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Committee on Legal Affairs and Human Rights

The Implementation of judgments of the European Court of Human Rights – 11th report

Information note following the rapporteurs visit to Romania, November 2022

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1. Introduction

1. I undertook a fact-finding visit to Romania on 15-16 November. The focus of the visit was (1) institutional capacity in Romania for implementing ECtHR judgments; (2) judgments relating to mental health, mental capacity and people with learning difficulties; (3) prison conditions; (4) other judgments including those relating to restitution cases and enforcement of domestic judgments.

2. I met with parliamentarians, including representatives of the Human Rights Committees of both the Chamber of Deputies and the Senate, the Chair of the Health Committee, and the PACE Delegation. I met with governmental bodies and agencies, including the Ministry of Health, the Ministry of Justice, the Chancellery of the Prime Minister, the Agent to the ECtHR, the National Authority for the Rights of Persons with Disabilities, and the Office of the Ombudsperson. I visited a mental health hospital to discuss the practical challenges relating to mental health detention. I also met with civil society representatives, including the Association for the Defence of Human Rights in Romania, the Center for Legal Resources, Romani CRISS, GRADO and ACCEPT. I am very grateful to all I met with for their time and useful insights into the challenges and efforts being made to implement judgments of the European Court of Human Rights.

3. According to the Annual Report 2021 on the Execution of Judgments, Romania has the 3rd largest number of cases pending execution (409 cases) of Council of Europe member States, and the 2nd largest number of leading cases pending execution (106 cases). Romania was 7th in relation to cases closed during 2021 (45 cases). The latest figures for 2022 seem similar with 496 cases pending execution, including 113 leading cases.¹ Romania has the largest number of unimplemented ECtHR judgments amongst EU member States.

4. During my visit I heard about a significant number of legislative and practical reforms being implemented at the national level, especially in the field of justice and social care. I was pleased to hear about the important progress being made, in particular to deinstitutionalise a number of people in the care system and to better support living in the community. Many of the sorts of reforms needed to grapple with the challenges identified by the ECtHR judgments require significant investment in large-scale meaningful reforms. I would therefore encourage maximum use of funds and expertise available from international organisations, including the World Bank, the Council of Europe and the EU, to help to deliver on these challenging but important reforms.

* Document declassified by the Committee on 25 January 2023.

¹ [Website](#) of the Department for the Execution of Judgments.

2. National processes and institutional capacity for implementing ECHR judgments

5. Most interlocutors considered that the Government was efficient at paying just satisfaction, but that there were greater delays in taking action to address general measures to address the root causes behind a human rights violation. During our meetings there was apparent general acceptance and acknowledgement that Romania had not had sufficient, recent focus on implementing ECtHR judgments in terms of resources, institutional mechanisms, and political weight and priority given to implementation. This was especially obvious when compared to CJEU judgments which were given a greater priority due to the financial penalties attached to their non-implementation through CJEU infringement proceedings.

6. The responsibility for coordinating the implementation of ECtHR judgments in Romania lies with the Agent to the ECtHR, within the Ministry for Foreign Affairs. It was widely recognised during our meetings that this Office had, for a number of years, been sorely understaffed not least given the significant caseload they faced (both in terms of litigating cases before the ECtHR and in coordinating the implementation of judgments). Whilst there was some discussion as to where the Office best sat within Government, overall I consider that it is perhaps less important where it is located; but rather that it has the necessary power and resourcing to deliver on implementation. In light of this, I was very pleased to hear of recent plans to address these concerns, including through the launch of two recruitment exercises to address staffing capacity issues in the Agents Office.² This would address their chronic understaffing and improve their ability both to defend cases before the ECtHR and to coordinate implementation work.

7. As well as staffing, there was also the recognition of the need for improved political coordination from those within Government with the power to drive through reforms needed to address ECtHR judgments. I was therefore pleased to hear of recent steps being taken to grapple with these issues and to provide the necessary coordination from central Government. During my visit, I was informed that three separate Working Groups/Task Forces were very recently established by the Chancellery Office of the Prime Minister to coordinate work in relation to (a) all the mental health/mental capacity cases; (b) the enforcement of domestic judgments (Sacaleanu) cases; and (c) the restitution cases. The Chancellery Office and the Agent said that further coordinating working groups for other topics and groups of judgments would be added as this coordination work progressed.

