

Romania¹

IHF FOCUS: Freedom of expression and the media; access to information; freedom of association; judicial system and legal reforms; fair trial and detainees' rights; torture, ill-treatment and misconduct by law-enforcement officers; conditions in prisons and detention facilities; security services; religious intolerance; protection of ethnic minorities; rights of homosexuals; intolerance, xenophobia, racial discrimination and hate speech; arms trade.

APADOR-CH (i.e. the Helsinki Committee in Romania) was active in many areas of human rights monitoring in 1999. In the area of legal reform, the association provided proposals for change and critical assessments of draft legislation presented to parliament. A major campaign was coordinated by APADOR-CH concerning the much criticized draft legislation on religious denominations in Romania, which was eventually withdrawn by the government on 10 February 2000.

Early in 1999, APADOR-CH was involved in an expert working group coordinated by the Center for Legal Resources, which sent its comments and suggestions to the Ministry of Justice before the latter completed a number of draft bills – in particular the penal code, the penal procedure code, the law on administering punishments – and submitted them to the government. Some suggestions of the working group were taken up by the government in these draft bills while others were not. APADOR-CH also commented on the draft bills submitted to parliament and disseminated these comments to members of the specialized commissions.

The government chose to divide the draft bill for the modification of the penal code into two: the Draft Bill Aiming to Synchronize Some Provisions of the Penal Code and of the Penal Procedure Code with Resolution 1123(1997) of the Council of Europe, which dealt with the articles referring to same sex relations, criminal offences against dignity (insult, libel) and crimes against authorities (offence against authority, outrage); and the Draft Bill for the Modification and Completion of the Penal Code, which dealt with the other articles of the penal code.²

One of the few concrete measures taken with regard to the protection of civil rights was the adoption in the summer of 1999 of a law allowing custodial sentences to be replaced by community service. Introducing a practice that was common in countries with well-founded democratic systems and the reduction of overcrowding in prisons, even to a small degree, were important consequences of this law.

APADOR-CH also continued its monitoring of prisons and detention centers, noting improvements in some areas, including a generally good working relationship between the association and the General Directorate of Penitentiaries (DGP), but the persistence of serious concerns about detention conditions. APADOR-CH also documented cases of serious misconduct by law-enforcement officers, some of which are published here, and called for police officers to be subject to greater accountability for their actions.

On a positive note, 1999 was recorded as the first year in which the issue of national minorities did not take precedence over

¹ Based on the Romanian Helsinki Committee-APADOR-CH, *Romania 1999, March 2000. Detailed assessments and APADOR-CH's commentaries on draft legislation presented in 1999 can be found in this report.*

² For details, see relevant categories below.

Romania

other problems, and APADOR-CH welcomed the proposal, to which the association had contributed, for a draft bill outlawing all forms of discrimination.

Freedom of Expression and the Media

The Draft Bill Aiming to Synchronize Some Provisions of the Penal Code and of the Penal Procedure Code with Resolution 1123(1997) of the Council of Europe, presented by government in late 1999, maintained insult as a criminal offence (article 205) but eliminated punishment by detention. Libel (article 206) was maintained, although the terms in prison were lowered (two months to two years as compared to the current three months to three years). APADOR-CH urged the legislature to repeal both articles, arguing that “sedition” should trigger civil rather than criminal liability, and only if bad faith could be proved.

The draft bill did not modify the provisions concerning “dissemination of false information” (article 168/1: “The communication or dissemination, by any means, of false news, data or information, or forged documents, if the deed is liable to jeopardize state security or Romania’s international relations, shall be punished by prison from one to 5 years”). Although the text made no explicit reference to the mass media, it was obvious that journalists, by nature of their professional activities, ran the highest risks of prosecution under the provision. APADOR-CH strongly urged that this article be eliminated, because its broad scope allowed value judgements to fall under the incidence of this article. Moreover, the minimal guarantee – the need to establish the journalist’s good or bad faith – was missing.

APADOR-CH also considered that article 236 (punishing “any show of contempt for Romania’s symbols” or for the “emblems

and signs used by the authorities”) should be repealed. Other countries (i.e. Germany or the United States) hold that attacks against national symbols are consistent with freedom of expression and may not be punished.

