COUNTRY REPORT

ROMANIA

Ioan Durnescu and Ghirca Mihaela

Content:

PART I

ECTHR CASE LAW AND CPT REPORTS

INTRODUCTION

1. **PRISON OVERCROWDING**
   1.1. THE *IACOV STANCIU CASE*. THE FIRST DECLARATION OF THE GENERAL OVERCROWDING CONDITION IN ROMANIA – 24 JULY 2012
   1.2. GENERAL MESURES IMPOSED BY THE ECTHR UNDER ART. 46 OF THE CONVENTION
   1.3. THE FOLLOW-UP BY THE COMMITTEE OF MINISTERS
   1.4. STATE OF THE PRISON OVERCROWDING ACCORDING APADOR-CH
2. **HANDICAPED PRISONERS – ADAPTED DETENTION CONDITIONS**
3. **MEDICAL HEALTH CARE IN PRISON - VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION UNDER THEIR MATERIAL AND/OR PROCEDURAL ASPECT**
4. **PRISONER'S RIGHT TO CORRESPONDENCE– VIOLATION OF ARTICLE 8 OF THE CONVENTION**
5. **PASSIVE SMOKING – VIOLATION OF ART. 3 OF THE CONVENTION**
6. ***BRANDUSE V. ROMANIA*. OFFENSIVE SMELL PRODUCED BY A CITY RUN – VIOLATION OF ARTICLE 8 O F THE CONVENTION**

PART II

NATIONAL LEGAL SYSTEM FOR PRISONERS' RIGHTS PROTECTION

This publication has been produced with the financial support of the Criminal Justice Programme of the European Union. The contents of this publication are the sole responsibility of the University of Florence and can in no way be taken to reflect the views of the European Commission.

PART I – ECtHR case law

Introduction

The ECtHR has pronounced an important number of judgments related to Romanian prison conditions. The Court focused on several problems that Romania has in respect of prisoners, such as overcrowding, medical care treatment during detention, passive smoking and it paid special attention to handicapped prisoners and their special needs. Due to the high number of complaints concerning overcrowding and, in general, the poor conditions of detention, the Court decided to take general measures against Romania in *Stanciu Iacov* case, a prisoner who spent his entire detention in seven facilities and who was moved 38 times from 2002 to 2011.
The effectiveness of the investigation carried out by the authorities following the death of a detainee or the allegation of a degrading treatment was the subject of several cases analyzed by the Court. Finally, the correspondence or the smell produced by a city run conducted the European judges to convict Romania for violating article 8 of the Convention.

We will focus on the after conviction prisoner's cases dealt by the Court, and will not analyze the cases which concern the detention on remand or police detention.

1. PRISON OVERCROWDING

1.1. THE *IACOV STANCIU CASE*[1]. THE FIRST DECLARATION OF THE GENERAL OVERCROWDING CONDITION IN ROMANIA – 24 JULY 2012

The first case in which the Court was called to analyse the conditions of detention in Romanian prisons was *Bragadireanu*[2]. Although the case concerned a prisoner with health problems, the Court considered that the applicant's description of the prison facilities both in his initial letters to the Court and in his further observations, in particular overcrowding, obligation to share beds with other persons, damaged mattresses and inappropriate sanitary facilities are not contested by the Government and are confirmed by the CPT's reports on Romania. These conditions do not satisfy

[1] ECtHR, *Iacov Stanciu v. Romania*, 35972/05, 24 July 2012.
[2] ECtHR *Bragadireanu v. Romania,* 22088/04, 6 December 2007.

the European standards established by the CPT and the cumulative effect of overcrowding in large capacity dormitories, poor regime of activities and inadequate access to washing facilities can prove detrimental to the prisoners.

After 2007 the Court pronounced tens of other judgments concerning overcrowding and poor detention conditions.

The *Iacov Stanciu* case was the perfect application for the Court to state the general conditions in Romanian prisons due to the particular circumstances of the case:

- the applicant spent his entire detention in seven detention facilities. In his application lodged with the Court in 2005 he complained about the conditions of detention in four of them: Ploieşti Prison, Jilava Prison and its hospital, Mărgineni Prison, and Rahova Prison and its hospital;
- the Government acknowledged overcrowding in all the detention facilities where the applicant was held until 2004, and in Ploieşti Prison until 2006 ;
- the Court observed, based on all the material at its disposal, that the personal space allowed to detainees in the detention facilities where the applicant was detained between 2002 and 2011 was, save for occasional situations, consistently less than three square metres;
- in many detention facilities there were fewer beds than inmates, so that the applicant had to share often his bed with other inmates;
- 38 transfers during his 9 years detention.

The Court considered that the applicants allegations were supported by the findings made by the CPT, the Human Rights Ombudsman and APADOR-CH, a Romanian NGO, and decided that the applicant also experienced the following conditions: lack of appropriate furniture in the cells; poor sanitary facilities, such as limited number of toilets and sinks for a large number of detainees, toilets in cells with no water supply, sinks in cells providing only cold water for a wide range of needs (personal hygiene, washing clothing and personal objects, cleaning the toilets), limited access to showers providing hot water; poor sanitary conditions in general, including the presence of cockroaches, rats, lice and bedbugs, worn-out mattresses and bed linen, and poor quality food.

Therefore, the Court held that not only do the above conditions not satisfy the European standards established by the CPT, but the cumulative effect of overcrowding in large capacity (and sometimes also insalubrious) dormitories, a poor regime of activities, bad food and poor hygiene conditions can prove detrimental to the prisoners and found that Romania has violated art. 3 of the Convention.

Due to the large number of cases concerning overcrowding and prison conditions, the ECtHR continued its rulings and considered, in more recent cases, that the Romanian prisons do not satisfy the minimum level of guaranties established by the article 3 case-law. In the case of T*oran and Schymik v. Romania*[3], an application lodged in 2010, the Court has considered the extreme lack of space as a central factor in its analysis of whether an applicant's detention conditions complied with Article 3. Moreover, the Court has already found violations of Article 3 of the Convention on account of the material conditions of detention in Romanian detention facilities, including Timişoara Prison and Bucharest-Rahova Prison, especially with respect to overcrowding and lack of hygiene (*Iacov Stanciu*, *Ionuţ-Laurenţiu Tudor v. Romania*, no. 34013/05, 24 June 2014; *Geanopol v. Romania*, no. 1777/06, 5 March 2013; and *Blejuşcă v. Romania*, no. 7910/10, 19 March 2013).

1.2. GENERAL MEASURES IMPOSED BY THE ECTHR UNDER ART. 46 OF THE CONVENTION

Due to the large number of cases concerning overcrowding, and based on the information provided by the Romanian NGO – APADOR-CH and the CPT, the Court considered necessary to adopt general measures against Romania. At the moment when de judgment was pronounced, there were 80 cases pending before the Court[4].

The Court reiterated that Article 46 of the Convention imposes on the respondent State a legal obligation to implement appropriate general and/or individual measures to secure the right of the applicant which the Court has found to have been violated. Such measures must also be taken in respect of every person which is in the same situation, notably by solving the problems that have led to the Court's findings (see Scozzari and Giunta v. Italy [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; Christine Goodwin v. the United Kingdom [GC], no. 28957/95, § 120, ECHR 2002-VI; Lukenda v. Slovenia, no. 23032/02, § 94, ECHR 2005-X; and S. and Marper v. the United Kingdom [GC], nos. 30562/04 and 30566/04, § 134, ECHR 2008-...; Poghossian v. Georgia, no. 9870/07, §§ 67 to 70, 24 February 2009; Ghavtadze v. Georgia, no. 23204/07, §§ 102 to 106, 3 March 2009). This obligation has been consistently emphasised by the Committee of Ministers in the supervision of the execution of the Court's judgments (see, for example, ResDH(97)336, IntResDH(99)434, IntResDH(2001)65 and ResDH(2006)1).

