

IHF FOCUS: Elections; freedom of expression and the media; detainees' rights; ill-treatment and misconduct by law enforcement officials; conditions in prisons; religious intolerance; protection of ethnic minorities; homosexuals' rights.

The year 2000 represented a period of stagnation from the point of view of bringing legislation up to par with the European standards – particularly that related to civil liberties. The members of both Chambers of the Parliament, the Senate and the Chamber of Deputies, were occupied mostly with the local and general elections (in June and November 2000, respectively) and lacked the political will to pass the necessary legislation.

A human rights issue of special concern was the so-called Stoica package (named after the former Minister of Justice) which included many important amendments to the Penal Code, the Penal Procedure Code, the Law on Execution of Prison Terms etc. APADOR-CH (the Romanian Helsinki Committee) will closely follow the debates in the new Parliament on those bills.

Police conduct remained a serious cause of concern while some improvements were noticed in prisons, which, nevertheless, had to struggle with many problems.

Elections

The general elections resulted in an expected victory for the PDSR, the party that ruled the country in 1990–1996. The emergence and popularity of the extremist Romania Mare party was a cause for alarm. It is led by Corneliu Vadim Tudor, who repeatedly threatened to rule the country by using firearms and public executions, to expel the “enemies” from Romania and to place all Roma offenders into special camps. Romania Mare received approximately one third of the seats in the Parliament and became the second most popular party in Romania, after the PDSR. Since the latter declined to cooperate with the former, choosing to rule the country single-handed, the Romania Mare party adopted

a destructive attitude, vetoing every decision in the Parliament. The PDSR concluded a one-year mutual support agreement with the other three parties represented in the Parliament (the Liberal Party, the Democratic Party and the UDMR – the party of the Hungarian minority).

Freedom of Expression and the Media

In 2000, the Chamber of Deputies passed a proposal to harmonize some provisions of the Penal Code with the Resolution 1123/1997 of the Parliamentary Assembly of the Council of Europe. The Resolution clearly stated that Articles 205 (insult), 206 (defamation), 238 (offence of authorities) and 239(1) (verbal “outrage”, i.e. an offence of lower-ranking officials) should be amended. The draft bill passed by the Chamber of Deputies that repealed Articles 238 and 239(1) ruled that insult is to be punished only by a fine, while defamation still carries a penalty of a fine or imprisonment of 3-12 months.

Although APADOR-CH has permanently asked for the removal of insult and defamation from the Penal Code (compensation would have been sought in civil court cases), it supported the modifications because they repealed some notorious articles, and took action to convince the former senators to pass this piece of legislation prior to the general elections. Despite international support and pressure, the former Senate did not vote on the amendments: the struggle shall be continued with the new Senate.

APADOR-CH also wrote comments on a draft bill on access to information. Nearly every article of that bill had to be either repealed or rewritten. A second draft bill on the subject, supported by APADOR-CH (with a few objections) was not adopted as

a Governmental Ordinance, which means that it would follow the normal procedure in the Parliament.

Detainees' Rights

There were two situations in which the police may deprive someone of freedom without an arrest warrant: first, "leading" suspects to the police station if they could not produce an ID card and keep them there until their identity is established, however, for the maximum of 24 hours. The "leading" - which APADOR-CH considered an unconstitutional measure - was in no way regulated and did not provide for the right to legal counsel. The police officers frequently argued that "leading" someone to the police station was not a form of deprivation of freedom but a mere "administrative measure." APADOR-CH claimed that as long as someone is not free to walk out from the police station, that means deprivation of freedom.

In the proposal to amend Law 26/1994 on the Police, the Ministry of Interior indirectly acknowledged the interpretation of APADOR-CH: it issued a draft on the right to a counsel during the up to 24-hour of "leading." The draft bill has been in the Parliament since 1999 but had not been debated by the end of 2000.

APADOR-CH believed that during the above-mentioned 24 hours, the person deprived of freedom was in the most vulnerable situation being entirely at the disposal of the police officers.

The second form of deprivation of freedom - the 24-hour police custody - did not provide for a much better protection of the suspect, but at least there were clear rules, which included the right to defence. Those rules - amended in 1999 - specified the confidentiality of the discussions between the suspect and the lawyer. In practice, however, this was not regularly observed under various pretexts such as "not having an appropriate space" or "the lawyer did not ask for a private talk with his/her client".

