

**IHF FOCUS: freedom of expression and media; secret services; ill-treatment, torture and police misconduct; right to privacy; conditions in prisons and detention facilities; freedom of movement; protection of national minorities; homosexuals' rights.**

The first year in office of the Government formed by the Social Democratic Party (PSD)<sup>2</sup>, which came into power after the November 2000 parliamentary elections, was contradictory in terms of human rights. However, the Romanian Helsinki Committee (APADOR-CH) concluded that negative trends were predominant.

While the former Parliament had been paralysed by a weak ruling coalition, the legislative process accelerated considerably under the new Government. This was both due to the fact that the Social Democratic Party held a strong position in both houses of the Parliament and to a reform of the working procedures that the Government initiated in the beginning of its term. During the year an impressive number of laws were passed by the Parliament, meaning that the backlog of draft legislation left over from the previous Government was largely reduced. From a human rights perspective it was most welcome that national minorities were granted broader rights to use their mother tongue at the local level, and that homosexual relations finally were decriminalised.

However, at the same time some basic legislation was still not brought into line with international standards. In particular, a number of Criminal Code provisions seriously restricting freedom of expression remained in force, and a revision of the Police Law left principal problems unsolved. It was also regrettable that the Government continued to actively issue ordinances and emergency ordinances - as allowed by the Constitution - which came into effect immediately when published. The ordinances could subsequently be accepted, amended or rejected by the Parliament. However, there was no set deadline within which the ordinances were to be examined by the two houses, and as long as the examination was under way the ordinances were valid in their original form.

More than 150 government ordinances were issued in 2001, with three emergency ordinances giving rise to particular concern: two of them undermined freedom of movement and one curtailed the right to privacy in the name of fight against terrorism. It was also worrisome that the new Government took several moves aimed at establishing political control over the circulation of information, with the foremost example being a decision to subordinate the National News Agency (ROMPRES) to the executive branch.

Meanwhile the Government failed to take effective measures to address the problem of abuses committed by law enforcement officials and to reduce the overcrowding of prison and detention facilities.

## **Freedom of Expression and Media**

### *Criminal Code*

In a 1997 resolution the Parliamentary Assembly of the Council of Europe (PACE) asked Romania to modify Articles 205, 206, 238 and 239 of the Penal Code, which were considered to seriously infringe freedom of expression. In late 2000, the Chamber of Deputies approved draft legislation that partially would have brought these articles into line with the PACE requirements. However, in May, when the draft legislation was due for examination in the Senate, the new Government proposed modifications to it that would have made hollow the improvements. While the 2000 draft legislation abolished prison penalties for insult (Article 205) and reduced the maximum prison term for libel from three years to one year (Article 206), the new Ministry of Justice proposal foresaw the retention of the existing stipulations. Expressing concern over this development, APADOR-CH stressed that the provisions in

force discouraged journalists to discuss matters of public interest and prevented the media from exercising its role as a public watchdog. In addition, the new Ministry of Justice proposal revoked the 2000 abrogation of provisions particularly incriminating insults against persons in high public positions (Article 238) and civil servants (Article 239). APADOR-CH also found this highly worrisome, and noted that the provisions in force violated the principle of equality before the law, as they placed politicians above other persons. However, as of the end of the year, the Senate had yet to examine the draft legislation passed by the Chamber of Deputies in 2000.

#### *Draft Legislation on the Status of Journalists*

A draft law on the status of journalists was submitted to the Parliament in 2000. As it was in apparent conflict with international standards regarding freedom of expression, it seemed doomed to failure from the very beginning. However, following the November 2000 elections the draft law was taken up to new consideration in the Chamber of Deputies. Noting that no amendments could save a draft law so detrimental to freedom of expression in its fundamentals, APADOR-CH urged the Parliament to turn it down. In particular, APADOR-CH referred to three major deficiencies of the draft law:

The draft law foresaw that journalists should organize themselves and then be supervised by central bodies.

Moreover, the draft law stated that the accreditation of a journalist facing charges would be suspended for the time he/she was held in pre-trial detention, and withdrawn if he/she was sentenced, no matter the character of the offence.

As of the end of 2001, the draft law had been dealt with in the Committee on Culture, Arts and Mass Media of the Chamber of Deputies, where numerous amendments to it had been made, although the text had not been rejected *de*

*plano*. An examination of the text in the plenum of the house was pending.