[3] ECtHR, T*oran and Schymik v. Romania* no. 43873/10, 14 April 2015.
[4] http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-4029365-4701508#{"itemid":["003-4029365-4701508"]}

In order to show the general problem in Romanian prisons, the Court:

- cited some of the cases in which it already found a violation Article 3 of the Convention in respect of the conditions of detention that have existed over a number of years in Romanian prisons, in particular overcrowding, inappropriate hygiene and lack of appropriate health care (Bragadireanu, Petrea v. Romania, no. 4792/03, 29 April 2008; Gagiu v. Romania, no. 63258/00, 24 February 2009; Brânduşe v. Romania, no. 6586/03, 7 April 2009; Măciucă v. Romania, no. 25673/03, 26 August 2009; Artimenco v. Romania, no. 12535/04, 30 June 2009; Marian Stoicescu v. Romania, no. 12934/02, 16 July 2009; Eugen Gabriel Radu v. Romania, no. 3036/04, 13 October 2009; V.D. v. Romania, no. 7078/02, 16 February 2010; Dimakos v. Romania, no. 10675/03, 6 July 2010; Coman v. Romania, no. 34619/04, 26 October 2010; Dobri v. Romania, no. 25153/04, 14 December 2010; Cucolaş v. Romania, no. 17044/03, 26 October 2010; Micu v. Romania, no. 29883/06, 8 February 2011; Fane Ciobanu v. Romania, no. 27240/03, 11 October 2011; and Onaca v. Romania, no. 22661/06, 13 March 2012);
- and emphasised that the prisons concerned were spread throughout the entire territory, such as Bucharest-Jilava, Bucharest-Rahova, Giurgiu, Ploieşti, Gherla, Aiud, Mărgineni, Timişoara, Botoşani, Târgu-Ocna, Mândreşti, Poarta-Albă, Târgşor, Baia-Mare, Galaţi and Craiova.

Furthermore, the Court stated that, although the State took some measures in order to ensure the effectiveness of the protection granted by the ECHR, there are 2 conditions to achieve such a goal:

- allowing the competent national authority to deal with the substance of the relevant Convention complaint and
- granting appropriate relief, i.e. compensation if such a finding was made.

Or, the remedy available at that moment under Romanian law relied mainly on the delegate judge and that system should have allowed him and the domestic courts to put an end to a situation found to be contrary to Article 3 of the Convention and to grant compensation if such findings are made. As to the compensation system, the Court considered that the State **should impose a presumption that substandard conditions of detention** occasioned non-pecuniary damage to the aggrieved individual. "*Moreover, even in a situation where individual aspects of the conditions of detention comply with the domestic regulations, their cumulative effect may be such as to constitute inhuman treatment*". As the Court has repeatedly stressed, it is incumbent on the Government to organise its

prison system in such a way that it ensures respect for the dignity of detainees (see, among other authorities, Ananyev and Others v. Russia, nos. 42525/07 and 60800/08, § 229, 10 January 2012, with further references).

The level of compensation awarded for non-pecuniary damage by domestic courts must not be unreasonable and has to take into account the awards made by the Court in similar cases. The right not to be subjected to inhuman or degrading treatment is so fundamental and central to the system of the protection of human rights that the domestic authority or court dealing with the matter will have to provide compelling and serious reasons to justify their decision to award significantly lower compensation or no compensation at all in respect of non-pecuniary damage.

1.3. The follow-up by the Committee of Ministers

Under the Committee of Ministers supervision, 93 Romanian cases concerning notably the overcrowding and the poor detention condition in prisons or in police arrest are being followed by the execution body acting within the Council of Europe umbrella. The last session of the Committee of Ministers took place in March 2015. The Romanian Government showed the steps the State has taken in order to solve this endemic problem and the Deputies adopted several decisions[5].

Regarding the general problem of o**vercrowding and material detention conditions, the Committee of Ministers** states that the Government established, in September 2012, new lines of priority action to resolve the substantial issue at the origin of these judgments and set up a working group tasked with the regular follow-up of their implementation.

According to the Committee of Ministers document drafted in March, Romania adopted several **substantial measures**:

- *Reform of the State's criminal law policy:* this reform led to the entry into force, on 1 February 2014, of the new Criminal Code and Code of Criminal Procedure and of new laws on probation and the execution of custodial and non-custodial sentences and measures.

The new legislation introduces new alternatives to detention on remand, modifies the conditions for applying measures alternative to imprisonment and strengthens the role of the probation service.

[5] http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=bragadireanu&StateCode=&SectionCode

The new framework maintains the system of detention on remand in police detention facilities during the investigation phase. This reform was accompanied by training activities for judges and prosecutors and other authorities concerned in the application of the new provisions which may contribute to reduce prison population. The Ministry of Justice also envisages setting up monitoring of the application and the impact of the new legislation.

- *Measures aimed at increasing detention capacity and at improving the material conditions*: As a result of works carried out between 2012 and 2014, it seems that new places were made available in penitentiary facilities. According to the Government, between March 2012 and January 2015, the capacity of the penitentiary system, calculated on the basis of a 4 sqm individual space per prisoner, increased from 17,367 to 18,986 places, and the prison population decreased from 31,448 to 30,153 prisoners.

A part from these substantial measures, in order to ensure full execution of the *Iacov Stanciu* case, the Romanian Government must ensure **the effectiveness of the complaint of overcrowding and prison conditions:**

- the new law of 2013 on the execution of custodial sentences and measures enables prisoners to challenge any measure which affects the exercise of their rights recognized by this Law before the judge who supervises the deprivation of liberty. According to the authorities, this procedure already constituted under the previous legislation (Law No. 275/2006) an effective preventive remedy, which the new law has reinforced. In this connection, the authorities relied before the Committee of Ministers on fifteen court decisions given between 2011 and 2013 which upheld complaints from prisoners relating to the non-observance of the national standards on minimum living space and, in some cases, to the inadequate equipment of the cells.
- as to the compensatory aspect, the authorities indicated that prisoners can bring proceedings before the civil courts under the general provisions governing tort liability to request compensation for the time they spent in conditions that did not comply with Article 3 of the Convention.

Following the analysis of the state of execution provided by the Government, the Committee of Ministers considered:

- **as to the substantive measures:** it noted that the overcrowding continues to be a cause for concern, although a slight decrease in the prison population registered since 2012 and that the detailed analysis of the provisions adopted as part of the

reform reveals that they cannot contribute in a significant manner to the objective of reducing the size of the prison population. Nevertheless, the Committee encouraged the work of modernization of the facilities and concluded that such measures contributes to raise the conditions in which the prisoners are being detained;

- **as to the procedure enabling to challenge overcrowding and poor detention conditions,** the Committee of Ministers considered that it is not effective due to the fact that State's liability for tort can only be engaged if a fault is proven on the part of the alleged tortfeasor. Or, the Court expressly said in *Iacov Stanciu* case that a presumption should exist. In addition, the scope of the remedy appears to be limited to reviewing the compliance with the national standards applicable to detention conditions, which do not cover all the criteria applied by the European Court or are sometimes in contradiction with such criteria.

In conclusion, the Deputies adopted, in March 2015, the following decision:

"The Deputies

1. noted with interest the measures taken by the authorities, as part of the reform of the State's criminal law policy, and encouraged them to put in place rapidly the monitoring they envisage of the real impact of the reform on the number of persons in detention; and noted also with interest the measures taken by the authorities to improve the material conditions in detention facilities in Romania and invited them to intensify their efforts in this field;

2. considered with concern that, having regard to the severity of overcrowding affecting penitentiary facilities, the legislative measures adopted in the context of the above-mentioned reform do not appear by themselves capable of leading to a lasting solution to this problem within a reasonable period; consequently, urged the authorities to rapidly define and implement appropriate additional measures to reach this objective;

3. noted that the legislative framework put in place under the reform opted to maintain the system of detention on remand in police detention facilities notwithstanding the fact that a part of these facilities are structurally unsuitable to detention; underlined, having regard to this option, the extreme urgency for the authorities to remedy the structural deficiencies which affect these facilities and, pending the achievement of this objective, to adopt measures aimed at keeping to a minimum the length of detention in the facilities that are unsuitable for detention;

4. noted, moreover, that the information provided to date does not allow for a conclusion that the available procedures represent adequate and effective remedies for complaints related to overcrowding and material conditions of detention and, therefore, invited the authorities to adopt rapidly measures to ensure the existence of such remedies in domestic law;

5. invited the authorities to provide the Committee of Ministers with information on the strategy they envisage to put in place for the implementation of these judgments by 1 June 2015 at the latest; and strongly encouraged them to draw inspiration in this respect from the solutions proposed in the framework of the relevant project of the "Human Rights" Trust Fund."