The association welcomed the draft bill’s proposal to repeal article 238 (offence against authority) and article 239 para. 1 (verbal outrage), but called also for the modification of articles 166 and 317 (“propaganda in favor of a totalitarian state” and “nationalist-chauvinistic propaganda” respectively), namely for a condition to be introduced requiring the existence of a genuine threat that such ideas, concepts or doctrines might be actually put into practice.

Access to Information

At the end of 1999, the Committee for Defense, Public Order and National Security and the Legal Committee for Discipline and Immunities of the Chamber of Deputies released a joint report on a draft bill on the security of state and job-related secret information, first submitted to the Senate in 1993 and considered by parliament in revised form in 1998. This draft bill raised important concerns which NGOs and even some MPs had debated for several years.

APADOR-CH recommended that such a bill should only be formulated after or concurrently with a law on access to information, and also that the notion of what constituted “job-related secrets” was difficult to regulate by law and should be a matter for all legal entities to determine separately. It noted also that legal restrictions on access to state secrets should only be applied to private legal entities “if they are under contract to state institutions directly involved in the field of national security and only in matters related to the actual object of those contracts.”

Romania

APADOR-CH's detailed assessment of the draft law raised a number of criticisms. These included the over-vague and in some cases inappropriate definitions of what constituted state secrets to be regulated by the law. Furthermore, the bill did not clearly distinguish between three categories of state secret to which it referred, nor did it define the nature of "confidential" information. According to the draft bill, the government would be able to classify any documents without receiving permission from parliament to do so. APADOR-CH also noted that there was no provision in the draft bill for the declassification of information, and criticized the bill for not providing that lists of which documents were classified were made publicly available.

Another law giving rise to freedom of information concerns was the 1991 law on national security, adopted before the constitution came into force and urgently in need of reform.

Three draft bills aimed at reforming the law were submitted to parliament in 1998 and 1999, only one of which attempted to amend – partially – the fundamental principles on which the protection of national security was founded. None of the draft bills was debated in parliament. At the end of 1999, the Supreme Council for National Defense (CSAT) drafted its own version, due to be submitted to parliament, and APADOR-CH joined efforts with four other NGOs to prepare a draft bill for reform of this law. The final outcome was forwarded to a caucus that was supposed to submit it to parliament. Unfortunately, this had not happened as of this writing.

The NGO-proposed bill made the following recommendations: a clear definition of each of the categories of threats to national security (the elimination of some of the current definitions and the replacement of others with more precise ones that no longer included phrases and sentences

such as "liable to..." or "that might endanger...", because the threat had to be genuine, not a mere supposition; judicial control to be instituted both over the issuance and extension of interception warrants as well as over the grounds invoked by intelligence services applying for a warrant and the results obtained during the carry out of warrants; interception warrants to be limited to six months, with only one three-month extension, if necessary; the persons placed under surveillance to be entitled to be informed about this when the warrant had expired and to institute proceedings if they consider their rights had been violated.

Freedom of Association

APADOR-CH called for the elimination of criminal liability of legal entities as part of the proposed reform of the penal code, noting that according to the current principles of criminal law, criminal liability was individual and the legislation in force provided for enough means of triggering the criminal (and civil) liability of natural entities. The sanctions proposed by the Draft Bill for the Modification and Completion of the Penal Code (article 51/2) seriously jeopardized freedom of association.

Judicial System and Penal Code Reforms

Sentencing Policy

APADOR-CH noted several concerns related to provisions on prisoner's rights in the Draft Bill for the Modification and Completion of the Penal Code: the unjustifiable denial of convicts' right "to elect and to be elected" (article 64.a); the denial of the right "to profess" (article 64.c) (namely the occupation exercised at the time when the offence was perpetrated) effectively forcing convicts to train for another profession; and the denial of parental rights (article 64.d), which they said should be restricted to cases in which

Romania

the victim of the crime was the minor child of the convict or another minor child. If all sentences to terms in prison of two years or longer allowed for the application of the additional punishment consisting of denial of certain rights (article 65) for up to ten years, then the exercise of fundamental rights was actually denied to most of the persons sentenced to prison in criminal cases. According to article 71, the restrictions provided by article 64 were effective throughout the whole term in prison. Article 49 of the constitution provided that “the restriction shall be proportional with the extent of the situation that determined it and may not infringe upon the existence of the respective right or freedom.”