#### *Status of National News Agency (ROMPRES)*

On the basis of a January Government decision a new Ministry of Public Information (MPI) was established and charged with promoting the Government's image, explaining and popularising the Government's policy, supplying foreign embassies with information about the Government's activities etc. In addition, the semi state-controlled ROMPRES was subordinated to the MPI, which was to issue new regulations for the agency within 60 days. In September, the Government issued a complementary decision, according to which ROMPRES was to function under the MPI in an administrative, financial as well as political respect. APADOR-CH vocally criticised the two decisions, and concluded that they turned ROMPRES into an instrument for promoting Government policies, while restricting the opportunities of the public to receive complete and credible information.

In an alternative move, a liberal parliamentarian submitted a draft law on the status of ROMPRES to the Chamber of Deputies in May. According to this draft ROMPRES was to function under the control of the Parliament. For over two months the draft law could not be discussed in the Committee on Culture, Arts and Mass Media for procedural reasons, which apparently were created by the Committee members representing the ruling party (PSD), with the help of those representing the Ethnic Hungarians' Democratic Union (UDMR). However, following pressure from a number of domestic NGOs (including APADOR-CH) as well as international organisations (including OSCE and members of the European Parliament), the PSD and UDMR deputies gave up their obstruction, and the draft law was adopted in a form that was acceptable to all parties in the committee.

As of the end of the year, the draft law was voted on in the plenum of the Chamber of Deputies, before being passed on to the Senate. Meanwhile ROMPRES remained under the control of the MIP.

### *Access to Information*

For several years adequate legislation on access to information has been lacking in Romania. In February, a National Liberal Party (PNL) initiative on the topic was taken up to discussion in the Committee for Culture, Arts and Mass Media of the Chamber of Deputies. Shortly thereafter, the new Government submitted alternative draft legislation on the topic to the committee. In an example of constructive committee work, the two draft bills were subsequently harmonised into a joint text. NGO representatives were also invited to participate in the committee meetings and to comment on the two drafts. Later on, the chamber plenum approved the joint text reached at in the committee. The Senate also passed the text, albeit with slight modifications, and in December the law came into force. As of the end of the year, implementation regulations were yet to be adopted.

While APADOR-CH commended the new legislation on access to information, it voiced concern regarding draft legislation on classified information.<sup>3</sup> A draft bill on the topic passed both Chambers, containing two drafts and some last minute amendments by the government. However, the Constitutional Court declared the voting procedure on the bill un-constitutional. However, in June, a group of three senators and seven deputies submitted a new draft law on the same topic to the Chamber of Deputies. This proposal was dealt with in the Committee on Defence, Law Enforcement and National Security in December, and was due for examination in the chamber plenum in early 2002. According to APADOR-CH the later proposal was clearly better than the first one, but still included many problematic provisions.

APADOR-CH stressed that the aim of legislation on classified information is to regulate exceptions from the general principle of access to information. Thus, the categories of state secrets should be established in a clear, restrictive and exhaustive way so as to effectively exclude the possibility that the exceptions should become the rule. In the light of these considerations, some of the definitions in the draft law were far too general. For example, a provision defining "scientific, technological or economic activities and investments that are related to national security or national defence or that are of particular importance to the economic, technical and scientific interests of Romania" could easily result in arbitrary interpretations.

Further, the law failed to strike a proper balance between the interest of the authorities to keep information secret and the interest of the public to have access to it. In fact, the draft law did not include any reference to public interest at all. At the same time the provisions on de-classification of secret information were vague; it was not made clear when such a measure was to be considered and whether it was to be based on a Government decision or not. In addition, no obligation was imposed on the authorities to inform the public about de-classification of information.

### **Secret Services**

Draft legislation on classified information that was submitted to the Chamber of Deputies in June included some problematic provisions regarding the Secret Services (SRI). In a May 2000 ruling the European Court of Human Rights<sup>4</sup> criticised the fact that the SRI exercised discretionary powers that were not subject to judicial control. However, in disregard of this, the draft law granted the SRI new powers to make decisions regarding classified information without providing for the possibility to appeal these decisions to court. In addition, the draft law enabled the SRI to impose con-

travention sanctions, although this was not foreseen in the 1992 law regulating the activities of SRI.

The SRI monitored the application of the law by the public authorities and had the right to verify on the spot how any judicial entity protected the State and professional secrets. The SRI did not have the power to impose sanctions under the SRI Law of 1992, but they are provided for under the draft bill.

