Romania[1]

IHF FOCUS: freedom of expression, the media and access to information; judicial system and independence of the judiciary; torture, ill-treatment and police misconduct; prisons; right to privacy; discrimination.

Respect of civil rights in Romania deteriorated in 2003. The tendency by the government to control every sector of society was more visible than before. Government Decision No. 952/2003 established an Integrated Information System (IIS), a nebulous body, which gathered and processed data about all people in Romania. Under the pretext of defending national security, this government decision gave the IIS full and discretionary powers, but did not provide for any kind of control and implicitly allowed for the violation of privacy. APADOR-CH (the Romanian Helsinki Committee and IHF member) and two private individuals lodged a complaint with an administrative court asking it to annul this government decision. The first hearing was scheduled for 2004.

Freedom of expression was under serious threat in Romania, facing pressure from the government and the ruling Social Democratic Party. Several journalists were assaulted. Defamation was still punishable under the Criminal Code and journalists could be sentenced to pay enormous fines.

The government attempted to control NGOs and foundations. Government Ordinance No. 37/2003 ruled, among other things, that only NGOs officially acknowledged by the government as being of "public utility" may benefit from funding granted by the European Union via the government. Clearly, the status of "public utility" was only given to NGOs that never criticized the authorities. By the end of 2003, only 15 NGOs were given "public utility" status. None of them has ever posed a "threat" to the government.

Romania was still far behind European standards as concerned the protection of civil liberties. Though some good laws were adopted there was a clear discrepancy between what the laws provided for and how they were enforced.

Enforcement of the much-praised law on free access to public information (No. 544/2001) was still at the discretion of central and local authorities. Many requests for information were either ignored or denied.

In 2003, the Ministry of Justice drafted a new Criminal Code. With regard to freedom of expression, the draft includes some improvements: for example, it no longer includes insult and provides for a "good faith" cause for journalists charged with libel. Nevertheless, the draft still contains threats to freedom of expression, such as maintaining libel as a criminal offence punishable by fines which may total huge sums of money, over-protection of privacy in cases of politicians and punishment of "hostile acts against a foreign state" without defining "hostile acts."

The demilitarization of the police in 2002 did not result in any real improvement. Only formal changes were apparent (new ranks and new uniforms) but nothing changed in terms of the conduct of police officers or in terms of serious investigations by civil prosecutors into police abuse cases.

[1] Based on the *Annual Report 2003* of APADOR-CH (the Romanian Helsinki Committee).

The extremely important matter of ensuring genuine independence of the judiciary has remained unsolved. The minister of justice continued to control Romanian judges.

The only major positive developments in 2003 were the adoption of the new Constitution in October (the concrete effects of the modified provisions will become visible in 2004) and the modifications of the Criminal Procedure Code, which provided for more protection of civil liberties. If and how these will be applied remains to be seen.

Also, Jehovah's Witnesses were recognized as a religious denomination three years after the Supreme Court of Justice ruled in this respect. The Ministry of Culture and Religious Affairs kept delaying compliance with the final judgment. APADOR-CH provided juridical assistance to that religious group at all stages, including their application to the European Court of Human Rights (ECtHR).

Of the over 20 cases supported by APADOR-CH at the ECtHR, one was finalized in 2003 (*Cotlet v. Romania*, violation of article 8 of the European Convention on Human Rights, ECHR: non-observance of the privacy of correspondence of a detainee) and another was declared admissible (see section on police misconduct). Many other cases, the majority regarding ill-treatment by the police, were at various stages with the ECtHR.

Freedom of Expression, the Media and Access to Information

Freedom of expression was under serious threat. Public television and public radio cowered from the government and the ruling Social Democratic Party while private television and radio stations were under permanent pressure, primarily of a financial nature. The important ones had huge debts to the state that were rescheduled repeatedly, making them vulnerable. Some of the talk shows that were still presenting opinions different from the official ones simply disappeared while others were moved to late hours. Newspapers were in a better position, but mostly only in Bucharest. In counties and other cities, the local media, with a few exceptions, were subdued by prefects and other representatives of the ruling party. About 16 investigative journalists were physically assaulted in 2003. As the police did not react, or reacted too slowly, none of the aggressors have been identified yet.

Defamation was still punishable under the Criminal Code. Insult was punishable with a fine, libel was punishable with a fine or imprisonment. Journalists could be sentenced on the basis of the above-mentioned provisions and could be obliged to pay enormous financial compensation to the "victim."