APADOR-CH called for the elimination of article 71 and the modification of article 66, according to which the denial of one or several rights is a punishment ordered and motivated by the court, effective throughout the term served in prison and/or afterwards. Among other concerns were the proposed lowering of the age of criminal liability (article 99) from 14 to 13 years – APADOR-CH proposed this should be raised to 16 years – and the retention of vague wording used to define offenses against national security.

APADOR-CH had several concerns about the draft bill to reform the penal procedure code. These included the preservation of the double role of the prosecution, bound by law to gather evidence both in favor and against the accused or the defendant (article 202); the role of the prosecutor, rather than a judge, in supervising and controlling investigations by the police; the subordination of the civil suit in a criminal trial to the course and the results of the latter.

Military Courts

Title II, chapter I (regulating the activity of military courts) was not modified under the draft bill to reform the penal procedure

code. APADOR-CH strongly urged the elimination of all military courts, which would involve a substantial change of Law No. 54/1993 on the Organization of Military Courts and Prosecutor’s Offices. The association considered that maintaining military courts amounted to a violation of the principle of separation of powers in the state, as these judges were subordinated to the executive based on the military hierarchy.

Fair Trial and Detainees’ Rights

APADOR-CH noted concerns about the draft bill to reform the penal procedure code concerning the circumstances under which a person could be arrested, pointing out that the circumstances under which deprivation of liberty was permitted were listed explicitly and limitatively in article 5 of the European Convention and that the Romanian law could not depart from the provisions of the convention. APADOR-CH urged the modification of article 155 (extension of the arrest period during the criminal investigation) and article 160/2 (holding the defendant in custody during the trial), to allow for extensions or for maintaining the defendant in custody only if new elements that change the state of facts existing at the time of arrest are revealed.

Although it appeared in a modified form, article 172(4) maintained the provision according to which any contact with the legal counsel could be forbidden for up to five days. APADOR-CH called for this text be eliminated, as both article 24 of the constitution and article 6 (c) of the European Convention guarantee the right to defense without exception.

A matter of serious concern, which ran counter to the Romanian constitution and to the international documents ratified by Romania, was that article 52 of the Draft Bill for the Modification and Completion of the Penal Code defined punishment and

Romania

its purpose as “a means of constraint, the nature of which shall subject the convict to physical or moral suffering, as well as a means to re-educate the perpetrator.” APADOR-CH held the compulsory infliction of physical and moral suffering during the serving of sentences to be unacceptable, noting that constitutional provisions and international documents prohibit infliction of physical pain, whereas the mental suffering that may occur in detention could by no means be regarded as the purpose of punishment.

“Leading to the Police Station”

APADOR-CH repeatedly pointed out the unconstitutionality of “leading to the police station” as a form of deprivation of liberty of up to 24 hours, provided by article 16 (b) of Law No. 26/2994 on the police. The constitution provided under article 23 that the only form of deprivation of liberty in the absence of a warrant was the 24-hour detention period in police custody, regulated by the penal code and by the penal procedure code. The measure of “leading to the police station” allowed police officers a means by which they could deprive a person of liberty for an additional 24 hours, for which there were no legal procedures. Article 16 (b) provided only that persons suspected of having jeopardized “public order, the lives of persons or other social values” and “whose identity could not be established” could be led to the police station.

Torture, Ill-treatment and Misconduct by Law Enforcement Officials

There were numerous cases documented by APADOR-CH of brutality and misconduct against citizens by law enforcement officers. These included: arbitrary arrest and harassment of citizens by police (the Sascut municipality police station was singled out for criticism by APADOR-CH for several instances of misconduct); the use

of firearms and excessive force to enforce the arrest of unarmed suspects regarding minor offenses; the use of physical violence to force confessions from suspects; and the use of inhumane and degrading treatment of detainees in police lockups, amounting to torture in some cases. APADOR-CH noted that in most cases of alleged abuse by police officers, investigating authorities either refused to take up the allegations or absolved the officers of blame.