8. Overall, whilst there was a very good knowledge of human rights and the judgments in some areas (e.g. Ministry of Justice, Agent's Office, Ombudsperson, civil society), further work was arguably needed to embed more of a human rights culture in other areas. I was informed by the Agent that consideration was being given to establishing a "focal point" for human rights within each Ministry. Such an approach, backed up by appropriate training for the relevant officials, could be an effective way of ensuring better awareness within Ministries of the importance of human rights and stronger involvement on their part in identifying and implementing the measures required to address ECtHR judgments.³

9. These new initiatives seem very positive and, in my opinion, seem to be a very welcome response to deliver what is needed to enable Romania to best tackle the challenges of implementing some of these groups of ECtHR judgments. I therefore can only encourage all involved in driving forward this important work and hope that these changes will facilitate improvements in addressing these complex ECtHR judgments. Ideas for improving transparency for the implementation of ECtHR judgments, and involving all actors, including civil society, in the new systems for implementing judgments could further help to improve the understanding of steps being taken to address ECtHR judgments, and to ensure they respond to the needs of society. I would encourage thought to be given to ensuring, where possible, the involvement of all actors, including the Ombudsman's Office and civil society, in these new processes.

10. In relation to Parliamentary scrutiny of the implementation of ECtHR judgments, this had perhaps diminished somewhat since PACE [Resolution 1823 \(2011\)](#) which called for a greater role for parliaments in holding Governments to account for implementing human rights judgments, and commended the Romanian Parliament as one of the positive examples of a parliamentary structure to monitor the implementation of the Court's judgments. Since then, the Parliament had disbanded the sub-committee on the implementation of ECtHR judgments. Parliamentarians, during our meeting, committed to write a Memorandum to the permanent Bureau to request improvement of the democratic control of parliament over the executive in relation to the execution of judgments, Ideas were discussed such as a committee specifically focussing on the

² I was informed that the Agents Office current had 7 members of staff, with one recruitment exercise underway for 8 new posts who should be in post in the next 2-3 months, and another was planned shortly for a further 5 people.

³ Designating "focal points" or "reference contacts" in the relevant national authorities is recommended in the CM Recommendation [CM/Rec\(2008\)2](#) to member states on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights (at point 1). Recommendation point 7 specifically refers to training such actors.

implementation of ECtHR judgments, and requesting an annual/six-monthly report from the Government on the implementation of ECtHR judgments. I welcome this commitment and strongly encourage them in this work.

3. Specific Judgments

3.1. *Mental Health and Mental Capacity cases*

11. There are a number of different groups of Romanian cases relating to the treatment of people in mental health detention or those with mental capacity issues in Romania, requiring significant legislative, structural and institutional reform in the way that people with mental capacity and mental health issues are treated. I heard of significant progress being made, in particular in relation to the treatment of people with learning disabilities. However, civil society painted a more depressing picture, highlighting the need for both political will and money to address the issues.

12. I was informed about progress being made on the *Valentin Câmpeanu* case.⁴ This case concerns the authorities' failure to protect the right to life of Mr Câmpeanu, a young man of Roma origin, orphaned, HIV-positive, and with "severe intellectual disability". A new law had been passed in relation to guardianship and legal representation of those with disabilities, which was generally viewed as huge progress. A lot of people would need their guardianship to be re-examined (50,000-100,000), so this was a significant coordination task. The new working group, organised with the support of the Prime Minister's Chancellery Office, had been set up and would coordinate implementation.

13. Related to the implementation of this new law, I heard from the National Coordinator for Persons with Disabilities about a significant project underway, with World Bank backing, to deinstitutionalise people with mental disabilities, with a clear targets and an individual plan for each deinstitutionalised person. This would facilitate increased use of supported living (and working) in the community and would ensure that people were no longer in large institutions (no social service could henceforth have more than 50 beneficiaries, with financial penalties for those who did not reach this target). The Department for inclusive housing would also be covering a monthly allowance (with EU funding) to cover the transition from institutional living to inclusive housing.

14. The Chancellery-coordinated working group was also focussing on issues relating to conditions and ill-treatment in psychiatric institutions to address the *Parascineti* case.⁵ This case concerned ill-treatment contrary to Article 3 ECHR due to overcrowding, poor sanitary and hygiene conditions, a lack of an individual bed and the impossibility to spend time outdoors due to staff shortages. The authorities informed me that they would produce a legally-binding Action Plan, by ordinance, by the end of 2022 to prevent and combat crime and abuse in all places where persons with disabilities could be the victims of abuse. In relation to staffing in mental health hospitals, there was acknowledgment of the problem and I was informed of efforts to simplify recruitment procedures and to tackle the challenge of stigma and risks of working in such environments.