III-Treatment and Misconduct by Law Enforcement Officials

Use of Firearms

Neither the modifications to Law No. 26/1994 on Police nor the Statute of the Police Officer were debated in the Parliament in 2000. Those two legal documents contained the provisions necessary to start demilitarisation and decentralisation of the police, both constantly urged by national and international human rights NGOs and IGOs.

APADOR-CH repeatedly took up the fact that the Romanian police frequently resorted to the use of firearms, which violates the UN and the Council of Europe's regulations on the use of force. The main document - *Basic Rules for Using Firearms by Law Enforcement Officials* - clearly describes the principles of proportionality and allows resorting to firearms only in case someone's life is put in real danger or when a prisoner escapes.

The Romanian laws still in 2000 allowed for using firearms in a number of situations which included firing at anyone caught in *flagrante delicto* who would flee from the site of the crime and would not stop when required by the police.

The provision was problematic as it *de facto* gave the police officers the right to fire also at suspects of petty offences such as pickpockets, persons breaking into a car boot or a kiosk etc.² So new internal rules and regulations - which were not open to public - introduced a number of compulsory cumulative conditions for the police officers to allow them to use their lethal weapons. However, the expected positive effects were not visible by this writing.

III-Treatment

APADOR-CH had the possibility to visit police lockups between November 1998 and February 2000 under certain - acceptable - conditions. After that, the General Inspectorate of the Police imposed severe limitations, which would have rendered any further visits useless.

In 2000, APADOR-CH investigated nine cases of alleged police abuse.³ Four deserve special attention.

◆ On 18 May Mugurel Soare (19) was beaten and then shot in the head by a plain clothed police officer in Bucharest. Taken to the hospital in a coma – from which he emerged five days later – he was operated on twice. Since his release at the beginning of August, Mugurel Soare is half-paralysed and not able to speak. At this writing, he was due for another operation but in the meantime he has undergone no rehabilitation treatment. The plain clothes police officer who shot him cited self-defence. In fact, he came to the same hospital where Mugurel had been taken, and displayed a superficial wound on his stomach which did not require any special medical assistance or hospitalisation. The police officer maintained that Mugurel Soare had stabbed him with a knife. However, the fact that he said the knife was never found did not seem to bother either the police officer or the Military Prosecutor in charge of the case. Two eye-witnesses claimed that Mugurel Soare had no knife and that the police officer seemed in perfectly good shape after the shooting, with no drop of blood to be seen on him. It should be mentioned that the plain clothed police officer, together with two other colleagues, were on a mission which had nothing to do with Mugurel Soare. As of this writing, the Military Prosecutor had not decided on the Soare case.

◆ On 12 October, Teodor Cicerone Nartea was beaten by two plain clothed police officers downtown in Bucharest. He was then handcuffed and taken to the Police Station No.10. On the way and at the police station the two police officers continued to beat him, attempting to force him to admit to have stolen from a car 15 audio-cassettes and a few small tools. Nartea refused and he was put in the police lockup. The next day he was so ill that he had to be taken to a police clinic and was diagnosed with a broken rib. At this writing, Nartea was

in pre-trial detention and awaited trial for theft. Another detainee witnessed the severe beating of Nartea to APADO-CH. His description - black swollen eyes, blood on the face, terrible pain in the chest and a leg - were consistent with Nartea's statement. Nartea also claimed that he had no counsel either when he was taken into police custody or when the Prosecutor issued the arrest warrant. The General Inspectorate of the Police denied every allegation and mentioned a name of an ex-officio lawyer who allegedly was there when Nartea was taken into custody. To the date of this writing, the Military Prosecutor has not decided on the case.

◆ Silviu Rosioru (33) was severely beaten by six police officers in the night of 25/26 January in a restaurant Buzau. The officers belonged to the "rapid intervention unit." Taken to the police station, he was fined and sent out, although it was obvious that he was unable to walk due to injuries resulting from the beating. In the end, he took a taxi and went straight to the hospital. The diagnosis cited multiple traumas on the head, stomach, back, the legs and the hands. Due to extensive coverage of his case in the media, the General Inspectorate of the Police moved the perpetrators out of the public eye. However, later on, the head of the "rapid intervention unit" was discretely promoted. As of the end of 2000, the Military Prosecutor did not issue any decision on the Rosioru case. Moreover, the victim claimed that the promoted major kept threatening to throw him into prison if he did not withdraw the complaint against the police officers involved in the January 2000 incident.