■ On 30 April, Constantin Buzatu was attacked and beaten by four men while returning from visiting his father in hospital. Buzatu recognized and named one of his assailants – Lieutenant Constantin Berbecel from the Craiova 4th precinct police – who told the others to stop hitting Buzatu. When Buzatu went to the 4th precinct police station to lodge a complaint related to the incident, the duty officer refused to record the complaint, urging Buzatu to return there the next day. A medical report of 3 May noted facial bruising and recommended a week of medical care. After lodging a complaint with the Craiova Military Prosecutor’s Office, in which he identified all his assailants, Buzatu took his case to the local media. The Prosecutor’s Office apparently solved the case in four days, when on 7 May, Buzatu was notified that no indictment of the three police officers would be made and concluding that the only civilian involved, Marian Fanuica, against whom he could press charges in court, had been the only one to hit him. When Buzatu appealed to the Military Department of the General Prosecutor’s Office, he was informed on 22 June that the conclusions of the Craiova Military Prosecutor’s Office would be upheld.

■ On 9 September, Cristian-Venus Dumitrescu (19) and his sister Gianina Dumitrescu were taken from their home to the Dolj County Police Inspectorate. The police told Cristian he was charged with having robbed a Korean citizen, in com-

Romania

plicity with three others, and allegedly having stolen U.S.\$ 7,000, two credit cards and an identification card from him on the night of 28–29 August. Gianina Dumitrescu declared that having been investigated by an IPJ officer, her brother had told her that “he could not bear it anymore” and that “he was going to commit suicide.” On 9 September, Cristian Dumitrescu told his girlfriend that he had been constantly threatened by the police officers (“you will spend 15 years in prison”) and kicked in the liver. Later that day, when Cristian was going to be placed under arrest, he threw himself through a third floor window. He died the next day of his injuries at Craiova Clinical Hospital. Although an investigation into the incident was not concluded during the year, the prosecutor in charge allegedly told friends of the youth that the police officers were innocent. APADOR-CH had received no answer to the questions it put to the authorities about Dumitrescu’s death as of this writing.

■ Aurel Uluiteanu (44), who lived with his parents in Barcanesti municipality, died in September, following a beating received at the police station in his village. According to his father, one day before this incident, the chief of the police station in the village and his deputy had taken Uluiteanu to the Urziceni Court, where he had a case pending, after several villagers had accused him of disturbing public order. Uluiteanu escaped from court and returned home. He spent the night in the open, but was found the following morning by police and taken to the police station. It was believed one of the police officers was celebrating his birthday at the police station and that several civilians also attended the party. Despite uncertainty as to exactly what happened there, Uluiteanu’s parents were informed that afternoon that their son had died. The Military Prosecutor’s Office ordered the arrest of the police chief, who was directly involved, and of one of the civilians who

had attended the party. APADOR-CH was later informed that a non-commissioned officer was under arrest, accused of the killing.

Conditions in Prisons and Detention Facilities

Detention Facilities

Conditions in pre-trial detention facilities were a cause of concern. Most lockups were situated in the basements of police stations, with poor ventilation and little natural light. In some lockups, the beds and tables were made of stone. Detainees were denied access to any form of media, a condition explained officially by lack of funds, although APADOR-CH noted that this effectively kept detainees isolated from the outside world.

The quality of food for detainees, provided by the nearest prisons, remained very poor. Hygienic conditions were also very poor, with inadequate basic sanitation and in some cases lack of funds to provide soap and detergent. In most lockups, the shower and sink taps were placed outside the lavatory and could be turned on and off only by the police officers. APADOR-CH noted that this practice, by which detainees depended entirely on the good will of police officers with regard to sanitation, could be regarded as a degrading treatment. Equally degrading were the conditions made necessary by the lack of toilet facilities, forcing detainees to resort to buckets or plastic bottles to relieve themselves.

According to Order 0410/1974, any person arrested/held in police custody had to be examined by a doctor within 24 hours. However, inadequate medical services meant this was often not the case. The situation in Bucharest was particularly bad, with 20 police lockups and the General Directorate of the Bucharest Municipal Police (DGPMB) serviced by one doctor and

Romania

four medical assistants. In June, there were about 600 detainees in Bucharest lockups. The same doctor and the medical assistants also had to tend to the police staff. In rural lockups, the situation was better, at least in terms of the number of doctors and medical assistants looking after detainees.

