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Human Rights in Romania:

Systematic violations & the anti-corruption efforts

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Over the past two years, Human Rights Without Frontiers International (HRWF) has paid particular attention to the Romanian judicial system and prison conditions.

From our investigations, it has become clear that there are a number of serious systemic problems throughout Romania regarding the judicial system. In addition to these institutional issues, HRWF has found widespread human rights violations in investigative tactics, trial proceedings, and detention centers. Such conditions carry on their backs the overarching issue of European Arrest Warrants issued by Romania.

Romania's Legal Obligations

As a member of the United Nations, European Council, and the European Union, Romania has signed and ratified a number of regulations regarding the rule of law and prison conditions.¹

Together, the international regulations Romania has signed provide a strong framework for the protection of fair trials and rights of those imprisoned in the country. For Romania not to comply, should be considered as a breach of international law.

In addition to these international regulations, Romania has constitutional guarantees that mirror respect for the rule of law, fair trials, and humane prison conditions and treatment.² While in theory, these laws adequately provide rights for those who face trial and/or detention in Romania, in practice it has been reported that the country rarely meets these standards.

Romania's Anti-corruption: Behind the numbers

The guarantee of a fair trial is rooted in the health of the judicial system of a nation. In Romania, the interference in the work of the judiciary by powerful external powers is a chronic disease that has expanded unabated. In particular, the activities of the National Anti-Corruption Directorate (DNA) and the national intelligence service (SRI) has displayed signs of severe corruption and meddling in the judicial system.

The DNA's Anti-corruption Fight

Created in 2002, the National Anti-Corruption Directorate (DNA) has been tasked with investigating and prosecuting mid- and high-level³ corruption-related offenses that cause

¹ Including: United Nations Universal Declaration of Human Rights; United Nations International Covenant on Civil and Political Rights; United Nations Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment; United Nations Optional Protocol to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment; United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; The United Nations Standard Minimum Rules for the Treatment of Prisoners; The United Nations Basic Principles for the Treatment of Prisoners; The United Nations Body of Principles on Detention; The Tokyo Rules; The Beijing Rules; The Riyadh Guidelines; The Bangkok Rules; Code of Conduct for Law Enforcement Officials; Istanbul Protocol; The European Council Convention for the protection of Human Rights and Fundamental Freedoms; The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; The Charter of Fundamental Rights of the European Union; Council Regulation (EC) No 1236/2005.

² Romania's Constitution of 1991 with Amendments through 2003. Constitute Project. Web Accessed: https://www.constituteproject.org/constitution/Romania_2003.pdf?lang=en

³ Mid- and high-level corruption is when the value of the bribe or advantages exceeds 10,000, if the prejudice caused exceeds 200,000, or if the corruption offenses are committed by people with important positions. http://www.pna.ro/about_us.shtml

material damage to the Romanian state. Offenses covered range from taking and giving bribes, receiving of undue advantages, money laundering, fraud, abuse of office, etc.

The DNA is an independent judicial structure that falls under the control of the Prosecutor's Office and is attached to the High Court of Cassation and Justice.⁴ Laura Codruța Kővesi is the current chief prosecutor of the DNA. She was appointed in 2013 by the Parliament on recommendation of the Minister of Justice. In 2016, Minister of Justice Raluca Prună, proposed a second mandate for Kővesi.⁵

The DNA has boasted a 50% increase in indictments in the past five years, a conviction rate of 92% and a ruthless crackdown on corruption across the board. Since Kővesi's appointment, the DNA has achieved more asset freezes, arrests, and convictions than any other counterpart agency in the EU.⁶

Since 2006, the DNA has sent over seventy members of parliament to trial.⁷ One of the most high profile cases was the former prime minister, Victor Ponta, who was accused of forgery, money-laundering and tax evasion in September 2015. The DNA has infamously indicted deputies, senators, mayors, directors of public institutions, and other officials over the past year.⁸

The European Commission's CVM

In 2007, the European Commission created a special mechanism to monitor Bulgaria and Romania's judicial systems and anti-corruption efforts. The Cooperation and Verification Mechanism (CVM) serves to assist Romania to make progress with the rule of law through judicial reform and combating corruption.

The CVM works to measure progress in addressing a series of benchmarks that were created in 2007. The CVM mandate is to continue until all benchmarks have been met and are deemed irreversible. The benchmarks for Romania are as follows:

1. Ensure a more transparent, and efficient judicial process notably by enhancing the capacity and accountability of the Superior Council of Magistracy. Report and monitor the impact of the new civil and penal procedures codes.
2. Establish, as foreseen, an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken.