### **Torture, Ill-treatment and Police Misconduct**

By the end of the year both the Chamber of Deputies and the Senate had passed amendments to the 1994 Police Law. As there were some differences between the versions adopted by the two houses a joint committee was set up and charged with harmonising them. The APADOR-CH had long advocated a revision of the Police Law, but regretted the fact that the amendments adopted failed to address a number of issues of crucial importance.

Firstly, no decentralisation of the administration of the police forces was provided for, meaning that the General Police Inspectorate retained full control over the County Inspectorates. Secondly, the problem regarding detention in the absence of an arrest warrant remained unsolved. Although the Constitution stated that no one could be deprived of his/her freedom for more than 24 hours unless an arrest warrant had been issued, the Police Law authorised police officers to detain a person for an additional period of 24 hours for the purpose of establishing his/her identity.

Thirdly, the problem of excessive use of force by police officers was not dealt with in any satisfactory way. Although the amendments introduced the idea of proportionality of police actions, they failed to revoke provisions establishing the situations where police officers may use weapons. According to international standards police officers should only have pow-

ers to use firearms when a person's life, including their own, are endangered. Together with some other NGOs the APADOR-CH submitted recommendations regarding the revision of the Police Law to the Parliament. However, these recommendations were largely ignored when the draft was being dealt with.

During the year APADOR-CH investigated several cases of police abuse.

◆ On the evening of 6 July, following a dispute with his wife, Dumitru Grigoras was arrested in his home in Rachitosa and taken to the local police station. The next day his wife, Felicia Grigoras, was informed that her husband was in the county morgue, where she could fetch the corpse for burial on Monday. When Ms Grigoras and her father-in-law came to the morgue they saw that the corpse was covered with bruises and wounds, including at the head. As a result they refused to take the corpse with them and requested that an autopsy be undertaken. According to the first autopsy, which was carried out on Saturday, Mr Grigoras had died due to "multiple organic failure". Later on charges on torture were brought against two police officers working within the Rachitosa police. The two police officers were dismissed and arrested but the trial had not begun at the time of writing.

◆ On 24 October, a large-scale police and security operation took place in the village of Ciocanari, in the county of Dambovitza. Most of the residents of this village are Roma, and the village is located close to an oil pipeline, from which oil repeatedly has been drawn off. At around noon, some police officers took up chasing a driver who had failed to stop for their signs in the village. The driver was caught, but following a short fight, he managed to escape. The police officers responded by bursting into the house behind the fence and by assaulting the family living there, including a woman who was eight months pregnant. When the police officers forced

their way into the house, a crowd of villagers had gathered in front of it. The crowd shouted insults at the police officers, threw stones at them and overturned one of their cars. About two hours later some 350 police and special force troops, some of whose members were masked, arrived in the village. During a raid lasting several hours the troops broke into houses, destroyed property, and beat villagers, including women and children. Over 20 persons, out of whom at least two were underage, were detained and taken to the police station in Buftea. Most of the detainees were released after 24 hours, but about five of them remained in detention on the basis of arrest warrants. APADOR-CH strongly condemned the police intervention as disproportionate and illegal, and found that it could not be considered but an arbitrary reprisal targeted at the entire population of Ciovanari. The association requested the Military Prosecutor's Office to investigate the case. However, no investigation was undertaken, and the General Police Inspectorate commented on the operation by stating that there were no doubts as to its legality.

◆ On April, Alexandru M. Dombi was shot dead by a police officer in Oradea under unclear circumstances. According to the police, the car Mr Dombi was driving was stopped for a routine check. When requested to show his driving license Mr Dombi was not able to do so, and drove away, as a result of which the police started following the car. Soon Mr Dombi and his two fellow passengers allegedly escaped by foot. Eventually the police found the men and following a few warning shots, the two persons accompanying Mr Dombi surrendered. However, Mr Dombi did not stop continued to run away, and was soon killed by a bullet shot in the head by a police officer. The police officers claimed that they had intended to shoot him in the legs but had fallen when being fired at. An eyewitness

stated that a total of eight shots were fired at Mr Dombi, and that they were fired from a distance although there were other persons in this area, who could have been hit. The eyewitness also said that there was no way Mr Dombi could have escaped. APADOR-CH deemed the police actions in the case as disproportionate and found that the use of fire against Mr Dombi was completely unjustified. The association requested a clarification from the Military Prosecutor's Office which decided not initiate investigations.