All lockups had their own “surgeries” where the detainees were examined, provided with a bed, a table and a chair, but no medical equipment. However, police stations had well-equipped surgeries where detainees were examined only under exceptional circumstances. There were reports that examining doctors were reluctant to record signs of ill-treatment by police officers before the issuance of a police custody order.

■ Florin Evelin Grosu (15) was detained at IPJ Iasi at the beginning of the month of November. Held in police custody in 5th precinct Iasi with another minor, Grosu claimed that on 21 September he was forced to lean against the heater while he was beaten with a truncheon, punched and kicked by police officers. At the IPJ Iasi lockup, Grosu complained he had experienced headaches since the beating. The medical record mentioned the headaches, but not the alleged cause. On 6 October, when APADOR-CH representatives talked to Grosu, he showed them a bruise on his back which could have been the result of the beating at the police station.

There was little provision for detainees to receive exercise. Despite regulations providing for 30 minutes’ exercise daily, there were no sports or exercise facilities and walking grounds were no bigger than the cells. In some cases there were little or no opportunities for exercise. At DGPMB, women detainees were taken out for 15-20 minutes once a week; at IPJ Maramures, the women and the minors had been taken out for a walk the day prior to an APADOR-CH visit, after spending over

two weeks in the cells; at IPJ Iasi, the minors had been taken out once for 15 minutes during the 10 days preceding an APADOR-CH visit.

The right to correspondence of persons detained in police lockups was severely restricted and detainees’ correspondence was censored. Order 901/1999 provided that detainees were only entitled to send one postcard and to receive one every month. APADOR-CH noted that this was one instance of the unacceptable difference between the regime for detainees and those in prisons.

Prisons

Although APADOR-CH noted the general willingness of the General Directorate of Penitentiaries (DGP) to institute reforms and the overall positive aspects of its attitude towards cooperation with APADOR-CH, serious concerns remained about prison conditions in Romania.

Overcrowding continued to be the most serious problem encountered in the penitentiary system and it appeared that this problem would not be solved in the near future. Severe overcrowding led to physical and mental discomfort for inmates but also, due to a high ratio of prisoners to warders, to tensions between prisoners and warders and to inadequate education activities for inmates. APADOR-CH noted that overcrowding was exacerbated by the tendency of judges and magistrates to hand down pre-trial detention orders too often, and the fact that many detainees were spending a long time – in some cases half the relevant prison sentence for the alleged crime – in detention. This was in contrast to a maximum pre-trial detention period in Western Europe of 3–6 months.

Lack of funds and the rigid feeding norms established by the DGP, ensured that the quality and quantity of prison food remained poor. Hygiene in prisons was un-

Romania

satisfactory in most cases. APADOR-CH noted that this entailed not only health risks for inmates but also constituted degrading and humiliating treatment. Although financial constraints were often given as the reason for poor sanitation, infestations of lice and rodents, etc., APADOR-CH noted wide variations in hygiene standards from prison to prison, despite the existence of similar budgets.

There was no improvement in leisure and education opportunities for inmates in Romanian prisons. APADOR-CH noted that minors and detainees with long sentences, especially life-terms, should be paid special attention regarding educational and leisure activities, and mentioned the programs at Craiova juvenile penitentiary as a positive example of reform. Inmates complained that exercise yards were poorly used, despite the obvious benefits of outdoor exercise.

Religious freedom within prisons was generally allowed, although APADOR-CH were informed in several prisons that inmates were forbidden to change their religion while in custody, a restrictive practice which they brought to the attention of the DGP. The right to privacy of inmates regarding correspondence was now observed in the prisons visited by APADOR-CH.

Medical care of inmates was poor. The scarcity of medical staff – especially of doctors – was the most serious issue. The example of the Mandresti prison was representative for most Romanian prisons: one doctor, one dentist and seven medical assistants were responsible for the health care of almost 1,500 detainees and over 200 employees. Although on 13 July the DGP informed APADOR-CH that a new order had been issued ordering staff as of 1 July to seek medical services outside the prisons for their own medical needs, there was evidence beyond this date that prison medical staff were continuing to provide

medical assistance to prison staff. APADOR-CH also noted cases of severe professional misconduct by some prison doctors, resulting in poor treatment of inmates.