Free Access to Public Information

Though free access to public information was guaranteed by Law No. 544/2001, many requests for information were either ignored or denied. Few applicants have had the courage and persistence to go to courts to claim this right. Public servants were either still harboring old mentalities or they feared the consequences of another law on classified information, which covered both state and professional secrets and clashed with Law No. 544. Another way free access to public information was denied was to establish substantial fees for copies of the requested documents. For example, the mayor's office of a small locality in the district of Sibiu imposed a fee ten times higher than the market price for a photocopy.

Law No. 544 was meant to be an important tool in the struggle to make the activities of both central and local public authorities more transparent and therefore, bring down the level of corruption.

In order to test how accessible public information was, APADOR-CH sent applications for information to many public authorities, including the Ministry of Finance, the General Prosecutor's Office, the Romanian Intelligence Service, the Ministry of Interior, the Ministry for Foreign Affairs, the government, mayors' offices and to some state-owned companies. Some of the requests got positive answers but many others were either ignored or rejected. APADOR-CH had no choice but to go to administrative courts. It won some cases and lost others. The following three examples stirred the public's interest:

- APADOR-CH requested statistics regarding exemptions of judicial taxes. In a civil claim, the applicant had to pay a judicial tax in advance, representing 8-10% of the value of the claimed property. In many cases this tax acted as a deterrent for those who wanted to recuperate property. The Ministry of Finance, however, could grant exemptions or postpone payment of the tax. The ministry refused to provide the statistics requested, which would have shown the extent to which those taxes were a hindrance for free access to justice. The administrative court ruled in favor of APADOR-CH and obliged the ministry to provide the information. As the ministry complied with much delay, APADOR-CH filed another case against it. This second court case was still pending at the end of 2003.

- APADOR-CH asked the Romanian Intelligence Service for information about the number and the duration of warrants issued between 1991 and 2002 that allowed it to put members of the leadership of political parties, leaders of NGOs and journalists under surveillance. It also asked about the commercial companies the Intelligence Service had set up, the resulting revenues and the purposes they were set up for. All the requests were denied under the pretext that the information related to national security and was protected by state secrecy laws. APADOR-CH lost this case in the administrative court despite the obvious truth that figures alone cannot jeopardize national security. Surprisingly, after APADOR-CH won a somewhat similar case against the General Prosecutor's Office (see below), the Intelligence Service released some of the information requested.

- APADOR-CH asked the General Prosecutor's Office to provide it with the number of surveillance warrants issued to the secret services (based of the Law on National Security, for the period 1991-2002) and to the police (based on the Criminal Procedure Code, for the period 1996-2002). It also asked for the number of warrant renewals; the longest duration of a warrant; how many warrants were requested; how many were approved and how many were rejected; how many individuals were brought to trial and sentenced as a result of the surveillance; how many were informed that they had been under surveillance, etc. APADOR-CH's purpose was to compare the number of warrants with the number of individuals brought to trial and sentenced as a result of the surveillance. This would have indicated the solidity of the initial suspicions of the secret services and/or the police and their efficiency while spending public funds. As expected, the General Prosecutor's Office refused to provide any of the requested information. APADOR-CH won the case in court in May 2003. But the General Prosecutor's Office resorted to the much-criticized "extraordinary appeal" (eliminated from the law in June 2003), which it lost. The General Prosecutor's Office had to release the information, which they only did in December. The statistics the General Prosecutor's Office provided

were complete in the case of surveillance by the police but far from satisfactory in the case of surveillance by the secret services. As in the case won against the Ministry of Finance, APADOR-CH lodged another complaint with the administrative court concerning non-compliance with a final judgment, in terms of both delay and provision of incomplete information. The first instance court ruled partially in favor of APADOR-CH. The appeal is scheduled in 2004.

At the same time, APADOR-CH developed a two-fold awareness-raising project on free access to public information. The first part was devoted to explaining to lawyers outside Bucharest the benefits and procedures of Law No. 544. APADOR-CH organized eight training sessions in various locations. The second part targeted individuals interested in the application of this law. To this purpose, a small leaflet was finalized at the end of 2003 containing practical information about Law No. 544, examples of applications for information and examples of complaints to courts. The leaflets (125,000 copies) are to be distributed all over Romania during the first trimester of 2004.

The Judicial System and Independence of the Judiciary

The central matter of ensuring genuine independence of the judiciary remained unsolved. The Minister of Justice and the executive branch directly and indirectly continued to control Romanian judges. Also, as long as the prosecutors, who were directly subordinated to the minister of justice (and were therefore part of the executive branch), were placed on equal footing with the judges and assimilated with the magistrates, the independence of the judiciary remained wishful thinking.