◆ In the evening of 4 December, Dumitru Matei was shot in the head by a gendarme who was part of a group watching the neighbourhood of an oil refinery in Pitesti. In the last half of 2000, there were repeated reports about thieves who would punch the oil pipelines to steal petrol. Dumitru Matei, who was taken to the hospital and operated on to extract the bullet, claimed

that he was not stealing petrol, that he did not see anyone in the area (either thieves or gendarmes), and that he never heard any warning from anyone. He said he lost consciousness, and woke up at the Pitesti hospital from where he was taken to the Bucharest emergency hospital. He was released from the hospital in mid-December but his family again took him to the hospital – this time to the psychiatric department of the Pitesti hospital – as he was complaining of unbearable headaches following the shooting. His mother and the wife-to-be said that the local police were trying to intimidate them into saying that Dumitru Matei had been involved in petrol stealing. No decision on the case was issued by the Military Prosecutor by the end of 2000.

Conditions in Prisons

In 2000, APADOR-CH visited 16 facilities, including one prison hospital (Jilava – Bucuresti) and the two re-education centres for minors (Tichilesti and Gaesti). APADOR-CH representatives had a one-year valid permit which allowed them to pay unannounced visits to any prison in Romania. As a result of every visit, a report was written.⁴

Overcrowding

Although overcrowding had slightly decreased, nearly all prisons in Romania still had to cope with this problem in 2000. The most overcrowded prisons visited in the year 2000 were Bucuresti-Jilava: it was officially designed for 1,530 prisoners but in reality accommodated 3,373 prisoners with 2,555 beds. Targu-Jiu had 500 official places, 875 beds and 1,230 prisoners. In Galati, where the old prison was levelled but the new one had only been half-erected, the facility had 1,384 prisoners who shared 700 beds. Some prisons opened new sections (Gherla, Margineni, Targu-Jiu), by taking over abandoned military barracks. Despite lack of financial resources, many prisons have taken positive initiatives – in particular finding jobs for the inmates

– and have made some improvements in terms of accommodation, food, sports etc. (Gherla, Botosani, Aiud, Slobozia, Rahova–Bucuresti).

Food

The vast majority of prisoners in the prisons visited still complained about the quantity and the quality of the food. Meat was rare although the prison food standards specified 100 gr. of meat per day for each prisoner. APADOR-CH proposed that in each prison a group of prisoners be allowed to monitor the daily transfer of food items – including meat – from the main storehouse to the kitchen, to watch the food processing and then distribution of the prepared food to the prisoners. In a few prisons where the system was in place (e.g. Tulcea), the inmates did not complain about the food as they knew exactly how was it was prepared.

Medical Care

The doctors in the prison system – usually general practitioners and dentists – were too few to care for hundreds of prisoners, plus the prison staffs and their family members. APADOR-CH repeatedly insisted that the understaffed medical units deal only with the inmates, not with prison staff and their family members. Although the General Division of Prisons acknowledged that the association was right and promised to take appropriate measures, 99 percent of the medical units still maintained the timetable which reserves 2–4 hours a day for the prison staff and their family members. Taking into account that the average number of consultations of inmates was about 60 per day (but could go up to 100), a doctor could spend only about 3-6 minutes on one inmate.⁵ Many inmates with whom APADOR-CH spoke complained that the medical care was very superficial.

Another problem was the handcuffing of sick inmates when transferred to a civil hospital. The European Committee for the Prevention of Torture (CPT) repeatedly stated

that sick prisoners should not be handcuffed and that other means should be found for assuring the security. APADOR-CH suggested that, to solve the problem, the civil hospitals that accept detainees would provide at least one room with bars in the windows.

Sanitary Conditions

Sanitary conditions were also the responsibility of the prison doctors. In most of the prisons visited the bathrooms (usually containing 2-3 WC bowls and a washbasin) were insufficient and improper. Hot water was provided usually once a week and only in the shower rooms. At Bucharest – Jilava prison, the inmates had to filter the water before drinking it. In prisons like Aiud, Margineni and Gherla, the bathrooms were separated from the rest of the cell either by a half-wall or with curtains which caused constant humiliation for the prisoners.