A more detailed analysis of the legislative measures adopted by Romania and their limitations has been drafted by the Service of Execution of the ECtHR on 12 January 2015[6]. According to this document, although the Law no. 254/2013 allows the detainee to introduce a complaint to the judge, it limits the complaint to the Romanian law, which may be significantly different from the European standards. The law does not allow a global analysis comparable to the one made by the ECtHR. In addition, there is no information as to the follow up of the decisions pronounced in such cases, i.e. the detention conditions were in fact adapted to the standards.

In **October 2015** the Romanian Government sent to the Committee of Ministers **a revised action plan**. The plan was follows two line: analysis over the impact of the criminal laws recently entered into force (Criminal Code and Procedural Criminal Code) and the intent of the Romanian authorities to modernize and to increase the penitentiaries (a five years plan starting with 2015). Although the plan was distributed to the Committee of Ministers in December 2015, it hasn't been yet (January 2016) followed by an analysis by the specialized department from the Council of Europe or a resolution.

Nevertheless, we will shortly present the lines of the newly revised plan.

a. Statistical data

- police detention: a decrease of the number is visible in 2014, the number being 7.147, compared to 10.473 in 2013, 10.039 in 2012, 8.982 in 2011 and 8.693 in 2010. Also, from February 2014 to March 2015 12.289 persons benefited from alternative measures to detention, out of which 2.250 were assigned at their home;

[6] http://www.coe.int/t/dghl/monitoring/execution/Source/Documents/Docs_exec/H-Exec%282015%297_Bragadireanu_fr.pdf

- penitentiary detention: from February 2014 to February 2015 12.415 persons entered into detention and 16.820 went out, as compared to 15.536 for the precedent year which entered and 15.727 which went out.

Based on these statistical data, the Government considers that there is a constant decrease of the prison population since the entry into force of the new Criminal Codes, a 19% decrease of the population being a real progress. Also, an important decrease of the number of persons sent before a court can be observed due to the new plea guilty institution. This tendency lead to a decrease of the population in prisons.

b. The new Probation Service

The main scope of this service is to provide the rehabilitation to diminish the relapse and to straighten the community security. The Government relies on statistical data in order to affirm the importance of this service, but there is little information about the effectiveness of their work and the impact over the criminal policy.

c. Action plan for 2015-2020 in order to allow the prisoner to enjoy better conditions of detention. The Government plans to insure detention conditions in line to international standards, to develop post detention assistance and to prepare the prisoners to the reinsertion into the society.
d. Investments into several detention facilities
e. A monitoring mechanism was put in place (weekly evaluation of the prison population, increase of the time spent outside the room, monitoring of the ECtHR judgements and ONG and others authorities' reports etc.).
f. As to the remedies available, the Government considers that the preventive measures put in place by Law no. 254/2013 rendered this remedy effective. There are, according to the jurisprudence cited by the Government a high number of judges that directly apply the Convention. In order to ensure the effectiveness of the judgment, ANPC recommends transferring the detainees in a room that respects the standards or in another prison. As to the remedy allowing the detainee to obtain compensation, the Government acknowledged that he has not enough information in order to draw up a conclusion.

The Committee of Ministers welcomed the recent decision pronounced by the High Court of Cassation and Justice in which the Judges [7], based on the detainee demand, finds that there has been a violation of article 3 of the ECHR due to lack of minimum standards of detention. The judge also obliged the authorities to ensure to the detainee his personal space such as provided by the Minister

[7] http://www.juridice.ro/371981/arest-preventiv-sa-fie-dar-nu-oricum.html

of Justice Order no. 433/2010 **and to ensure that the meal will be served in a dedicated room. Such findings of the internal judges must be encouraged and can contribute to a highest level of protection. Nevertheless, one can observe that the judges, although they reached the conclusion that article 3 was violated, they did not award any compensation. Moreover, the execution of such a decision is questionable, due to the generalization of the overcrowding in Romanian places of detention.**

In the same context, Romania became one of the six beneficiary States of a specific project of the Human Rights Trust Fund on "*implementing pilot, 'quasi-pilot' judgments and judgments revealing systemic and structural problems in the field of detention on remand and remedies to challenge conditions of detention*" (HRTF project No. 18). Within this project, an exchange of views with the Romanian authorities and international experts took place in February 2014, to assist the authorities in the elaboration of a consolidated action plan for this group of cases. In the same framework, Romania participated in a Round Table on the "The setting up of effective domestic remedies to challenge conditions of detention", held in Strasbourg on 8 – 9 July 2014.

1.4. State of the prison overcrowding according to CPT and Romanian NGOs and reactions of the Government

The question of the overcrowding and poor detention conditions in Romanian penitentiaries is a problem followed by the NGOs and for which the Governments drafted an action plan.

APADOR-CH is a Romanian NGO which has as objectives to increase the level of implementation of human rights judgments in the Romanian internal legal system, to develop efficient mechanisms to ensure the rights of the persons deprived of liberty. In order to achieve their goals, they carry out fact finding missions in places of detention such as prisons, police arrests and carry out strategic litigation before the domestic courts.

Several reports drafted after their visits on prisons are available on their web site[8]. In 2014 the members of the NGO visited 16 places of detention, prisons and canters for re-education of minors. The findings of the reports are as follows:

- **9 prisons are overcrowded** and the hygiene is poor, the conditions of detention are under the limits established by the Court. The rats and cockroaches are present in the facilities and the measures taken by the authorities are not sufficient.

[8] http://www.apador.org/en/monitorizarea-conditiilor-de-detentie-penitenciare/

For example, in Jilava prisons there are 689 sqm for 1792 detainees, meaning a 0.43 sqm for each. The water was of a poor quality, although the authorities replaced the plums. The NGO considers that Botosani prison is one of the more overcrowded and at Iasi there are 3 times more detainees that the maximum capacity of the prisons, i.e. 1,8 sqm per detainee.

- **7 prisons don't have overcrowding problems**, 3 of them being for minors. The good news is that the canters in which minors are detained are not overcrowded and all de prisoners have a higher level of comfort.

The situation observed in 2014 is a continuation of the poor material conditions in Romanian prison and of the overcrowding problems which were analyzed in tens of cases by the ECtHR. In this respect, by a letter of May 2014, Apador-CH informed the Committee of Ministers about the situation in Romanian prisons. According to this letter, the specific problems of the system were: overcrowding rate, inappropriate hygiene, lack of educational, cultural programs, the treatment of vulnerable prisoners, lack of appropriate health care, legislation problems (Law no. 254/2013). Their findings were based on 17 prisons visited during 2013. Also, according to official data from the National Administration of Penitentiaries as of 22 April 2014, the holding capacity of the Romanian penitentiaries was of 29.660 number of persons detained for a capacity of detention facilities as per 4 sqm per detainee of 17.772, therefore little over 2 sqm per person.

In the same communication[9], APADOR-CH underlines that detention facilities, including the prisons in which construction and renovation works were carried out in 2012, continue to be severely overcrowded and do not offer adequate material and hygiene conditions. During the visits made in 2013, APADOR-CH noted, inter alia, situations in which the prisoners had to share beds (prison of Ploiesti). In the police detention facilities visited, the material and sanitary conditions remained precarious.

The Government drafted a revised action plan which was submitted to the Committee of Ministers in October 2014. The intention is to rely in several measures adopted or to be adopted and which would conduce to achieve the scope of prison condition in accordance whit the European standard. The measures are:

- a legislative reform – the entry in force of the new criminal code and new criminal procedure code;

[9] https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2564695&SecMode=1&DocId=2150586&Usage=2

- the training of the judges by the National Institute of Magistrates from 2 points of view, the ECtHR jurisprudence and trainings regarding the penalty policy, the role of the probation system;
- the increase of prisons capacity;
- the Ordinance no. 48/2014 increased the powers of the Ombudsman whith attributions for prevention of torture.

The Committee for Prevention of Torture (CPT) made its last visit in Romania in 2014 where it emphasised issues such as prison overcrowding, inmates-staff violence, inmate-inmate violence but also prisoner's intimidation[10].

2. PRISONERS IN SPECIAL NEEDS – ADAPTED DETENTION CONDITIONS

The ECtHR was called to analyze the detention conditions for prisoners with special needs, persons which due to their health problems or their condition need a different treatment in detention, meaning facilities to help them to have with their daily needs.
By these rulings, the Court imposes to the member states, in addition to the standards, to assure adapted conditions such as a person dedicated to help de detainee or a detention in a hospital adapted to his needs.

