As from 2006, the law provides that female and male employees in the army have equal rights to parental leave.

*Hulea (33411/05)*

[Final Resolution  
CM/ResDH\(2013\)194](#)

➤ on ethnic grounds

Following a series of violent anti-Roma events, vast awareness-raising measures and training activities were organised to address discrimination based on ethnic origin. In 2014/15, a further strategy was approved addressing racially-motivated violence against villagers of Roma origin in Târgu Mureş and Hădăreni. It included the construction of a community medical dispensary and an industrial building, the acquisition of equipment, the finalisation of the creation of a local cultural centre, school and kindergarten. The infrastructure had already been improved from 2005 onwards. In view of remaining issues related to the educational, health, employment and housing needs of Roma, an integrated programme against discrimination was established, bringing together teachers, medical personnel and officials from the county administration. In order to regularly monitor the inter-ethnic relations in Hădăreni, local and county authorities, as well as civil society, will address annual assessment reports to the inter-institutional expert working group.

*Moldovan and Others No. 1*  
(41138/98+)

[Final Resolution](#)  
[CM/ResDH\(2016\)39](#)

➤ Electoral rights

Following a ruling by the High Court of Cassation and Justice in 2007, courts ceased to automatically impose on prisoners the penalty of general ban on voting and started determining the need for complementary penalties on an individual basis when sentencing. A criminal law reform of 2014 aligned the legal framework to this case-law. A new electoral Law of 2015 introduced clearer rules for the participation in elections of organisations belonging to ethnic minorities, the sole criteria being the recognition of the public utility of the organisation and a minimum number of members.

*Calmanovici (42250/02+)*

[Final Resolution](#)  
[CM/ResDH\(2014\)13](#)

*Ofensiva Tinerilor*  
(16732/05)

[Final Resolution](#)  
[CM/ResDH\(2017\)9](#)