15. In relation to mental health in general, the Ministry of Health painted a positive picture of engagement with the issues, but explained that the split of institutions between the Ministry, local authorities and other bodies made it hard to coordinate. However, other interlocutors, including the Ombudsman and civil society, highlighted persistent concerns with mental health detention.

16. The *Cristian Teodorescu* Group⁶ of cases concern deficiencies in the legal framework governing (civil) involuntary placement in psychiatric hospitals and a general failure by psychiatrists to apply to procedures set by the law in relation to involuntary psychiatric detention. I was informed that progress in relation to safeguards in relation to mental health detention, would also fall under the centrally-coordinated working group. However, plans for addressing these issues seemed less well-developed and certain. In relation to mental health institutionalisation, there were suggestions that doctors were complicit in this due to funding arrangements and that a process of deinstitutionalisation and destigmatisation was needed.

17. The cases *N. v. Romania* and *R.D. and I.M.D. v. Romania* concern psychiatric confinement ordered as a security measure in a criminal context, i.e. for people who have committed a criminal offence, but who lack capacity to stand trial because of their mental health condition. The Committee of Ministers adopted an Interim resolution in March 2022 relating to this group, in the absence of any indication of any execution measure taken and/or envisaged, four years after the judgment was delivered. In relation to these issues I heard how risk assessments for dangerousness needed to be updated. Concerns seemed quite practical and widespread,

⁴ [Centre for Legal Resources on behalf of Mr Valentin Campeanu v Romania](#) – and see here for the [status of execution](#)

⁵ [Parascineti v Romania](#) – see here for the [status of execution](#).

⁶ [Cristian Teodorescu v Romania](#) – see here for the [status of execution](#).

for example, I heard from the hospital lawyer how individuals were detained in mental health hospitals for lengthy periods to facilitate their presence for a mental evaluation in preparation of a prosecution (due to fears they would otherwise fail to attend the evaluation). Such detention could be further delayed due to the heavy workload of the National Forensic Institute. There were other concerns relating to the lack of an adequate legal regime in respect of the mental health detention of minors.

18. More might be done to ensure that the Ministry of Health, and those working within its institutions, fully understand the relevance of human rights to their work. It can be hoped that the working group will focus on all areas of reform to ensure a much needed emphasis is giving to addressing all of the human rights cases in this area.

3.2. *Prison conditions*

19. There are a series of Romanian cases relating to prison conditions, including overcrowding and poor conditions in prisons and police detention facilities (*Bragadireanu* and *Rezmives group*),⁷ as well as deficiencies in the mental health treatment and care in detention (*Ticu group*),⁸ poor conditions of detention for life-sentenced prisoners, relating to isolation and systemic handcuffing, (*Enache*)⁹ and release on humanitarian grounds (*Dorneanu*).¹⁰

20. The Ministry of Justice (MoJ) reported good progress as against the 2020 Action Plan. In terms of overcrowding, they were in advance of the timelines set in the Action Plan of having 4m²/person with the additional buffer of 500 people on 31/12/2024. This also included building 2 new prisons; building work would start in January 2023. The MoJ were also working on increased use of alternatives to detention, which had in turn meant an increase in work for the probation service. During prison time, the focus was on preventing reoffending and reoffending rates were now the lowest they had been for 15 years. The ombudsman's detailed recommendations were nearly all accepted by the MoJ (apart from one relating the attendance at funerals, which is regrettable given the *Bragadireanu No. 2 group*¹¹ which concern the impossibility for prisoners to attend funerals of close relatives).

21. However, civil society expressed concern about continued poor conditions and about progress being unclear or slow. Doubts were expressed as to the accuracy of statistics on overcrowding and civil society suggested that better methodology would be preferable. Concerns were also expressed that prisoners transferred to address overcrowding often did not understand why they were being transferred and felt it as a punishment if they were moved away from family. As ever, it is important that the reason for decisions affecting prisoners should be communicated to them clearly.