Punishments meted out by prison authorities to inmates who violated internal regulations differed from prison to prison, as there were no consistent regulations issued by the DGP. A common punishment, isolation, was handed down for such actions as a refusal to carry out work, or exhibiting a “disrespectful attitude to staff.” APADOR-CH noted that, given the appalling conditions in isolation cells, this punishment caused suffering to the inmates thus detained. The worst conditions in isolation cells were observed in prisons in Baia Mare, Iasi, and Satu Mare.

Although rare, there were still cases of inmates who complained of having been beaten by staff. At Baia Mare prison, APADOR-CH discovered heavy wooden mallets with long handles, used “to check the iron bars,” according to the staff. Some inmates, however, claimed that the prison officers beat them with the wooden mallets. The DGP denied that the detainees were beaten with mallets but confirmed that a prison officer was under investigation for allegedly hitting the detainees.

After a 3 September roof-top protest by inmates at Iasi prison, officers stormed the cells and beat other prisoners who had expressed solidarity with the protesters. Following a further roof-top protest on 27 September which ended peacefully, all protesting prisoners (ten in total) were punished by ten days in isolation cells. APADOR-CH noted the high incidence of self-harm carried out by prisoners in Iasi prison and called for this and various serious claims of brutality and neglect by warders and the prison doctor to be investigated by the DGP and the Ministry of Justice.

Romania

Inmates serving life-terms were mostly held at the Craiova prison for adults, and were subject to a special regime. This involved no educational or cultural activities and no opportunity to work, although inmates were allowed 2-3 hours daily in the open and could play football once a week. APADOR-CH called for more attention to be paid to the needs of such inmates and for them to be accommodated in other prisons, where possible with those serving lesser terms.

Security Services and Right to Privacy

The Draft Bill on the Security of State and Job-Related Secret Information

APADOR-CH considered that this draft bill would violate rights and liberties such as access to information, the free flow of information, freedom of expression, presumption of innocence, access to justice, etc., while increasing the ability of the Romanian security services (SRI) and other "public authorities involved in intelligence work" to place citizens under surveillance without being subject to democratic controls.

Article 19 (f) of the draft bill would entitle SRI to carry out "preliminary acts related to the violation of the norms on the security of state secret information, in accordance with the conditions set by the penal procedure code." This would mean that, in accordance with article 224 of the penal procedure code and of article 91/1 of the penal code, SRI would be entitled to tap phone calls and place a person under surveillance on the basis of a 30-day warrant (which could be extended for an indefinite number of 30-day periods), besides the similar warrant SRI could apply for on the basis of article 13 of the Law on National Security (a warrant valid for up to

six months, but which could be extended indefinitely). In other words, instead of ensuring a better protection against potential abuses perpetrated by the authorities, the draft bill supported the contrary. Article 19 (j) would entitle SRI to "apply contraven-tional sanctions for violations of the norms regarding the security of state secret information," although this was not permitted by Law 14/1992 on the Romanian Intelligence Service.

The Draft Bill for the Modification and Completion of the Penal Code, presented to parliament in 1999, introduced article 261/1 ("tampering with the activity of the judiciary"). In practice, the article would allow criminal investigation bodies to gain access to all the data and documents owned by natural or legal entities, including unrestricted access to their premises, completely ignoring the confidential nature of the work of certain professional categories (journalists, doctors, lawyers, priests, etc.). APADOR-CH held this article to be unconstitutional, because it would violate and deny the right to privacy and the inviolability of the domicile.

The draft bill also introduced new provisions related to the wiretapping of calls and communications. APADOR-CH considered that article 91/1 should be improved to limit the wiretapping period to a maximum of 30 days, to eliminate the possibility of intercepting the calls or communications of other persons (family, colleagues) using the telephone under surveillance, and to allow authorization of such surveillance only once during the criminal investigation conducted in a particular case.

Religious Intolerance³

1999 was a significant year with regard to freedom of belief and religion in Romania. Trends from previous years continued, in-

³ For a very detailed assessment of the draft legislation on religious denominations, please refer to the report of APADOR-CH *Romania 1999*, March 2000.

