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Communication from Romania concerning the case of Ioan Pop and Others v. Romania (Application No. 52924/09)

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Communication de la Roumanie concernant l'affaire Ioan Pop et autres c. Roumanie (requête n° 52924/09)
(anglais uniquement)

DGI

16 NOV. 2017

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Action report

Case Ioan Pop v. Romania (application no. 52924/09, judgment of 6 December 2016, final on 03/03/2017)

I. Introductory summary of the case

The case concerns a family's (parents and their minor child) forced execution procedure by eviction from the house where they lived in. Due to the fact that the first applicant opposed to the procedure and became violent towards the bailiff and the police officers, he was immobilized and taken to the police headquarters, together with his wife. The child of the couple, who was 12 years old at the time of the events, remained alone, unattended, until his mother returned. The Court found that the national authorities did not prepare the operation and did not envisage taking measures to supervise and protect, (including by explaining the events) the minor child, although they knew he was present at the site. As such, Article 3 of the Convention was violated.

The Court also found a violation of Article 5 § 1 of the Convention as regards the second applicant, because she was taken to the police station with her husband, the first applicant (who was later detained and then arrested), where she stayed for at least 7 hours without being heard but, however, she was not allowed to leave.

II. Individual measures

a) Payment of the sums afforded by the Court

The sums afforded by the Court as just satisfaction have been transferred into the applicants' bank accounts within the time limits imposed through the Court's judgments.

b) Reopening of the impugned proceedings

Due to the nature of the violations of the Convention in the present case, there are no procedures to be reopened.

III. General measures

III.A. Measures adopted in order to prevent further violations of article 3 of the Convention

1. Observations of the Court

In the present case, the European Court noted that although the situation of the family, respectively the fact that a minor was living in the house where the eviction procedure was to take place, was well known to the authorities, no measure was taken towards him. Even if the particular circumstances of the case were not severe enough as to resort to the

special protection measures envisaged by the Law no. 272/2004, the authorities could have explained to the child the reasons for which his parents were taken to the police station. Moreover, the supervision of the child could have been entrusted to a person who knew him and agreed to take care of him during the absence of his parents.

2. Origin of the violation

The origin of the violation in what concerns article 3 of the Convention resides in the faulty behavior of the authorities, who displayed a poor preparation of the intervention and who did not take the necessary measures in order to limit or prevent the negative consequences on the further development of the child.

3. Measures adopted by the national authorities

First of all, the authorities involved in the execution process were informed, by the dissemination of the Court's judgment, in what concerns the origin of the violation of article 3 in the present case. Thus, a summary of the ECHR judgement was transmitted to the General Inspectorate of the Romanian Police, The National Union of Bailiffs and to the National Authority for the Protection of Children's Rights and Adoption, in order to analyze, identify and prevent further violations of the Convention.

According to the information provided by the General Inspectorate of the Romanian Police, this case was included in the police schools' curricula as part of the initial training of police officers. Also, two training sessions were organized for police officers in the field of human rights protection and prevention of abuse, ill-treatment and degrading treatment. As resulting from the same address, the legal provisions in what concerns the protection and promotion of the rights of the children are now well known and are applied in the activity of police officers.

Given the fact that the Code of Civil Procedure obliges the police structures to provide aid in the execution process (as it happened in the present case), the National Union of Bailiffs and the Ministry of Internal Affairs signed a protocol regarding the collaboration during the execution of enforceable titles. In applying this protocol, a special procedure was issued, in 2010, regulating the activities performed by police officers who accompany bailiffs at the execution of enforceable titles. From the information provided, all authorities implied in the execution process are aware of their obligation.

Secondly, relevant safeguards can be found in the Code of Civil Procedure (CPC) in force since 2013, which are adequate and sufficient for a proper protection of minors which are subject to an execution process.