3.3. *Restitution*

22. There are very long-running structural property restitution cases dating back 17 years in the *Strain* and *Maria Atanasiu* group of cases,¹² involving complex challenges and many cases. All of those I spoke with seemed aware of the scale of the problem but the issue was resourcing, prioritisation and coordination, including within local authorities. I was informed that the new Working Group relating to restitution cases was being set up by the Chancellery of the Prime Minister, involving local authorities and the Ministry of Finance, and was meeting to discuss options following the recent *Văleanu* ECtHR judgment, containing indications under Article 46 of the Convention of further measures required to settle this problem. Whilst those involved in the working group were confident of resolving the issues, the ombudsperson's office seemed less aware of this progress. The Ombudsperson's Office had a very good understanding of the issues and it might be useful to consider how they might be better involved in developing the solutions that this working group is drawing up.

3.4. *Non-enforcement of domestic judgments*

23. The *Sacaleanu Group*¹³ relates to long-standing structural issues of non-implementation or delayed implementation of domestic court judgments against the State or against State bodies. I heard how a draft law had recently been adopted by the Senate and was now with the Chamber of Deputies to help to address this.

⁷ [Bragadireanu v Romania](#) and [Rezmives v Romania](#) – see here for [status of implementation](#).

⁸ [Ticu v Romania](#) – see here for [status of implementation](#).

⁹ [Enache v Romania](#) – see here for [status of implementation](#).

¹⁰ [Dorneanu v Romania](#) – and see here for [status of implementation](#).

¹¹ [Bragadireanu No 2 v Romania](#).

¹² [Strain v Romania](#) and [Maria Atanasiu v Romania](#) – and see here for [status of implementation](#).

¹³ [Sacaleanu v Romania](#) – and see here for [status of implementation](#).

However I also heard of coordination difficulties around identifying who had responsibility for gripping these issues. There was, as of very recently, a new Government Memorandum and Action Plan on these cases, coordinated by the General Secretariat in a new Task Force. The intention was that this would help to identify the responsible authorities and to obtain the relevant budgetary resources. The Task Force were analysing the impediments to enforcement in these cases to prevent a repetition of these problems in the future.

3.5. Other cases

24. As concerns the *MGC*¹⁴ group of cases relating to the lack of a clear notion of consent to differentiate between cases of rape and those of sexual intercourse with a minor, this was a live issue in discussions. A draft law was being worked on but progress was not easy.

25. In relation to the *Lingurar* case¹⁵ concerning discrimination against Roma and disproportionate use of force by the police, civil society highlighted how many cases there were of such police discrimination against Roma. They noted that discrimination cases were usually settled by an out of court payment, often in kind, leading to a lack of real accountability and action to tackle the discrimination issues.

26. As concerns legal recognition of gender identity (*X & Y*),¹⁶ civil society expressed concerns at the lack of procedures for judges and the lack of political will to address this issue. The Ombudsman was trying to spear-head this work but whilst there was a major legislative development relating to personal documents, there was little progress to address *X & Y*.

4. Conclusions

27. Overall, my impression is that there is a great deal of human rights expertise both within Government and in civil society. The Romanian Government is aware of the institutional challenges posed by the number of unimplemented ECtHR judgments and is in the process of developing good initiatives to strengthen the institutional capacity to implement these judgments, including through better resourcing for the Agent's Office, a system of working groups coordinated through the Prime Minister's Chancellery Office to coordinate and drive through reforms, as well as initiatives to improve parliamentary oversight of implementation of judgments and human rights awareness within Ministries, such as through the use of focal points. All of these initiatives draw on CM Recommendation [CM/Rec\(2008\)2](#) to member states on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights and sound like examples of good practices for member States grappling with the implementation of ECtHR judgments and I encourage the Romanian authorities in this work. I would encourage greater involvement of civil society and the Ombudsman's Office in these mechanisms and in finding durable solutions. I would also encourage creative thinking to secure the funding, expertise and commitment necessary to deliver on some of the reforms needed. I would also encourage a more human rights focussed approach to be embedded within the Ministry of Health and the provision of mental health care. Finally, I would encourage the authorities to fully draw on Council of Europe expertise, including in technical cooperation programmes and projects. I look forward to hearing further about the progress of the implementation of these cases once these new processes start delivering tangible results.

¹⁴ [MGC v Romania](#) – and see here for [status of implementation](#).

¹⁵ [Lingurar v Romania](#) – see here for the latest [Action Plan and here for the status of implementation](#).

¹⁶ [X and Y v Romania](#) – see here for [status of implementation](#).