Romania

cluding: obstacles to free exercise of religious life for religious communities not acknowledged as denominations; obstacles for religious communities wishing to be recognized as legal entities; religious discrimination; the inefficiency of the judiciary in re-establishing the right to property, especially in the case of Greek Catholic (Uniate) churches. A significant development was the ordinance by means of which it was decided that the clergy should be remunerated entirely from the state budget. But the event that turned 1999 into a watershed year for religious life in Romania was the adoption by the Romanian government in September, and submission to parliament of the draft bill on the status of religious denominations.

The Draft Bill on the Status of Religious Denominations

The draft bill on the freedom of religious denominations was condemned by APADOR-CH as a dangerous step towards the creation of a Romanian Orthodox state, and away from the secular state. Most minority religious denominations criticized the draft bill and asked the government to withdraw it, as did many religious associations. Also, the Romanian president, government and parliament were under strong international pressure not to adopt the draft bill. The draft bill was subsequently withdrawn by the government on 10 February 2000.

The Draft Bill on the General Status of Religious Denominations was submitted on 13 September by the State Secretariat for Denominations, a body headed by a leading Romanian Orthodox theologian, whom APADOR-CH considered biased in favor of the Romanian Orthodox Church, the majority religion (over 80 percent of the population were registered as members in the 1992 census). The bill contained significant measures to limit and control religious activity in Romania and to turn the Romanian Orthodox Church

into an institution that enjoys a special relationship with state authorities. The new bill drew heavily on the model of Decree 177/1948, used to regulate organization and functions of religious denominations under the communist regime. As such, APADOR-CH considered both its fundamental conception and execution flawed, and called for a rethink of the legislation in line with Romania's constitution and international norms.

APADOR-CH criticized many provisions of the draft bill for discriminating in favor of the Romanian Orthodox Church. Among these, article 7 contained a new provision that "The state shall support the activity of religious denominations, in accordance with the principle of proportionality." The association noted this could be used to severely restrict the access of minority religions to media, to facilities and to financial support. Articles 15 and 23 restricted the ability of religious communities to achieve legal recognition as denominations according to their membership. Those not having a membership of at least "0.5 percent of the country's population, according to the latest census", for example, would be denied legal status. APADOR-CH noted this would exclude effectively all those communities with less than 115,000 members, and that it represented a direct violation of the principle of equality among denominations. Provisions in the bill for state assistance to religious denominations were excessive, in terms of direct financial support, premises and remuneration of personnel. This would strengthen the increasing closeness between religious leaders, primarily those of the Romanian Orthodox Church, and political authorities.

The most serious proposed restrictions on freedom of religion involved the provisions of the draft bill regulating religious communities, which did not qualify for legal status as denominations and would therefore seek registration as associations.

Romania

According to article 6 (2), religious associations would only be registered where communities had at least 300 members, at least two-thirds of whom had to be Romanian, and “upon the previous agreement of the State Secretariat for Denominations.” Religious communities were bound by law to seek registration and those which undertook religious activities without legal status risked large fines of between 50 million and 150 million lei (U.S.\$ 2,500–7,500) under the draft bill’s article 67. APADOR-CH feared that given the track record of the State Secretariat for Denominations in acting to limit religious activity and mirroring Romanian Orthodox policies, these provisions would have had a serious chilling effect on freedom of religion in Romania.

Protection of Ethnic Minorities

National Minorities

No spectacular development related to the situation of national minorities occurred in 1999. It was perhaps the first year when this topic appeared of much less importance than other issues in Romanian society.

On 3 August, Law No. 151/1999 ratifying Emergency Ordinance No. 36/1997 on the modification and completion of the Law on Education No. 84/1995 came into force. Chapter XII included new provisions related to the education of persons belonging to national minorities.

Article 123 had been the focus of a lengthy struggle led by the Hungarian minority to establish multicultural universities upon request. According to the article, groups, sections, colleges and faculties with tuition provided in the minority mother tongue could be organized upon request within state-owned higher education institutions. In such cases, specialized terminology was to be taught in Romanian. Multicultural

higher education institutions could be established upon request, according to the law. Tuition languages could be established in the founding statutes of these institutions.