Article 911 para. 1 of the Code of Civil Procedure (in force since 2013) states that "Execution shall be carried out **in the presence of a representative of the General Direction of Child Protection and Social Assistance** and, where he considers it necessary, of a psychologist appointed by him. The presence of the psychologist is not necessary if the representative of the direction has this qualification."

According to the information provided by the National Union of Bailiffs and the General Inspectorate of the Romanian Police, even if this article is found in the chapter regarding the custody of minors, it is applicable each time the authorities know that at the site of an execution a minor is present. Thus, in such cases, the General Direction of Child Protection and Social Assistance is notified, prior to visiting the places concerned, and asked to send representatives in order to take the appropriate measures regarding minors.

The General Inspectorate of Romanian Police provided several examples in which the authorities, namely the bailiffs and the police officers assigned to aid in the execution process took all the appropriate measures in order to limit the effects on the minors present at the site. Thus, it results that the authorities performed a check before the evacuation processes and, when needed, representatives from the General Direction of Child Protection and Social Assistance were present and provided the necessary measures for the protection of children (for example they were taken, together with their parents or with one of them in shelters or at relatives).

The National Authority for the Protection of Children's Rights and Adoption informed the Government that the local authorities, respectively the General Directions for Social Assistance and Child Protection, organized in each county, signed protocols with the County Police Inspectorates in order to ensure a proper cooperation in matters regarding police operations involving minors.

Although the Court's judgement was pronounced in 2016, the reforms in the field began long before this time and, given the cause of the violation in the present case, the Government appreciate that the training activities are sufficient and adequate in order to prevent future violations of the Convention in similar cases and raise awareness on the importance of the protection and promotion of the child's superior interest.

III.B. Measures adopted in order to prevent further violations of article 5§1 of the Convention

1. Observations of the Court

The Court pointed out that the second applicant was taken to the police station, where she stayed for several hours without her legal situation being clarified, a context in which her deprivation of liberty had no legal basis in domestic law. Her situation could not be considered an administrative measure because the conditions provided by the law (art. 32 § 1b of the Law no. 218/2002) were not met. At that time, two preventive measures could be taken under the Romanian law, namely detention and preventive arrest. However, the applicant was not object to any of them.

2. Origin of the violation

The origin of the violation in what concerns article 5§1 of the Convention resides in the faulty behavior of the authorities, who did not properly apply the legal provisions in force at the time of the events.

3. Measures adopted by the national authorities

Given the fact that the cause of the violation rested in the behavior of the authorities, an extensive dissemination of the case was performed; thus, the General Inspectorate of Romanian Police was informed on the Court's judgment and on the importance of a proper understanding of the situations in which each legal provision relating to deprivation of liberty is applicable. According to the information provided, the case was included in the curricula of police schools.

The Government consider that the legal provisions existing in the Code of Criminal Procedure (in force since 2014) and in Law no. 218/2002 on the functioning of the Romanian Police are clear and sufficient. Even if the Court noted that the applicant's deprivation of liberty had no legal basis in domestic law, it does not mean that such legal basis doesn't exist at all, but that it was not applied by the police officers who took the applicant at the headquarters.

According to art. 61 of the Code of Criminal Procedure:

“(1) Whenever there is a reasonable suspicion of the commission of a crime, the following shall be required to draw up a report on the circumstances found:

- a) state control agents, other state agents, public authorities, public institutions or other legal entities governed by public law, for offenses that constitute violations of the provisions and obligations the observance of which is controlled by the law;
- b) the control agents and the management agents of the public administration authorities, other public authorities, public institutions or other legal persons of public law, for offenses committed in connection with the service by those under their control;
- c) the public order and national security authorities for the offenses established during the exercise of the duties provided by the law.

(2) The agents referred to in paragraph (1) are required to take measures to preserve the place where the crime has been committed and to remove or preserve the material means of evidence. In the case of flagrant offenses, the same agents have the right to make body searches or vehicles, **catch the perpetrator and immediately bring him to the prosecuting authorities.**

(3) When the perpetrator or the persons present at the site have objections or clarifications or have to give explanations regarding the ones recorded in the minutes, the agents have the obligation to record them in the minutes.