### Right to Privacy

In October the Government adopted an emergency ordinance on terrorism and public order. According to Article 7 of this ordinance the Ministry of Communications and Information could order mail companies and telecom-operators to supply all information necessary in order to identify the person or the persons suspected of a terrorist act (including hoaxes e.g. linked to anthrax alarms) or a crime against the public order of the State. APADOR-CH, along with other NGOs, was deeply concerned about this provision as it enabled that mail be checked and telephone conversations be tapped on the basis of an administrative decision, outside any judicial control.

### Conditions in Prisons and Detention Facilities

During the year representatives of APADOR-CH visited penitentiaries in Ploiesti, Botosani, Codlea, Oradea, Barcea Mare, Arad, Tulcea, Dej and Poarta Alba.

On the basis of these visits, APADOR-CH concluded that the most acute problem was overcrowding. As a rule the normal capacity of the penitentiaries was grossly exceeded, with many detainees forced to share beds. For example, in Botosani, 1,337 detainees were accommodated in 970 beds, while the penitentiary was built for 710 detainees. There was also an insufficient number of

prison staff, with the rate being seven to ten detainees to one staff member.

Despite some improvements from previous years, the quantity and quality of the food provided to detainees also remained a problem. This was partly due to the scarce allocation of resources for the purpose, which reflected the general economic situation in the country, but also due to mismanagement. In several cases APADOR-CH representatives observed discrepancies in the quantity of meat registered in the accounting and the amount actually used in the preparation of food to detainees. The APADOR-CH also called for an abolishment of the restrictions regarding detainees' right to receive food parcels from their families.

Another problem was that detainees were not adequately supplied with articles to care for their personal hygiene, including soap, razor blades, toilette paper, shaving foam and detergents. In some cases several detainees were supposed to share a razor blade, thus creating the danger of serious diseases being transmitted between them.

Health and medical care suffered from a lack of medical staff, in particular doctors. Doctors frequently had to carry out up to 70 examinations per day. In some cases there were particular problems regarding dental care. For example, in Iasi no dentist was available, which meant that detainees suffering from serious tooth infections for as long as one year and were offered no other help but painkillers. The practice of handcuffing detainees who were cared for in civil hospitals persisted. APADOR-CH considered this measure excessive as police officers still escorted the patients.

There were cases in which disciplinary measures were taken against detainees who had not been heard by the disciplinary committees, including when the punishment amounted to solitary confinement. In many penitentiaries visited by APADOR-CH the conditions in the confinement cells were unreasonably harsh. The cells were for ex-

ample equipped with stone beds, while the detainees were not allowed to have any sheets or mattresses during daytime. In the penitentiaries in Poarta Alba, Ploiesti and Arad, chains were still used as a means of constraint against detainees.

In some penitentiaries the staff continued to overhear discussions between detainees and their visitors, including lawyers. APADOR-CH called for detainees to be granted the right to wear civil clothes during visits, at least when the visitors were under-age.

Another area of concern was the lack of activities organised for detainees. It was particularly worrisome that detainees serving long terms often were deprived of the possibility to work. In many penitentiaries there were also undue restrictions of the time detainees were allowed to spend outdoors. According to the regulations in force detainees should be able to take a daily walk of "at least 30 minutes", which APADOR-CH considered too vague a provision. The most extreme case was observed in Iasi, where some detainees could only take walk of half an hour to three times per week.

Although detainees normally were able to practice their religion, APADOR-CH observed that Orthodox priests, employed by the penitentiaries, sometimes interfered in the services held by leaders from other religious denominations, such as Adventist or Evangelic Churches.

### **Freedom of Movement**

An August emergency ordinance introduced sanctions to be employed against citizens of Romania and stateless persons resident there who illegally had trespassed the frontiers of any country (i.e. not only Romania's neighbouring countries). The sanction foreseen included imprisonment from three months to two years, confiscation of valuable used to an illegal crossing of the border and withdrawal (or denial or renewal) of the person's passport for a period of five years. APADOR-CH and other

NGOs, protested the sanctions as unreasonable, and pointed out that they were in contradiction with ECHR jurisprudence in defining expulsion as a crime.

An October emergency ordinance was even more worrisome in light of the freedom of movement. The ordinance imposed a requirement on citizens travelling to other countries for private purposes to present a certain amount of cash when exiting the country. The amounts required in different cases, depending on the countries of destination and the length of stays, were to be established jointly by the Ministry of Interior and the Foreign Ministry upon consultation with foreign authorities. APADOR-CH and its cooperation partners saw no justification for these regulations and feared that they would be arbitrarily implemented.