It is the case of a very recent judgment pronounced by the ECtHR, *Sandu Voicu v. Romania*[11] the Court considered that there has been a violation of article 3 of the Convention due to the lack of adapted conditions for a prisoner which suffered of multiples disease: epilepsy, lumbar hernia, cervical problems, gonarthrosis, he was diabetic and victim of a of a cerebral-vascular accident. Due to his invalidity, the doctors prescribed him a permanent help which had to be provided by a specialized person, but he actually received help only for the replacement of his personal effects. The reasoning of the Court is the following:

« La Cour ne peut se satisfaire des explications avancées par le Gouvernement à cet égard (paragraphe 41 ci-dessus). Elle estime que les autorités responsables de la prison auraient dû réagir promptement afin de pallier les défaillances physiques du requérant en respectant les recommandations des médecins et en lui assurant une prise en charge appropriée eu égard à son état de santé.

[10] The report is available here: http://www.cpt.coe.int/documents/rom/2015-31-inf-fra.pdf
[11] ECtHR, *Sandu Voicu v. Romania*, no. 45720/11, 3 March 2015.

49. En outre, la Cour observe que les souffrances du requérant liées à sa pathologie ne pouvaient qu'être exacerbées par les conditions de sa détention dans les cellules de la prison de Jilava qu'il partageait avec une vingtaine de personnes et dans lesquelles chaque détenu ne disposait que d'un espace compris entre 1,70 et 2,30 m² selon les informations du Gouvernement (paragraphe 7 ci-dessus).

50. La Cour estime que ces conditions, réputées inadéquates pour toute personne privée de sa liberté, ne pouvaient l'être que davantage encore pour une personne malade comme l'était le requérant (Parascineti c. Roumanie, no 32060/05, § 53, 13 mars 2012).
51. De plus, la Cour estime que sa détention dans des cellules ordinaires et non pas dans une infirmerie ou dans une pièce plus adaptée à son état de santé a pu concrètement mettre le requérant en situation de dépendance et d'infériorité par rapport à ses codétenus en bonne santé, et qu'elle a porté atteinte à sa dignité et constitué une épreuve considérable, source d'angoisses et de souffrances allant au delà de celles que comporte inévitablement toute privation de liberté (Kaprykowski c. Pologne, no 23052/05, §§ 71-76, 3 février 2009, et Vincent c. France, no 6253/03, §§ 100-103, 24 octobre 2006). ».

In the case of *Ticu vs. Romania*[12]**,** the applicant was serving a 20 year sentence for participating in armed robbery occasioning the victim's death. In childhood he suffered from an illness which led to considerable delays in his mental and physical development. He complained in particular about the poor conditions of detention in the various prisons where he had been serving his sentence, and especially about overcrowding and shortcomings in the provision of medical treatment. I n the light of the facts of the case taken as a whole, and considering in particular the conditions in which the applicant had been detained, the Court held that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention. Finding the living conditions in the institutions where the applicant had been held and continued to be held to be a particular cause for concern, it considered that such conditions, which would be inadequate for any person deprived of his or her liberty, were especially so in the case of someone like the applicant, on account of his mental health problems and the need for appropriate medical supervision. **The Court also noted that the relevant recommendations of the Committee of Ministers of the Council of Europe to member States, namely Recommendation No. R (98) 7 concerning the ethical and organisational aspects of health care in prison and Recommendation Rec(2006)2 on the**

[12] ECtHR Ticu v. Romania, no. 24575/2010, 1 October 2013.

European Prison Rules, advocated that prisoners suffering from serious mental health problems should be kept and cared for in a hospital facility which was adequately equipped and possessed appropriately trained staff.

3. Medical health care in prison – violation of Articles 2 and 3 of the Convention under their material and/or procedural aspect

Another important and visible problem in the reports of the NGO's and in the European Court case-law refers to the medical treatment in prisons, notably the lack of such medical treatment and afterwards the absence of an effective investigation as to the causes of the violation of the prisoners right to medical care and the identifications of the responsible persons. Not all the penitentiaries have a proper medical cabinet, or there is a lack of appropriate medication. Also, dental problems are very often due to the poor quality of food and not all the places of detention have a specialized doctor.

We have selected a few judgments which are relevant for the medical health care in detention facilities.

Gagiu[13] case – lack of medical treatment followed by the death of the applicant - violation

Principal facts

The applicant, Traian Gagiu, a Romanian national, was born in 1954 and died in September 2001. Having no family, he was raised in an orphanage. In July 1994 Mr Gagiu, a shepherd, was arrested and remanded in custody for murdering another shepherd. On 25 January 1996 he was convicted of aggravated murder and sentenced to twenty years' imprisonment by the Supreme Court of Justice. Amongst other ailments, the medical file drawn up by the authorities mentioned that the applicant had suffered since 1980 from chronic hepatitis and a chronic ulcer. In July 1998 Mr Gagiu was hospitalized for five months in the prison hospital, and again for another ten days in December 2000, during which time he underwent various examinations that revealed that he was suffering from, inter alia, chronic obstructive bronchopneumonia and persistent chronic hepatitis. The applicant returned to Aiud prison on 27 March 2001, where he was treated for chronic obstructive bronchopneumonia. In June 2001 the prison doctors reported that he had contracted scabies. On 20

[13] ECtHR *Gagiu v. Romania,* 63258/00

August 2001, suspecting chronic hepatitis, they sent Mr Gagiu to the Aiud Municipal Hospital where, following analyses, surgery was envisaged as well as further analyses at the Jilava prison hospital in Bucharest. The applicant's medical file made no mention of whether or not the authorities actually followed the prescriptions made out by the specialists, or what treatment was administered to him between that visit and 7 September 2001, in particular for his liver cirrhosis. While under treatment at that hospital, Mr Gagiu died on 8 September 2001 following a hepatic coma and cardiopulmonary arrest. The forensic report stated that death had been caused by liver and kidney failure with underlying liver cirrhosis, complicated by early peritonitis and hemorrhage of the upper digestive tract.

On 15 October 2001 the public prosecutor's office decided to discontinue the proceedings, finding that the applicant had died of non-violent causes and that there were no grounds for criminal proceedings. A medical committee found in February 2004 that the treatment the applicant had received had been appropriate and that death had occurred following foreseeable complications.

Decision of the Court under article 2 of the Convention – right to life

The Court reiterated that the State's obligation to protect the lives of persons in custody meant providing them in a timely manner with the medical care necessary to prevent death. It emphasized that the serious state of Mr Gagiu's health had made special care and treatment necessary.

However, the Court noted that until 20 August 2001 the applicant had been treated only for bronchopneumonia, whereas his medical file also mentioned chronic hepatitis. Although aware of Mr Gagiu's symptoms, the prison authorities had waited until that date before sending him to the municipal hospital.

The Court further observed that instead of receiving the treatment prescribed by the surgeons and specialists following the tests carried out at the municipal hospital, Mr Gagiu had been placed in a cell until the day before he died.

The Court found that the prison authorities had not acted with due diligence in providing Mr Gagiu with the necessary medical care, and that there had therefore been a serious failure on their part in their obligation to protect the health of a person in their custody, in violation of Article 2.

As to the authorities' obligation to conduct an effective investigation into the applicant's death, the Court noted that although the public prosecutor's office had immediately opened an investigation, it had been confined to the treatment administered to the applicant at the prison hospital the day before he died, paying no attention to the possible negligence of the authorities responsible for monitoring his state of health at Aiud prison. The investigators had simply found that Mr Gagiu had

died of natural, non-violent causes. The Court also noted that the medical committee had not announced its findings until more than two years after the investigation. It therefore held that the authorities had failed in their obligation to conduct an effective, thorough and timely investigation, in violation of their procedural obligation under Article 2.

Association for the Defence of Human Rights in Romania – Helsinki Committee on behalf of Ionel Garcea v. Romania[14] **- f**ailure to conduct effective investigation into the death of mentally-ill detainee: violation

Facts

The application was lodged by an NGO named the Association for the Defence of Human Rights in Romania – Helsinki Committee, on behalf of a prisoner Mr Garcea, who died in 2007. While serving a seven-year sentence, Mr Garcea was diagnosed with a mental illness and other health problems and was under regular supervision of the prison medical service. He had been in contact with the applicant association since the beginning of his prison term. In August 2004 he inserted a nail into his forehead and in early 2005 attempted suicide. Mr Garcea alleged that he was beaten up on several occasions and handcuffed and chained to a hospital bed. The applicant association lodged complaints with the domestic authorities after visiting him, stating that the lack of medical treatment amounted to torture and urging the prison authorities to stop using force against him. In June 2007 Mr Garcea inserted another nail into his forehead and was operated on in a civilian hospital. After his final return to the prison hospital he died there in July 2007. The applicant association lodged an administrative complaint with the prison administration requesting an investigation into Mr Garcea's medical treatment. The prosecutor's office decided not to prosecute the prison doctors. Concerning the allegations of ill-treatment through improper medical care a court of appeal ordered that the investigation be continued in February 2011 after finding that the conditions that had precipitated Mr Garcea's death had to be established.