(4) The acts concluded together with the material means of evidence **shall be submitted immediately to the criminal prosecution bodies.**

(5) The minutes concluded in accordance with the provisions of paragraph (1) constitutes an act of notification of the criminal investigation bodies and cannot be controlled by the administrative authorities.”

This text contains clear provisions obliging the public order agents to take the necessary measures in cases in which there is a suspicion regarding the commission of a crime. These measures are clearly stipulated by the law and follow well-defined steps, namely: drawing up a report on the established circumstances, immediately presenting the perpetrator to the criminal investigating bodies, forwarding immediately all the documents concluded to the criminal prosecution bodies. The minutes always include the place where they were concluded, the date and time, as well as the activities carried out, the measures taken, as the case may be, etc.

However, it is obvious that the activity of the public order agents is not always continuous, existing numerous downtimes, inherent to the activities they carry out immediately after the commission of a crime they became aware of. For example: identifying people by consulting the databases, taking measures to preserve the place of the crime, identifying evidence, etc. In this context, it is not possible to set a certain length of time for which a person may remain at the disposal of the public order agents, which is why the legislator used the phrase "immediately".

It can be observed that the new regulation is much more comprehensive and more explicit than the previous one (Article 214 of the CPP 1969), since it provides the obligation to carry out the activities swiftly (the perpetrator *shall immediately* be submitted to the prosecuting authorities, the documents to be *forwarded immediately*).

According to article 31 para. 1 b of Law no. 218/2002, "In order to carry out his duties according to the law, the policeman is entrusted with the exercise of public authority and has the following rights and obligations: (...) to take those who by their actions endanger the life of persons, public order or other social values, as well as persons suspected of committing illegal deeds whose identity could not be established under the law to the police headquarters; in cases of non-compliance with the provisions of a police officer, he is entitled to use force; verifying the situation of these categories of persons and taking legal measures, as the case may be, takes place within 24 hours as an administrative measure;

This procedure can be applied only in specific cases, namely when the identity of the perpetrator is not known and specific investigative measures are required. Therefore, given the findings of the Court, the dissemination in the present case also underlined the need to avoid the overuse of this article as a basis for each situation in which a person is taken to the police station, especially when the person is likely to be subject to a criminal investigation. Moreover, the actions of the police must be clear, transparent, in order to avoid further violations of the conventions.

At present, a project to modify the Law no. 218/2002 is in public debate. The article concerning the administrative measure of conducting persons to the police station has been substantially amended.

Therefore, any person who is conducted to the police precinct has the right to a lawyer of her own choice and to inform a member of her family regarding her situation, in the case

where criminal proceedings are being carried out against her. The police officer has to draw up a report, signed by the person in question, containing the date and time when the person was found and all measures taken against her. 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.

It is important to mention that these provisions are already applied by the police officers since 3 March 2014, as they are already stipulated by the “*Proceedings regarding the conducting of persons to the premises of police units*”. However, the need for them to be regulated by the law, and not solely by the proceeding used by the police, rose from the need to allow citizens to be fully aware of their rights and obligations, as the proceedings were not published and thus not accessible. Therefore, by amending the Law no. 218/2002, the situations in which persons can be conducted, as an administrative measure, to the police station are now clear, accessible and foreseeable.

Moreover, the said guidelines of 3 March 2014 require an especially allocated register where all persons taken to the police precinct are recorded. The register will 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 behaviour 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.

In this context, the Government appreciate that no further measures are needed for the execution of this judgement.

IV. Conclusions

To conclude, the Government invite the Committee to close its supervision on the execution of this case, as no other measures are necessary, the individual and general measures already adopted by the national authorities being capable to prevent further similar violations of the Convention.