Three draft bills were essential for the establishment of a truly independent judiciary: the law on the organization and functioning of the judiciary, the statute of the magistrates and the law on the organization and functioning of the Superior Council of Magistrate. The draft of the first law was voted on in December 2003 by the Chamber of Deputies, the second statute was still under debate in the same chamber, while the third law had not been yet submitted to parliament. The crucial issues were: the complete elimination of any possibility of interference by the executive branch with the judiciary by reducing the power of the minister of justice exclusively to administrative matters; the clear separation of judges from prosecutors, although both are included in the general category of "magistrates"; and the accountability of judges.

Another issue was ensuring the complete financial independence of the Superior Council of Magistrate. As of the end of 2003, everything related to the budget was under the control of the Ministry of Justice with the exception of the budget of the Supreme Court.

The struggle to radically change the philosophy and the concrete provisions of the criminal law—one of the most repressive in Europe—started more than ten years ago. However, the many changes brought to the law so far have been unimportant with two exceptions: the decriminalization of same-sex relations and the elimination of the "offence against authority."

In terms of personal freedom, there were some positive changes such as lower prison terms for certain offences, probation as an alternative to imprisonment and release on bail. However, one of the most controversial forms of depriving someone of freedom—"leading" an individual to a police station where he/she could be kept for up to 24 hours as an administrative measure, in accordance only with the Law on Police. APADOR-CH stated that “leading” an

individual to a police station is not a mere administrative measure but a form of deprivation of freedom as the individual cannot leave the police station as and when he/she wishes.

Moreover, the modified Criminal Procedure Code specified that any period spent at the police station by a person who was "led" there must be deducted from the final court sentence (if it was imprisonment). In other words, "leading a person to the police station" was acknowledged by the Criminal Procedure Code as deprivation of personal freedom. Consequently, the new Criminal Code should also clarify this long-lasting confusion.

Another matter is related to the much too lenient punishment for torture of 1-7 years imprisonment, as compared to 2-7 years for ordinary theft and 1-5 years for ill-treatment.

Debates in parliament over the draft Criminal Code were interrupted by the adoption of the new Constitution. Obviously, the draft must be amended in keeping with the new constitutional guarantees.

Torture, Ill-Treatment and Police Misconduct

The long expected demilitarization of the police (achieved in 2002) did not yield any concrete results in terms of police behavior and mentality. Cases of beatings in police stations and shootings in situations, which did not justify such an extreme intervention continued to occur. Raids conducted with brutality in discos, restaurants and in areas believed to harbor prostitutes or drug addicts increased in number.

In the meantime, the main problems remained: the possibility to "lead" someone to a police station for a stay of up to 24 hours without any individual protection; excessive use of force, including of fire arms, with no justification; frequent and arbitrary raids; and disproportionate invasion of privacy, in the absence of known rules and regulations.

It should also be mentioned that, in many cases, the police worked together with the gendarmes. Since the gendarmes were still members of the military, any alleged abuse would be investigated by the Military Prosecutor's Office, while any alleged abuse by the police would be investigated by the Civil Prosecutor's Office. Given that military prosecution still had priority, it is hard to imagine that a non-indictment decision in the case of alleged abuse by gendarmes would be reversed by civil prosecution investigating the police involved in the same incident.

APADOR-CH repeatedly protested against the impressive display of force used in raids and against the violence of the methods employed, such as breaking doors and windows, throwing people to the ground and handcuffing even those who had no connection with the alleged crimes, hitting them and taking them to the police station with no chance to defend themselves. APADOR-CH has also protested against the fact that the majority of police officers and gendarmes involved in raids wore masks. Since they also failed to wear a badge (if not one with a name at least a one with a number would be preferable), there was no chance for possible victims to identify them in case of abuse.

- In October 2003, about 20 policemen from the district of Prahova raided the house of a villager under the suspicion that one of the sons had been involved in the theft of a large quantity of corn. The police found no corn but handcuffed and hit all members of the family and threatened them with firearms. They shot the father in the leg under the

pretext that he was resisting the search, a fact strongly denied by the family. The mother and two sons, both minors aged 17 and 14 respectively (the suspected son was not home), were taken to the Prosecutor's Office. Medical certificates were issued to all members of the family. APADOR-CH considered that the police conducted an illegal and abusive action. The use of the firearm against the father was totally unjustified and disproportionate. The police issued a press release saying that they had shot the father because, in his attempt to resist search, he had threatened to kill his baby daughter if the search was carried on. This was unfounded since no stolen goods were found during the search and, obviously, the father had no reason to resort to that extreme threat.