The fact that the parliament turned down the persistent request to establish a Hungarian higher education institution represented, however, the victory of an anti-minority attitude. APADOR-CH noted that the interpretation of article 27 of the ICCPR in the Romanian framework should have obliged the Romanian authorities to comply with the request of the Hungarian minority.

The Romanian parliament also discussed the draft bill for the modification of the Law on Local Public Administration No. 69/1991, which refers to the percentage of minority population in a locality that mandates the use of that minority’s mother tongue in their relationship with the local authorities. Discussions were expected to be resumed in the first half of 2000. The two laws – on education and on local administration – represented the most important legal norms regulating the status of national minorities.

Rights of Homosexuals

The Draft Bill Aiming to Synchronize Some Provisions of the Penal Code and of the Penal Procedure Code with Resolution 1123(1997) of the Council of Europe, presented by government in late 1999, proposed the repeal of article 200 of the Romanian penal code, which criminalized same sex relations. This was welcomed by APADOR-CH.

Romania

Intolerance, Xenophobia, Discrimination and Hate Speech

The Draft Bill on the Elimination of All Forms of Discrimination

An interesting initiative, which promised to have a considerable impact on the issue of discrimination in Romania, especially in the case of Roma, was the draft bill on the elimination of all forms of discrimination, elaborated under the aegis of the Department for the Protection of National Minorities. Members of APADOR-CH participated in drafting the legal proposal.

The draft bill defined discrimination as “any difference, exclusion, restriction, or preference aiming to or resulting in the restriction or prevention of equal recognition, use or exercise of human rights and fundamental liberties, in the political, economic, social, cultural or any other field of public life.” Starting from this premise, the draft bill established principles related to “equal opportunity in economic activities, in terms of employment and profession”; “access to public administrative, legal, health services, to other services, goods and facilities”; “access to education”; and “freedom of movement, the right to free choice of domicile and access to public places.”

A special section was dedicated to the “right to personal dignity,” which referred to “any behavior that violates personal dignity or that of a community, consisting of indecent remarks, the use of insulting, pejorative or offending language, which subjects a person, a group of persons or a community to an unjust or degrading treatment, on grounds that they belong to a disfavored race, ethnic background, nationality, social class, or based on their convictions, gender or sexual orientation, and respectively due to the appurtenance to an organization the activity of which aims to protect any of the categories above.”

The establishment of a National Council for the Elimination of Discrimination was planned to enforce this law, as a specialized body of the local public administration subordinated to the government. The institution would have the competency to acknowledge the offences provided by the law and to apply sanctions. The acts that document such offences could be challenged in court, in accordance with Law 32/1968.

Significantly, the draft bill also allowed human rights NGOs to appear in court on behalf of the damaged party in order to ensure the representation of discriminated communities or groups of persons. Such organizations could also appear in court on behalf of the damaged party if the discrimination violated the rights of a natural person, on condition that this person mandated the respective organization to do so.

Arms Trade⁴

Recent cases have demonstrated Romania’s role in violating international arms embargoes, arming human rights abusers, and fueling violent conflict, and point to the need to halt such irresponsible arms trading. For example, in late 1998 the Romanian Defense Ministry acknowledged in a statement that a state-owned company under a prior regime had illegally sold missile systems to Iraq from 1994 until the end of 1996. It further stated that Romanian authorities had monitored a recent effort by Iraq to renew commercial arms contacts during a May 1998 visit to Bucharest. Iraqi officials confirmed that a delegation from Baghdad met with the Romanian company to discuss a contract, but denied that they attempted to negotiate the purchase of technology prohibited under a United Nations embargo.

In September 1999 Romania announced the indictment of an Israeli-Romanian

⁴ By Human Rights Watch/Division on Arms for the *IHF Annual Report 2000*.

Romania

arms dealer for illicit arms trafficking. The dealer was alleged to have bought weapons from several companies in Romania and elsewhere and to have smuggled them to various destinations in Africa using false documents. One deal in 1999 reportedly involved the sale of explosives to Eritrea, which continued to be entrenched in a war with Ethiopia that has displaced thousands of civilians on both sides. Eritrea and Ethiopia were both subject to a voluntary United Nations arms embargo. ■■■