Leisure Activities and Training

As a rule, the prisoners – apart from those who worked – were taken out of their cell every day for about one hour. Much depended on the space available: at Miercurea Ciuc there was only one small yard available and the prisoners complained that they were taken out only once a week or even two weeks. The opposite happened at Margineni where every inmate stayed out for 2-3 hours every day and those who – for reasons of age or health – were unable to work were out in the open air for four hours per day.

There have been gradual improvements in the field of educational and recreational activities, although the number of qualified prisoners remained too low. However, in many prisons such activities existed only on paper or were minimal (e.g. uninteresting lectures, one newspaper per cell and a few library books). Many prisons offered no psychological therapy.

Attempts to establish a closer relationship between the inmates and the outside world have been relatively successful: at Gherla, Margineni, and Targu Jiu, profes-

sional actors and singers performed in the prisons, at Gaesti and Rahova- Bucuresti, a drama-therapy project was going on. Most prisons organized yearly open days during which anyone could visit the premises. Also, there were experimental centres for probation work in 10 prisons, (although the probation law has been in force only since November 2000).

All the prisons provided for at least a four-year primary education and some vocational training. Unfortunately, the prisoners had little chance to find a job after their release on the basis of that training.

Sanctions

As a positive development, prisoners under disciplinary measures had the possibility of defending themselves, of producing witnesses and of appealing against a decision to punish them. Unfortunately, there was no possibility for the inmate to appeal to an independent, impartial judge.⁶ The punishments ranged from verbal reprimand, withdrawal of the right to receive food parcels or visits, to isolation and - at the worst - a restrictive regime of up to 12 months meaning no visits, no food parcels, no TV or radio set in the cell, one quarter of the cigarettes ration per month, no cultural or recreational activities, tougher security measures when taken out of the cell etc. APADOR-CH found many cases in which prisoners were punished with isolation of 10–15 days for the "offence" of being disrespectful toward the prison staff. When weighing up the sanction, mostly the word of the guard won against that of the inmate.

Juvenile Delinquents

There was one juvenile prison (in Craiova) and two educational centres (Tichilesti and Gaesti) in Romania for minors (aged 14 to 18) and young offenders (aged 18 to 21). Apart from that, nearly every prison had a separate section for minors and young prisoners. The explanation was that, by law, a minor aged at least 14 could either be sentenced to serve a term

in one of the two educational centres – staying there until the age of 18, with a possibility to extend detention up to the age of 20 - or he/she could serve a specific term in prison from the age of 16 in which case he/she would go either to Craiova, or to another prison closer to the place where his parents/relatives live.

In the two educational centres, although the detention conditions were not much different from the adult prisons, the minors were going to a “normal” school within the facility (grades I–VIII) and were given vocational training.

Minors at Gaesti centre complained of brutal behaviour of guards and teachers, of severe punishments – including isolation – for violating internal rules (including “insults” of the personnel). The sanitary conditions were appalling in both centres: cells were not equipped with toilets and the only shower room for the whole male section was totally inappropriate. The conditions were particularly poor at Gaesti where APADOR-CH’s representatives were assured that radical improvements were scheduled for 2001.

On the other hand, the Gaesti probation centre had initiated some new activities such as organizing summer and winter camps or excursions together with a local NGO, with young offenders mixing freely with other youths.

The minors’ sections in ordinary prisons were usually better than the adult sections. However, even if the minors stayed longer outside and could play football, volleyball etc., it should be mentioned that in many cells there was no TV set provided by the prison. Some prisons had their own internal radio stations run by prisoners under the tight control of the prison staff, but they usually broadcast only a few hours a day and loudspeakers in the cells did not always work.

Probation Ordinance

A positive development was the Probation Ordinance⁷, which was written af-

ter repeated consultations by the Government with the 10 experimental probation centres and NGOs that constantly visit prisons (including APADOR-CH). It introduced for the first time in Romania an alternative to incarceration and the assistance to inmates released on parole. The ordinance has been in force since the beginning of November 2000.

Religious Intolerance

In August the Government issued Ordinance No.137/2000 to prevent and punish any form of discrimination. The ordinance is in principle an efficient instrument for the elimination of any form of discrimination. Following a Government Decision of December, a National Council is to be set up to be in charge of monitoring the application of the ordinance, investigating any cases of discrimination (based on ethnicity, sex, sexual orientation, religious orientation etc.), and sanctioning possible violations. The National Council is empowered to investigate any case of discrimination and to impose fines on the culprit, unless the offence is serious enough to fall under the Criminal Code. An important provision of the ordinance deals with rights of human rights NGOs to lodge complaints on behalf of discriminated groups of individuals or communities. APADOR-CH contributed to the preparation of the text.