## **Protection of National Minorities**

### *Legislative Framework*

In April, a new Law on Local Public Administration was adopted. This law established that local council decisions made in administrative-territorial units where more than 20% of the residents belong to an ethnic minority should be published in both Romanian and the language of the minority. If at least one third of the deputies belonged to the ethnic minority local council meetings could also be held in the minority language. Moreover, minority members in these areas were granted the right to address the local administration in their mother tongue, both orally and in writing, and to receive an answer in the same language. The local authorities were also requested to provide for bilingual signs of public institutions and facilities as well as to see to that announcements of public interest were translated into the minority language.

APADOR-CH commended the adoption of the new law but expressed regret over the fact that it was not being implemented effectively in all parts of the country. Most flagrantly, the Mayor in Cluj-Napoca, where 23% of the residents are ethnic Hungarian

according to the latest census, publicly declared his refusal to apply the law.

### *Combat of Discrimination*

In December, the Government took a decision to establish a National Council for Combating Discrimination. APADOR-CH welcomed this as an important step toward the development of a comprehensive system for prevention and combat of discrimination in the republic. Representatives of the association also took part in the drafting of the Government decision. The National Council will draw up a policy for the prevention of discrimination, and it monitors the observance of the law. It also investigates cases of discrimination and issues sanctions. Any individual, group or association can lodge a complaint with the Council. The act also allows for access to justice to anyone who would consider that he/she has experienced discrimination. However, by March 2002, the Council had not been active.

### *The Csango Hungarian Minority in Moldavia*

During two days in December a team composed of members of APADOR-CH and the Pro Europe League made a field mission to the region of Bacau in order to study the situation of the Csango Hungarian (numbering some 2,600 people according to the 1991 census<sup>5</sup>) minority settled there. Through discussions with leaders of the Association of Csango Hungarians of Moldavia (ACHM) and community members the team documented an increasing pressure toward the minority.

The prevailing attitudes from the local authorities and members of the majority population discouraged the minority members to express the Hungarian dimension in their identity, and to use their mother tongue, a dialect of Hungarian. In particular, a worrisome development regarding instruction in Csango Hungarian took place in the autumn. Since 1996 parents in



Bacau had repeatedly requested optional studies in Hungarian be introduced in local public local schools. As the requests never yielded any results, the ACHM started offering private Hungarian courses to pupils as of September. Following the launch of this initiative, the local authorities took up a campaign of intimidation and harassment against the ACHMC, the parents of the children attending the courses, and the owners of the facilities where the courses were organised. In some cases teachers also scolded the children who took part in the courses in front of their classmates, or lowered their grades of conduct.

APADOR-CH found that the Government did not fulfil its obligations under the European Charter of Regional and Minorities Languages in terms of the Csango Hungarian minority: the Government did not encourage and promote the use of the Csango Hungarian.

### Homosexuals' Rights

For a long period of time Article 200 of the Penal Code, which criminalizes same-

sex relations, has been a controversial issue Romania. In 2000, the Chamber of Deputies voted to repeal the article, but the Senate subsequently failed to do the same.

In May, the Ministry of Justice put forward proposals according to which Article 200 was abolished, but same-sex relations remained punishable through amendments to other articles related to crimes of a sexual nature. This move gave rise to an outcry from APADOR-CH and ACCEPT, a Romanian NGO advocating gay rights. The two organisations also received backing from international bodies, including the European Parliament and the PACE, in their criticism. Facing this pressure, the Government issued an emergency ordinance that effectively decriminalized same-sex relations in June. As of the end of 2001, both the Senate and the Chamber of Deputies had passed this ordinance, albeit in slightly different forms. A joint mediation committee was charged with harmonising the two versions.

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### Endnotes

- <sup>1</sup> Based on the *Annual Report 2001* of the Helsinki Committee in Romania/APADOR-CH.
- <sup>2</sup> In June the major Romanian Party of Social Democracy (PDSR) merged with the small Romanian Social-Democratic Party to form a single new Party; the Social Democratic Party.
- <sup>3</sup> See also IHF and the Romanian Helsinki Committee, "Romanian Law on Protection of Classified Information Would Put Democracy at Risk," 14 March 2001.
- <sup>4</sup> See European Courts of Human Rights, *Rotaru v. Romania*, 4 May 2000, at <http://hudoc.echr.coe.int/hudoc/>
- <sup>5</sup> In addition, some 56,000 Roman Catholics and other Csangoes in Moldova belong to that community.