Decision of the Court under the procedural aspect of article 2

The Court was called upon to determine whether the national authorities had fulfilled their obligation to conduct an effective investigation into Mr Garcea's death. The pending domestic proceedings had already lasted for more than seven years. Furthermore, the court of appeal had found that the investigation had not been thorough since essential questions had not been answered

[14] ECtHR *Association for the Defence of Human Rights in Romania – Helsinki Committee on behalf of Ionel Garcea v. Romania*, no. 2959/11, 24.03.2015

by the prosecutor. The prosecutor's office itself had failed to deal with the complaint of ill-treatment in detention lodged by the applicant association. The ineffectiveness of the investigation and the time it had taken the authorities to establish the circumstances of Mr Garcea's death thus amounted to a procedural breach of Article 2.

Iacov Stanciu[15] – dental problems – violation of article 3 of the Convention

Principal facts:

Mr Stanciu developed a number of chronic and serious diseases in the course of his detention, starting in 2002, including numerous dental problems, chronic migraine and neuralgia. He maintains that his dental problems became very serious for lack of proper treatment and monitoring. Following Mr Stanciu's request for a stay of execution of his sentence on health grounds, an official medical report of October 2004 stated that his neuralgia could be treated in prison. However, no treatment was prescribed for that condition and the report did not mention his dental problems. Mr Stanciu was hospitalised on a number of occasions during his detention, being treated with antibiotics and pain killers and having teeth extracted. On a number of occasions, Mr Stanciu was denied immediate treatment on the grounds that his condition did not constitute an emergency. During his detention, Mr Stanciu made numerous complaints under the Romanian legislation on the rights of prisoners concerning the conditions of his detention and the
alleged inadequacies of his medical treatment, which were eventually dismissed by the courts. His requests for a stay of execution of his sentence were equally dismissed. Mr Stanciu also lodged a criminal complaint against one of the prison doctors, alleging that he was left without appropriate care for a number of illnesses. After having heard the doctor, who stated that Mr Stanciu had no chronic or acute disease that required emergency treatment, the prosecutor decided in October 2004 not to open proceedings.

Decision of the Court under article 3 of the Convention:

The Court noted that in the course of his detention the applicant developed a number of chronic and serious illnesses.

In August 2002 the applicant started to have dental problems, complaining repeatedly each year of sore teeth and other associated pains. Between 2002 and 2003 he had several teeth extracted, and it

[15] ECtHR *Iacov Stanciu v. Romania,* no. 35972/05, 24 July 2012.

was not until the beginning of 2005 that he was diagnosed with partial edentulism and that a dental prosthesis was recommended.

As from January 2004 the applicant also complained regularly of headaches. In December 2004 he was diagnosed with occipital neuralgia, for which treatment was recommended.

In March 2005 he was diagnosed with chronic periodontitis, several extractions were performed and further monitoring was recommended. In 2006 he was again diagnosed with chronic generalised periodontitis requiring treatment, frontal edentulism, and occipital neuralgia requiring treatment, but also with neuralgia of the superior laryngeal nerve, nasal septal deviation and chronic rhinitis (see paragraph 83 above). Treatment of his dental problems was again recommended.

The diagnosis of chronic periodontitis was again made in 2007 and further dental extractions were performed between 2006 and 2008.

In 2008 chronic pharyngitis and a worsening of the applicant's migraine were detected.

By July 2010 the applicant was found to be suffering also from the following chronic illnesses: duodenal ulcer, chronic hepatitis, chronic migraine and biliary dyskinesia (see paragraph 91 above).

Despite his chronic diseases, the Court noted that the applicant was treated on a symptomatic basis. No comprehensive record was kept of either his health or the treatment prescribed and followed. Thus, no regular and systematic supervision of the applicant's state of health was possible. No comprehensive therapeutic strategy was set up, aimed at, to the extent possible, curing his diseases or preventing their aggravation rather than addressing them on a symptomatic basis.

The applicant's medical record indicates no treatment for the above chronic illnesses, including the chronic periodontitis. It appears that the applicant received symptomatic treatment consisting of pain killers and, for occasional infections, antibiotics.

Even some of the medical recommendations and prescriptions of the doctors who examined the applicant were not implemented, such as the treatment for his neuralgia, a dental prosthesis and appropriate monitoring and treatment of his dental problems. Frequently the applicant had to wait for several weeks, despite severe pains, to be provided with medical assistance, in particular for his teeth, because no dentist was available. As a result, the applicant's health seriously deteriorated over the years. In particular, his dental problems grew worse, and yet no appropriate treatment was envisaged. Combined with his other untreated chronic ailments, this resulted in various constant pains and, in respect of his dentition, eventually to the complete loss of fourteen teeth and the main part of two other teeth.

Lastly, the Court observed that it was not until October 2010 that the applicant's dental problems were taken care of intensively (fourteen appointments over a period of four months) and comprehensively (check-up and treatment of all remaining teeth, as well as a dental prosthesis) in a

private practice outside the prison, which the applicant was allowed to consult only after he stated that he was in a position to do so at his own expense.

4. PRISONER'S RIGHT TO CORRESPONDENCE– VIOLATION OF ARTICLE 8 AND OR 34 OF THE CONVENTION

The prisoners' right to correspondence was analyzed by the Court in several cases, starting with *Petra*[16] case. Although there is not a large jurisprudence on this matter, we consider that this is a very important aspect which must be paid attention by the authorities. The Court held in several cases that there has been a violation of article 8 or 34 of the Convention due to the interference of the authorities in the correspondence of the prisoners.

Cotlet v. Romania[17]

Facts

The applicant, Silvestru Cotleţ, is a Romanian national who was born in 1964 and lives at Gura-Humorului. The case concerns his difficulties in corresponding with the Convention institutions after lodging his application. The applicant complained under Article 8 of the Convention of interference with his correspondence with the Convention institutions, including delays in forwarding his letters to the Court and the Commission, the opening of his letters to those institutions, and the prison authorities' refusal to provide him with paper, envelopes and stamps for his letters to the Court. He also complained of a violation of his right of individual application, as guaranteed by Article 34 of the Convention.

Decision of the Court under article 8 of the Convention – violation of the right to correspondence.

Delays in forwarding the applicant's letters to the Commission and the Court

The Court noted that between November 1995 and October 1997 the applicant's correspondence had taken between 1 month and 10 days and 2 months and 6 days to reach its destination. Such delays amounted to an interference with his right to respect for his correspondence. Referring to its case-law, the Court observed that it had previously held that the Romanian legislation on the monitoring of prisoners' correspondence was incompatible with the requirement under Article 8 § 2 of the Convention for an interference to be "in accordance with the law". Consequently, finding that

[16] ECtHR *Petra v. Romania,* no. 115/1997/899/1111, 23 September 2008.
[17] ECtHR *Cotlet v. Romania*, no. 38565/97, 3 June 2003

that requirement was not satisfied, the Court held that there had been a violation of the Convention under this head.

Opening of the applicant's correspondence with the Commission and the Court

As regards the period up to 24 November 1997, when a decree was issued guaranteeing the confidentiality of prisoners' correspondence, the Court found that the fact that the applicant's letters had been opened amounted to an interference with his right to respect for his correspondence: that interference had been based on national provisions which had not amounted to a "law" for the purposes of Article 8 paragraph 2 of the Convention. Consequently, it held that there had been a violation of the Convention under that head. With regard to the period after 24 November 1997, the Court noted that the facts were in dispute. The case file showed that the interference with the applicant's right to respect for his correspondence had continued. In the absence of any specific information from the parties on the point, the Court assumed that the basis for the interference was the Minister of Justice's decree of 24 November 1997. It noted that the decree was referred to under various different numbers and did not appear to have been published. Accordingly, the Court found that the interference was not "in accordance with the law" and that there had been a violation of Article 8 of the Convention.