Jehovah’s Witnesses

Jehovah’s Witnesses, initially registered as a non-governmental religious association, started having problems with the Romanian authorities under the assumption that it was not an officially acknowledged religious denomination. In 1998, the Jehovah Witnesses changed their statute from association to religious denomination, a fact ultimately acknowledged by the Romanian Supreme Court of Justice in March 2000.

Although any group could freely establish its own status (except for cases when the future association could be a threat to

the national security, public order etc.) and Jehovah's Witnesses always considered themselves as a religious cult, some of its ministers were summoned in 1999 to serve compulsory military service or the alternative services. They refused, however, claiming that the latter meant a substitute for military services which they, as ministers, could not accept. The ministers were tried in a military court for refusing to perform military service and sentenced to suspended terms in prison. They complained to the European Court of Human Rights in Strasbourg, with the full support of APADOR-CH. In 2000, some of the ministers were again summoned to discharge their military duties, and again they refused. The situation at this writing was that the Military Prosecutor's Office had dropped the charges against the Jehovah's Witnesses who refused military service. At the same time, the State Secretariat for Cults – an administrative body which should have notified every central or local body that the Jehovah Witnesses had been officially acknowledged as a religious cult – refused to follow this mere formality, thus ignoring a decision of the Supreme Court of Justice.

Protection of Ethnic Minorities

The Ordinance on Preventing and Punishing Every Form of Discrimination already brought about one improvement: every post office has hung up a notice stating that it would not accept any job advertisements which contain the requirement "Roma excluded."

On the negative side, one of the first acts of the new political power resulting from the November-December 2000 parliamentary and presidential elections has been to downgrade the Minorities Department, which used to have the status of a ministry, including direct participation in Government sessions and decisions. Since January 2001, the Department has been placed under a bizarre Ministry of Information, whose creation APADOR-CH is preparing to challenge.

Tartar Minority

The 1992 census showed that about 24,600 Tartars (0.07 percent of the total population) are living in Romania, mostly in the Dobrogea region. Still in 2000, the Tartars were regarded as members of the Muslim Turks-Tartars Union, although numerous Tartars were not Muslims. The Tartars' official representation as a minority was only through this union. Recently, some Tartars have wanted to stand up for their ethnicity and the respect of their language and traditions. APADOR-CH has encouraged and supported their efforts to organize themselves and to gain recognition as a national minority.

New Ethno-Cultural Minorities

The more than 2,000 Kurds living in Romania – wrongly assimilated with the PKK – are an example of a growing minority whose rights to peaceful assembly, peaceful demonstration and association have been denied by the Romanian authorities. APADOR-CH protested heavily in November when the Bucharest authorities forbade a peaceful street demonstration of several Kurd associations. APADOR-CH reminded the authorities that the rights guaranteed by the Romanian Constitution apply to every person – including foreigners – living in Romania.

Homosexuals' Rights

On 28 June, the Chamber of Deputies repealed Article 200 (same-sex relations) in the process of harmonising some provisions of the Penal Code with the Resolution 1123/1997 of the Parliamentary Assembly of the Council of Europe. At this writing, the bill is in the Senate.

The bill still in force as of the end of 2000 punished by 3-5 years' imprisonment "homosexual activities" if they were performed "in public" or caused "public scandal."

Endnotes

- ¹ Based on the Romanian Helsinki Committee-APADOR-CH, *Summary of Activities in the Year 2000*.
- ² For examples in minor cases, see APADOR-CH's Annual Reports in 1993–1999 and the case-by-case reports in 2000 at www.apador.org
- ³ For full details on each case, see www.apador.org
- ⁴ Posted both in English and Romanian at www.apador.org
- ⁵ A prison doctor worked seven hours per day.
- ⁶ The draft bill on the execution of terms in prison, still pending in the Parliament at this writing, introduces the idea that one judge per prison would monitor every legal aspect, including disciplinary measures.
- ⁷ The problem with ordinances is that, although they are enforced after publication in the "Official Gazette", they must be debated in the Parliament which may maintain, amend or reject the texts.