The harsh methods used by the police were exposed for the first time by the ECtHR, which, in December 2003, declared admissible the application of a young man who complained against ill-treatment at the hands of the police a few years ago, when he was still minor. APADOR-CH assisted the applicant and hopes that the expected judgment of the ECtHR, combined with the new guarantees of the Constitution and the revised Criminal Procedure Code, will bring about positive changes in the behavior of police.

Prisons

Starting in mid-2003, APADOR-CH decided to focus on juvenile detention, including the role of probation officers (the UK model).

Government Ordinance No. 56/2003 brought about substantial improvements for all detainees, including the right to complain to a court against disciplinary measures, the right to more visits and more food parcels per month and the possibility for a prisoner to be examined by a doctor of his/her choice. But as if to contradict these good intentions, an order by the Ministry of Justice and the Ministry of Health, issued in August 2003, established that the joint commission authorized to investigate a death in prison would only make the cause of death but not the medical treatment given prior to a prisoner's death public. Medical treatment given prior to death would be covered by professional secrecy. APADOR-CH strongly protested against this decision and, due to the lack of any reaction from the two ministries, went to the Administrative Court. The first hearing is scheduled in January 2004.[2]

APADOR-CH visited six penitentiaries and two juvenile facilities in 2003. Although consistent small improvements have been made throughout the last ten -year period during which the APADOR-CH has made numerous visits to prisons all over the country, the basic problems were still unsolved. The law on execution of terms in prison has been in force since 1969 and despite repeated efforts by the Prison Administration (PA) and by NGOs interested in the matter, no amendments were made by the legislative body. Consequently, the PA had to be extremely cautious not to break an outdated law.

Overcrowding that was mostly due to disproportionate punishments provided for by the Criminal Code was tackled on a small scale by the PA by taking over old military barracks and turning them into detention centers or by building new prisons. Obviously, the right answer was not to erect new facilities but to change the law so as to put fewer individuals behind bars.

According to official statistics, in June 2003, there were 47,070 detainees for a total prisons capacity of 38,000, calculated at the rate of 6 cubic meters per detainee. APADOR-CH

After the first hearing in February 2004, the two ministries decided to drop the contested provision.

has insisted that the space per detainee should be calculated in square, not cubic, meters: the European Committee for the Prevention of Torture has set at least 4.5 m² per detainee as a desirable guideline for a detention cell. At the Bacau prison, for example, 1,604 prisoners were sharing the 1,031 available beds. If calculated at the above 4.5 m² standard, the occupation rate would amount to 400%.

With regard to re-education/rehabilitation programs, APADOR-CH determined that repeat offenders did not benefit from any such programs. In addition to the lack of activity—prisoners actually spent at least 23 hours out of 24 in an overcrowded room with nothing to do—they were frequently subjected to searches (some routine and others without warning) performed by masked officers. Whether these officers were members of the prison staff was not clear to APADOR-CH. What was clear, however, was that these officers were omnipresent in the Romanian penitentiary system and they were accused of the most brutal interventions against prisoners.

Cultural and educational programs were more visible in the case of first offenders and juveniles. Juveniles benefited from permanent programs providing schooling, vocational training and leisure activities. However, although education followed the normal curricula, juveniles in grades I-IV all learned together, which may have affected the quality of education. Vocational training followed an obsolete system, preparing the youngsters for professions, which were in little, if any, demand in the labor market. Moreover, the equipment and tools used to teach trades were outdated (for example, decade old lathe machines). In other words, once free, the young detainees would hardly be able to find a job.

The probation system (implemented for the first time in Romania in 2000) was still in its infancy. In principle, probation officers were to take care of juvenile offenders placed in their custody as an alternative to imprisoning them. This was done particularly well in the Arad, Iasi and Dambovita districts. Probation officers were to also take care of those released from prisons, which they could not do, with a few exceptions, for want of support from local authorities and for want of appropriate funding and staffing. For the same reasons, probation officers seldom dealt with adult offenders.

Food and medical assistance in prisons were still below standard in most prisons. Disciplinary measures against detainees who broke internal rules and regulations continued to be applied according to debatable procedures. Many detainees claimed that they did not know why they had been punished, although in theory they should have been able to defend themselves in front of a disciplinary commission. Since June 2003, prisoners have had the right to contest disciplinary measures taken by the PA in court but by the end of 2003, APADOR-CH knew of only one such action taken by a detainee, which was rejected by the judge.