The prison authority's refusal to provide the applicant with writing materials for his correspondence with the Court

The Court noted that inherent in the right to respect for correspondence, as guaranteed by Article 8 of the Convention, was the right to writing materials. It noted that several letters in which the applicant had related the difficulties he was experiencing had arrived in envelopes from other prisoners. The Court did not find the Government's submission that the applicant had been entitled to two free envelopes a month substantiated. It also found that the applicant's right to respect for his correspondence was not adequately protected by the provision of envelopes. It noted that the Government had not disputed that the applicant's requests had been turned down because there were no stamped envelopes for overseas correspondents available. In the circumstances, the Court found that the authorities had not discharged their positive obligation to supply the applicant with writing materials for his correspondence with the Court and, accordingly, held that there had been a violation of Article 8 of the Convention.

A more recent case, *Enache v. Romania*[18] confirms that the applicant had encountered problems in receiving the Courts letters in 2010 and concluded that article 34 of the Convention had been violated.

5. PASSIVE SMOKING – VIOLATION OF ART. 3 OF THE CONVENTION

The conditions in which the detainees are being held are not limited at the minimum space or medical treatment. The mere fact that they are detained does not justify an obligation for the person to support the smoke produced by the cigarettes of the others detainees, although the Court notes that there is no consensus among the member States of the Council of Europe with regard to protection against passive smoking in prisons. The reasoning of the Court relies on the medical advices and the health deterioration of the applicants. It should be noted also that a law in force since 2002 prohibited smoking in hospitals and the domestic courts had frequently ruled that smokers and non smokers should be detained separately. The problem should no longer exist once the overcrowding of the prison population will be solved.

Elefteriadis v. Romania[19] - violation of article 3 of the Convention

The applicant, who suffers from chronic pulmonary disease, is currently serving a sentence of life imprisonment. Between February and November 2005 he was placed in a cell with two prisoners who smoked. In the waiting rooms of the courts where he was summoned to appear on several occasions between 2005 and 2007, he was also held together with prisoners who smoked. The applicant further claimed to have been subjected to second-hand tobacco smoke when being transported between the prison and the courts. The Court held that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention, observing in particular that a State is required to take measures to protect a prisoner from the harmful effects of passive smoking where, as in the applicant's case, medical examinations and the advice of doctors indicated that this was necessary for health reasons .In the instant case, it appeared possible to separate the applicant from prisoners who smoked, given that there was a cell in the prison containing only non-smokers. Furthermore, following the period during which the applicant had been detained in a cell with smokers, the medical certificates issued by several doctors recorded a deterioration in his respiratory condition and the emergence of a further illness, namely chronic obstructive bronchitis. As to the fact that he

[18] ECtHR *Enache v. Romania*, no. 10662/06, 1 April 2014, par. 63-72.
[19] ECtHR *Elefteriadis v. Romania*, no. 38427/05, 25.01.2011.

had been held in court waiting rooms with prisoners who smoked – even assuming that it had been for short periods –this had been against the recommendations of doctors, who had advised the applicant to avoid smoking or exposure to tobacco smoke. The fact that the applicant had eventually been placed in a cell with a non-smoker appeared to have been due to the existence of sufficient capacity in the prison in which he was detained at that particular time rather than to any objective criteria in the domestic legislation ensuring that smokers and non smokers were detained separately. Thus, there was nothing to indicate that the applicant would continue to be held in such favourable conditions if the prison where he was currently detained were to be overcrowded in the future.

Florea v. Romania[20] – 14.09.2010 – violation of article 3

In 2002 the applicant, who suffered from chronic hepatitis and arterial hypertension, was imprisoned. For approximately nine months he shared a cell with between 110 and 120 other prisoners, with only 35 beds. According to the applicant, 90% of his cellmates were smokers. The applicant complained in particular of overcrowding and poor hygiene conditions, including having been detained together with smokers in his prison cell and in the prison hospital. The Court observed in particular that the applicant had spent in detention approximately three years living in very cramped conditions, with an area of personal space falling below the European standard. As to the fact that he had to share a cell and a hospital ward with prisoners who smoked, no consensus existed among the member States of the Council of Europe with regard to protection against passive smoking in prisons. The fact remained that the applicant, unlike the applicants in some other cases the Court had previously dealt with 2, had never had an individual cell and had had to tolerate his fellow prisoners' smoking even in the prison infirmary and the prison hospital, against his doctor's advice. However, a law in force since June 2002 prohibited smoking in hospitals and the domestic courts had frequently ruled that smokers and non smokers should be detained separately.

6. *BRANDUSE V. ROMANIA*. OFFENSIVE SMELL PRODUCED BY A CITY RUN COMPANY – VIOLATION OF ARTICLE 8 O F THE CONVENTION

An inedited judgement was pronounced by the Court in the case of Mr. Branduse. The smell that the applicant had to endure several years during his detention, a pollution contrary to the standards, has been considered by the Court as affecting the living conditions and therefore contrary to article 8 of the Convention.

[20] ECtHR *Florea v. Romania*, no.37186/03, 14.09.2010.

Branduse v. Romania[21] – violation of article 8 of the Convention

Principal facts

The applicant, Ioan Brânduşe, is a Romanian national who was born in 1951. He was sentenced to ten years' imprisonment for fraud and is currently imprisoned in Arad (Romania). While in pre-trial detention Mr Brânduşe was at first held at Arad police headquarters. He was then transferred to prisons in Timişoara (Romania) and Arad, where he has spent most of his detention to date. The applicant brought judicial proceedings to complain of his conditions of detention and the fact that in Arad Prison he had to put up with stale air and the nauseous stench from a site about 20 metres away from the prison formerly used for the disposal of household waste. This former refuse tip, managed by company S., which is itself run by Arad City Council was in use from 1998 to 2003. Mr Brânduşe's applications were rejected by the domestic courts.

The Court decision under article 8 of The Convention:

While noting that Mr Brânduşe's health had not deteriorated through proximity to the former refuse tip, the Court considered that, in the light of the conclusions of the environmental studies and the length of time for which the applicant had to suffer the nuisances concerned, the applicant's quality of life and well-being were affected to the detriment of his private life in a way which was not merely the consequence of his deprivation of liberty. Indeed, the applicant's complaint related to aspects which went beyond the context of his conditions of detention as such and which, moreover, concerned the only "living space" the applicant had had available to him for a number of years. It therefore considered that Article 8 was applicable in the case.

The Court observed that the Romanian authorities were responsible for the offensive smells, as company S. was run by Arad City Council. In addition, responsibility had been transferred from the Council to S. only in February 2006, and even after that date the environmental authorities had made the Council directly responsible for closing the site.

Moreover, the file showed that the tip was in operation effectively from 1998 until 2003, and that the growing volume of waste accumulated proved that it had even been used thereafter by private individuals, as the authorities had not taken measures to ensure the effective closure of the site. However, throughout that period the tip had no proper authorisation either for its operation or its closure. Whereas the applicable provisions imposed the requirement of a permit and compliance with a number of other conditions before the tip could be opened, the local authorities had not

[21] ECtHR *Branduse v. Romania*, no.6586/03, 7.04.2009

followed the procedure laid down and as a result had failed to comply with some of their obligations.
Furthermore, although it was incumbent on the authorities to carry out preliminary studies to measure the effects of pollution, it was only after the event, in 2003 and after a fierce fire on the site in 2006, that they did so. The studies concluded that the activity was incompatible with environmental requirements, that there was a high level of pollution exceeding the standards established in 1987 and that persons living nearby had to put up with significant levels of nuisance caused by offensive smells. The competent authorities had explicitly penalised Arad City Council for the absence from the site of any means of informing the public about risks for the environment and the health of the population arising from the existence of the refuse tip. Nor had the Romanian Government been able to indicate what measures had been taken to ensure that the inmates of Arad prison, including in particular the applicant, could have effective access to the conclusions of the studies mentioned and to information whereby they could assess the risks to their health.
Lastly, the proceedings relating to the work to affect the closure of the former tip were still pending and the Government had not supplied any information about the progress – or even the beginning – of the work to cover over and rehabilitate the site, which was supposed to be completed in 2009.

Civil liability – an analysis on the Romanian Law and jurisprudence

According to articles 998 and 999 of the Civil Code into force from 1865 until 2011, any person who has suffered damage can seek redress by bringing a civil action against the person who intentionally or negligently caused that damage. The New Civil Code as into force since 2011 states in art. 1349 that any person who infringe his duty to respect the rule of law in order not to violate others rights, is responsible for the damage caused. This New Civil Code, as the old one, states that we are in the presence of a tortfeasure if several conditions are met cumulatively: a prejudice, an illicit behaviour, an intention or negligence from the person who committed the facts and a causal link between the facts and the prejudice[22]. The circle of the compensated claims has been enlarged by the New Civil Code which also includes nowadays the cases when the legitimate interests of a person were affected by the behaviours, therefore not only their rights.

The above mentioned provisions are used by the prisoners in order to seek compensation for the violation of their rights during their detention. There are not other civil ways for this kind of claim

[22] See *Flavius-Antoniu Baias, Eugen Chelaru, Rodica Constantinovici, Ioan Macovei, Noul Cod Civil* – Comentariu pe Articole, Editura C.H.Beck 2014.

which can lead to material compensation. The general tort provisions are invoked by the Romanian Government in order to prove that there is an effective domestic remedy.

In *Iacov Stanciu* case, the ECtHR considered, after a thorough analysis of the internal jurisprudence sent by the Romanian Government, that it must reflect the existence of a presumption that substandard conditions of detention have occasioned non-pecuniary damage to the aggrieved individual. There is not necessarily a link between the prison itself and the violation of the detainee rights, but it can be link to much broader issues of penal policy. Or, it can be easily noted from the civil provisions that the person must demonstrate before the judge the intention or the negligent behaviour of the person sued (natural or moral) and that, in every case, the judge must analyse whether the mentioned behaviour was able to produce damage. What the ECtHR wants from the Romanian authorities is to be able to recognize and compensate a detainee held in substandard conditions of detention, regardless of what he was able to prove as damage. The sole detention in such conditions must be sufficient to allow compensation claim. Moreover, the European Court asks the State (meaning the regulator and the judges called to decide on this case) to analyse the claim in the same conditions as the ECtHR would do it, by taking into consideration the cumulative effect of several apparently minor treatments, but which, taken together, can lead to a violation of the conventional rights. Lastly, the Court stated that, in order to be effective, a compensation afforded at national level must be compensation at the level usually afforded by the ECtHR.

The Committee of Ministers of the Council of Europe and the Council of Europe specialized departments analysed the civil claim pretended to be effective remedy by the State, and the conclusions were that:

- the courts did not award the applicants compensation for the damages already caused by the situation in issue; two examples do not suffice to prove the existence of a remedy with the required certainty; a remedy challenging the failure to observe the minimum national standard of individual living space could not lead to an immediate relief of the applicants' situation; the systemic nature of the issue found should not dissuade courts in addressing the merits of the applicants' complaints as regards overcrowding and material conditions of detention and in seeking in relation to the concrete situation of each applicant ways to alleviate the effects of overcrowding or to remedy the other challenged aspects23

[23] Memorandum prepared by the Department by the Department for the Execution of Judgements and Decisions of the ECtHR on 12 May 2012, available on www.coe.int.

- the State's liability in tort can only be engaged if a fault is proven on the part of the alleged tortfeasor[24]; therefore the Committe of Ministers decided in May 2015 that "*the information provided to date does not allow for a conclusion that the available procedures represent adequate and effective remedies for complaints related to overcrowding and material conditions of detention and, therefore, invited the authorities to adopt rapidly measures to ensure the existence of such remedies in domestic law*".

Internal decisions resumed:

- Supreme Court of Justice (SCJ), decision no. 4905/2013 – the Court allowed the claimant a 1000 RON (about 250 EUR) for overcrowding. The detainee was held, together with 13 other detainees in a cell of 34,78 m^2, respectively 2.48 m^2 for each detainee. The SCJ considered, based on a previous decision pronounced by the judge responsible with the execution, that the Jilava Penitentiary disrespected the minimum standard and therefore created a discomfort which can be translated into a moral damage. As to the amount afforded, the court based its decision on the general Romanian jurisprudence and doctrine for moral damage, without taking into consideration the European Court jurisprudence;

- SCJ, decision no. 3562/2010 – the Court allowed 37000 RON (about 8200 EUR) for moral damage due to the illness caused during detention. The SCJ considered that the claimant proved a link between his illness and the poor conditions of detention. Also, when analyzing the appeals on points of law the SCJ took into consideration the ECtHR jurisprudence;

- Bihor Tribunal – decision no. 80/A/2013 – the court rejected the claim based on witnesses testimony about the conditions of detention, but did not analyzed whether, for example, the 4m^2 was respected or not; the appeal on points of law was also rejected by Oradea Court of Appeal[25] which considered that the tribunal analysed the facts based also on EctHR jurisprudence. Nevertheless, the decision is not clear as to the material conditions of detention, it only contains general findings. Moreover, the decisions states that the burden of proof is within the claimant. In this file, the first instance court stated that the detainee was

[24] 1222nd meeting (11-12 March 2015), available on www.coe.int.
[25] Oradea Court of Appeal, decision no. 4301/2013

not able to prove the real conditions of detention for Rahova, Oradea, Jilava and therefore analysed his claim only for Satu-Mare Penitentiary for which he proposed two witnesses.

- Braila Tribunal – decision no. 298/2015 – the court rejected the claim and by a very short analysis of tort conditions, decide that the claimant was able to prove that his detention conditions war contrary to the law;

These recent decisions pronounced by Romanian Courts are concordant with the conclusion of the Committee of Ministers that the civil remedy available is not yet effective or that supplementary legislative measures should be taken.

The CPT reports

In the last ten years, Romania has been visited by CPT in five occasions: 2004, 2006, 2009, 2010 and 2014.
The visit in 2004 was dedicated to the psychiatric units and other hospitals for disabled people.

The visit of 2006 focused on the situation in the police detention but also on the regime and treatment applied to the life-sentenced prisoners and foreign nationals. The report also noted the serious level of overcrowding and call the Romanian authorities to follow the 4 square meters rule. Another important recommendation was for the Romanian authorities to use the force only in isolated cases (to forbid also the wearing of mask during the force interventions) and limit the physical and verbal disputes and also the insults. The report makes also recommendations regarding the material conditions in different prisons and suggest more rehabilitation and constructive activities for inmates. Regarding the use of violence in prison establishments, CPT required specific information as how the prison staff reacted, how many inmates and prison staff were sanctioned, in how many cases the prosecutor was involved and so on. In its response, the Romanian authorities described the reactions of the prison administration dealing with between inmates violence and also inmate-staff incidents. In most cases of inmate-inmate violence the sanction was a disciplinary one (isolation for a number of days) and removal from that prison. In case of staff misconduct, the prison administration response stated that between 2005-2006 there were 313 complaints against prison staff. In same cases disciplinary procedures were launched (three in Bacau prison for example) and one prison staff was prosecuted for abusive conduct.

The visit of 2009 was dedicated to the conditions and the regime in the psychiatric units in Romania.

The visit in 2010 aimed at following up the recommendation formulated in the previous visits. The situation in the police detention and the treatment of juveniles and life-sentenced prisoners were the main topics of interest. As far as prisoners were concerned, the report demanded the Romanian authorities to improve the detention conditions especially for the juveniles held in the Rahova prison and the Craiova juvenile prison. Important to mention here is also that the report urged the Romanian authorities to implement the Optional protocol signed in 2009 on setting up a national mechanism for preventing the torture.

The report of the 2014 visit is not published yet but from the news flash issued by the Council of Europe results that the visit aimed at assessing the extent to which the previous recommendations have been implemented by the Romanian authorities. Particular attention seemed to be allocated to the treatment of persons in police custody, prison conditions, prison healthcare and the situation of patients in psychiatric institutions.

To conclude this section, it appears that CPT played an important role in Romania in stimulating Romanian authorities to pay special attention to the complaint procedures. Special interest was allocated to how the Romanian authorities reacted to violent acts between inmates and between inmates and staff. In this respect, it seems that the Romanian authorities took the necessary steps to ensure that no violent or intimidating act goes unpunished.

PART II
NATIONAL LEGAL SYSTEM FOR PRISONERS' RIGHTS PROTECTION

1. List of legal resources for protecting the rights of prisoners

As in most of the European countries, the most powerful act regulating the rights and the obligations of the citizens is **the Constitution**.

As far as prisoners are concerned the following articles are relevant:

- Art. 21 – Free access to justice:

(1) Every person is entitled to bring cases before the courts for the defence of his legitimate rights, liberties and interests.