- Marian Predica, a 20-year-old prisoner at the Rahova-Bucharest Penitentiary, died on 5 October 2003 after being in a coma for four days. His death was violent according to the forensic report. Other detainees claimed that he and at least one other prisoner (see paragraph below) were severely beaten by prison guards on 25 September. The prison doctor said that Marian Predica had never been sick before 1 October, nor had he had fights with other inmates before, therefore APADOR-CH had strong suspicions that his death was as a result of the beating of 25 September. APADOR-CH asked the Military Prosecutor's Office (the prison staff were still military) to start an in-depth inquiry into the cause of death. As of the end of 2003, APADOR-CH had not received an answer.

- Dan Bejinaru, another prisoner at Rahova, claimed that he too was beaten by prison guards on the same day as Predica. His bruises were still visible on the day APADOR-CH's representatives visited the prison. He said that he had borrowed clothes from a colleague as he was awaiting his mother's visit. Asked by the guards to change the clothes, he refused. He was repeatedly hit and forcefully stripped of the clothes. Half an hour later, he was asked to sign a statement saying that he had refused to obey the guards' orders. He did not do it and was beaten again. In the end, he was allowed to see his mother and she confirmed that her son had visible marks of a beating on his face, arms and upper body. APADOR-CH asked the Military Prosecutor's Office to inquire into this case too.

Right to Privacy

Draft Bills on National Security

There were five draft bills on national security under debate in parliament as of the end of 2003. Regrettably, priority was given to the government's draft, the most regressive of the five. It maintains all the principles of the law in effect on national security that was passed in 1991. It ignores human rights and gives full power, beyond any control, to the secret services. According to this draft, the prosecutors can continue to issue surveillance warrants. "Surveillance" was more than wiretapping: it also included invasive measures such as secret domicile searches, audio and video recordings and placement of microphones.

On a positive note, the draft limits surveillance to a maximum of one year (the first warrant is valid for six months, followed by two possible extensions of three months each) while the law in force allowed for surveillance for an unspecified period of time. But even one year is inadmissibly long, particularly in the absence of any judicial control.

APADOR-CH repeatedly requested that such warrants be issued only by a judge, that their validity not exceed three months (extensions included), and that the judge exercise tight control over the secret services during the whole surveillance operation.

The draft bill also mentions the possibility for individuals to file complaints with a court against abusive surveillance. However, individuals would not be able to file such a complaint unless they are informed, after the operation is completed, that they have been subjected to surveillance by the secret services.

APADOR-CH also asked for the demilitarization of the secret services, bearing in mind Recommendation No. 1402 of 1999 of the Parliamentary Assembly of the Council of Europe.

A sixth draft bill on the protection of human rights and fundamental freedoms during secret service operations was introduced in parliament at a moment when the specialized committees had already started debating the five above-mentioned drafts. This last draft refers exclusively to the surveillance of individuals. APADOR-CH strongly criticized it, noting that there is no need for a separate law on the subject: the law on national security should regulate all issues related to the activities of the secret services. In addition, although the draft stipulates the issuance of a warrant by a "specially designated judge," it maintains the role of the prosecutors as a "first filter." Further, the warrant is valid for six months followed by a three-month extension—which is much too long. And finally, the draft does not include the obligation of the secret services to inform the individual that he/she has been under surveillance after completion of an

operation. In the absence of this obligation, the right to complain to a court about possible abuse becomes worthless.

At the end of 2003, none of the above draft bills had been passed by either of the two chambers of the parliament.

Discrimination

In collaboration with other NGOs, APADOR-CH contributed to the proposals aimed at modifying the anti-discrimination law. The main proposals of the working group related to modifying the definition of direct discrimination and harassment as well as modifying the methods of fighting discrimination and unequal compensation.

The case of the Szekely National Council (SNC) provided an example of discrimination in Romania. The Szekels are part of the Hungarian minority in Romania.

- The SNC promoted the establishment of an autonomous Szekels region in the districts of Mures, Harghita and Covasna, where 50 to 85% of the population is of Hungarian origin. Four active members of the SNC were repeatedly harassed by the local police, the gendarmes, the Prosecutor's Office, and the Romanian Intelligence Service, under the pretext that they were espousing "territorial separation." They were "led" to the police station, their houses were searched and they were threatened by high-ranking officials (including the minister of public administration) about their "anti-constitutional" actions. Clearly, there was voluntary confusion between "autonomy" and "territorial separation." The statutes of the SNC specify that its goal is autonomy and that it is not harmful in any way to the territorial integrity of Romania. Moreover, that kind of harassment did not occur when Romanians living in the same area, where they are a minority, attempted to change the rules regarding the administration and representation of minorities in Romania.

APADOR-CH asked the National Council for Combating Discrimination to take immediate action against the Romanian authorities involved.