(2) The exercise of this right shall not be restricted by any law.

(3) All parties shall be entitled to a fair trial and a solution of their cases within a reasonable term.

(4) Administrative special jurisdiction is optional and free of charge.

According to this article, prisoners are entitled to bring their case before a competent court to defend their rights.

- Art. 51 – The right of petition:

(1) Citizens have the right to address the public authorities by petitions formulated only in the name of the signatories.

(2) Legally established organizations have the right to forward petitions, exclusively on behalf of the collective body they represent.

(3) The exercise of the right of petition shall be exempt from tax.

(4) The public authorities are bound to answer to petitions within the time limits and under the conditions established by law.

- Art. 52 – The right of a person aggrieved by a public authority:

(1) Any person aggrieved in his/her legitimate rights or interests by a public authority, by means of an administrative act or by the failure of a public authority to solve his/her application within the lawful time limit, is entitled to the acknowledgement of his/her claimed right or legitimate interest, the annulment of the act and reparation for the damage.

(2) The conditions and limits on the exercise of this right shall be regulated by an organic law.

(3) The State shall bear patrimony liability for any prejudice caused as a result of judicial errors. The State liability shall be assessed according to the law and shall not eliminate the liability of the magistrates having exercised their mandate in ill will or grave negligence.

In our case, the prison administration can be defined as a public authority.

The next powerful act that protects the rights of the prisoners is the **Criminal Procedure Code** which states at art. 598 that the prisoners are entitled to contest the execution of imprisonment to the court in some different situations (e.g. when the sentence is not final, when there is a mistake regarding the imprisoned person etc.).

But all these acts are quite general and cover issues related to the whole criminal justice processes or to human rights. The act that is mostly used equally by the prison staff and also by the prisoners is the **Law no. 254/2013** regarding the execution of the punishments and the measures involving the deprivation of liberty.
According to this law, a supervisory judge (ro. Judecatorul de supraveghere a privarii de libertate) is appointed in every prison in charge with 'supervisiong and monitoring the legality of the prison sentence implementation'. In line with this mission, the supervisory judge responds to the prisoner's complaints regarding their rights, regarding the prison regime and also concerning the disciplinary sanctions. In dealing with the complaints, the supervisory judge has access to all information and relevant people who can help in finding out the truth. Before deciding, the judge has to listen to the prisoner. All the decisions of the supervisory judge are obligatory for the prisoners or the prison administration. The supervisory judge decision may be contested against by both the prisoner or the administration at the local court (ro. judecatoria). The local court will pass the final decision (ro. sentinta definitiva). Contesting the decision of the supervisory judge will not suspend the execution.

Apart from the judiciary route, the prisoners can also inform the human rights NGOs. According to art. 57 alin. 2 and 3 of the Law no. 254/2013, the representatives of the NGOs may visit the prisons and speak to the prisoners with the approval of the general director of the Prison Administration. The meetings between the prisoners and the NGO representatives are confidential and may take place only under visual surveillance. For examples of how NGOs are involved into the human rights monitoring, see section 1.4 of this report.
The prisoners may also speak to the mass media, if they do not put in danger the safety of the prison establishment, the victim or the other prisoners.

Further more, the right to complain and for correspondence is covered in full details in the Law no. 254/2013 – art. 63 and 64. The right for petition and correspondence is guaranteed and the prison administration is obliged to take all the necessary measures to facilitate the realization of this right (e.g. to install collecting points for collecting post, to supply paper and pencils etc.). The letter can be opened without being read in front of the prisoners under some strict conditions. In case the prisoners have no means to cover the costs for correspondence, the prison administration will cover these costs when the destination is a court or an international human rights organization.

Apart from these legal mechanisms, the prisoners have also access to other administrative remedies. For instance, they can address their complains to the prison director or to the general director of the National Prison Administration (NPA). More over, they can address the minister of Justice. Both the minister of Justice and the General Director have inspection bodies that can check and respond to complaints. As these bodies belong to the same system that allegedly violated the prisoner's rights, their independence may be difficult to defend.
Sometimes, the prisoners send their complaints to the President of the Republic. In this case, the President asks the minister of Justice or the general director to check and respond.

To conclude this section, the protection of the prisoner's rights in Romania is ensured through a number of legal texts that allow prisoners to address a significant number of authorities: the president, the minister of Justice, the general director of NPA, the NGOs, the Ombudsman, the directors of the prisons, the courts and the supervisory judges. Most of these mechanisms are rather internal/administrative and therefore not completely independent. However, the existence and the proximity of the supervisory judges and the access to the court constitute a solid evidence for a more independent and court based mechanism for the realization of human rights behind bars.
The most important limit of this mechanism is that it reacts to individual cases and is reactive and not pro-active. Responding to one violation does not guarantee that this mistake will not be repeated in the future. Furthermore, the supervisory judge has no legal ground to order the prison administration to award compensations to the prisoner whose rights were violated.

In 2014, a number of 3.885 complaints were registered by the supervisory judges regarding the violation of different rights. A number of 12.594 complaints were registered regarding the regime applied and 6.605 cases of complain against the disciplinary sanctions.
In number of 9.844 cases the decisions of the supervisory judges were contested at the court.
It can be noted that most of the complaints are against the detention regime. It seems that in more than half of the cases inmates are satisfied with the solutions of the supervisory judges and don't contest their decisions to the court.

2. Ombudsman

According to the Romanian Constitution (art. 58-60) and the Law no. 35/1997, the Ombudsman is responsible to protect the human rights and the liberties of people when they come in contact with the state authorities.

As far as prisoners are concerned, the Ombudsman has two main responsibilities: to check on the individual complaints and to implement the national mechanism for preventing torture and other ill treatments.

In 2013, the Ombudsman reacted to 133 complaints filed by the inmates (an increase from 2012 - 102). Most of these complaints addressed issues such as:

- delays in taking prisoners in front of different medical commissions to attest their disability,
- irregularities in the medical treatment,
- the lack of food during the court hearings,
- inappropriate detention conditions. The most severe issues seems to be overcrowding. According to the MoJ Order no. 433/C/2010 the maximum capacity of the penitentiary system is 27.700 places. If the CPT rule applies (minimum 4 m/inmate) than the maximum capacity is 18.339 places. In May 2013 for instance there were 33.243 inmates registered in the prison system of Romania.
- staff abuses
- restrictions on different rights (e.g. telephone calls etc.). etc.

All these complains were verified by the Ombudsman staff and concrete recommendations were sent to the Prison Administration. In its responses, the administration were very responsive and many problems were solved this way.

Since 2000, the Ombudsman published also four special reports dealing with juvenile or adults executing privative measures or sanctions. Most of these reports emphasize the lack of appropriate resources and the overcrowding.

In 2009 Romania ratified the Optional protocol adopted in 2002 regarding the National mechanism for preventing torture. By OUG no. 48/2014 the National mechanism for preventing torture was set up within the Ombudsman Office. Year 2014 was dedicated to many organizational and administrative measures. In 2015, the Ombudsman has published a comprehensive report on the

situation in prisons and arrest centres. The preventive or compensatory remedies were not mentioned.

Once the new preventive mechanism will be in place it is expected that the role of the Ombudsman in enhancing the rights protection of the prisoners will increase. However, this trend is conditioned by the availably and professionalism of the staff involved and also by the political independency of the institution.

Conclusions

From the analysis above, Romania is under different pressures: one coming from the ECtHR, CPT and NGOs to reduce overcrowding, provide effective preventive and compensatory remedies and to improve detention conditions and one from the state budget that does not provide enough resources to refurbish the existent penitentiaries or build up new ones. Indeed, some of the measures – especially to improve detention conditions – require significant financial resources. In the same time, other measures are more legislative and practice related ones. For instance, prison overcrowding might be reduced by reforming the penal policy – more real alternatives to prison (some of the existent ones act more as alternatives to simple suspension and fines – net widening), more early release forms (e.g. introducing home detention with EM to replace 6 months or 1 year of detention prior to conditional release), ease the conditions for conditional release, drop the automatic supervision for those with more than 2 years conditional release (this should be decided on the case by case bases) etc. Some other measures might be introduced by providing more training to prison staff in areas like mental health, communication, human rights etc.

From the latest reports of the Committee of Ministers results that Romania is still expected to tackle more effectively the problems associated to detentions.