⁴ Anti-Corruption Authorities. "Profiles: Romania." 2012. <https://www.aauthorities.org/country/ro>

⁵ Newsroom. "Laura Codruta Kovesi gets second mandate at the helm of Romania's anti-corruption body". Business Review EU. 07 April 2016. <http://www.business-review.eu/news/laura-codruta-kovesi-gets-second-mandate-at-helm-of-romania-anti-corruption-body-102894>

⁶ Kassandra. "The Corruption of Romania's Anti-corruption fight". *New Europe*. 08 December 2017. <https://www.neweurope.eu/article/corruption-romania-anti-corruption-fight/>

⁷ Ilie, Luiza. "Romanian minister calls for prosecutor's sacking, graft crackdown under threat". Reuters. 22 February 2018. <https://www.reuters.com/article/us-romania-government/romanian-minister-calls-for-prosecutors-sacking-graft-crackdown-under-threat-idUSKC11G62F2>

⁸ Directia Nationala Anticoruptie. "Raport de activitate 2017". <http://www.pna.ro/obiect2.jsp;jsessionid=64a2205c44ecfc8a9cd7554a03f4?id=328>

3. Building on progress already made, continue to conduct professional, non-partisan investigations into allegations of high level corruption
4. Take further measures to prevent and fight against corruption, in particular within the local government.⁹

To evaluate the progress of these benchmarks, the CVM reports are dependent on multiple sources. The primary source, as stated by the EC, is the Romanian government. Secondary sources include the EC Representation Office, Member State diplomatic missions, civil society organizations, associations and expert reports.¹⁰

The most recent progress report of 2017 conveys overall praise of the Romanian judicial system and specifically for the DNA, promoting that “The impressive track records of all the National Anti-Corruption Directorate (DNA) and the High Court of Cassation and Justice (HCCJ) should be safeguarded.”¹¹

Furthermore, the report regards these statistics as “a sign of the independence and professionalism of the judicial institutions.”¹²

The report also posits that Romania still needs many reforms in order to achieve all of the Commission’s recommendations. The criticisms revolve around: a lack of clear procedures for the appointing of candidates for prosecutorial leadership and deputies; a lack of transparency and predictability for the legislative process; and the slow application of some measures of the 2012-2015 National Anti-corruption strategy. However, overall the CVM report was in high praise of progress in Romania.¹³

Supporting this rhetoric in January 2018, President of the European Commission, Jean-Claude Juncker remarked, “The rule of law made remarkable progress in Romania and it is not acceptable or foreseen that the rule of law achieved so far can go backwards. I have full confidence in the Romanian justice system.”¹⁴

While the DNA and European Union deem the creation of organizations and the conviction statistics as trophies in the fight against corruption, HRWF has uncovered a series of concerns regarding the tactics used to achieve such numbers.

Behind the statistics: Questionable tactics

⁹ European Commission. “Progress Report on the Cooperation and verification mechanism – procedural aspects”. MEMO 07/260. 27 June 2007. http://europa.eu/rapid/press-release_MEMO-07-260_en.htm

¹⁰ Ibid.

¹¹ Council of the European Union, General Secretariat of the Council. Outcome of Proceedings. 12 December 2017. Conclusion 10 https://ec.europa.eu/info/sites/info/files/20171212-st15587_en.pdf

¹² European Commission. “Report from the Commission to the European Parliament and the Council: On Progress in Romania under the Co-operation and Verification Mechanism. 25 January 2017. Page 8. https://ec.europa.eu/info/sites/info/files/com-2017-44_en_1.pdf

¹³ Ibid.

¹⁴ Paun, Carmen. “Romanian president: EU can’t link funding to rule of law”. Politico. 31 January 2018. <https://www.politico.eu/article/romanian-president-eu-cant-link-funding-to-rule-of-law/>

Relations between the DNA, the Romanian intelligence service (SRI)¹⁵, and judges, and the DNA's evidence gathering tactics cause serious concern for the respect of human rights in Romania.

The DNA, SRI & Judges

Under the pretext of fighting corruption, the SRI has increased its influence to a point where the independence of the judiciary and the rule of law have become strongly questionable.

The scandal of the SRI's involvement in the judicial process became public in April 2015, when General Dumitru Dumbrava, the head of SRI's legal department, stated in an interview that the SRI would not "withdraw from the tactical field once the indictment was presented to the court"¹⁶ and that the SRI maintained its "(...) interest/attention until the final resolution of every case is reached".¹⁷ He also stated that the SRI was profiling judges to detect patterns of criminal behavior, regardless of whether suspicion had been reported or not.¹⁸ These statements raised serious concerns about the independence of the whole Romanian judiciary as the SRI is prohibited by law to interfere with courts and prosecution.

At the SRI's 25th anniversary, Eduard Hellvig, the current SRI Director, explained that magistrates had to be monitored "to avoid situations like in the past when the judges and prosecutors forgot on the road that they serve the Romanian State and had other preoccupations than to serve the Romanian State"¹⁹. The guest of honour at this event was General Iulian Vlad, the last head of Securitate (the former communist secret police).²⁰

This affair has led to the issuance of comments by Romanian and foreign judges' organizations:

The National Union of the Romanian Judges (UNJR) raised concerns about the independence of the judiciary system in Romania and asked the state institutions to clarify in a transparent manner, the involvement of the SRI in the judiciary. The government has refused to publish the decisions of the Supreme Council of National Defense (CSAT) for they are deemed classified 'state secrets'.

In parallel, hundreds of individual judges petitioned the Superior Council of the Magistracy (CSM)²¹ to defend the autonomy of the judiciary by publically clarifying what was meant when Dumbrava referred to the courts as a 'tactical field' for the SRI. The CSM received a reply from the SRI, but did not share it with the UNJR, thereby further undermining people's confidence in courts and judges.

¹⁵ *The Romanian Intelligence Service (SRI) broadcasts itself as an agency protecting Romanian democratic values (including civil rights and the rule of law), preventing espionage, terrorism, and cross-border organised crime, and promoting Romanian security interests. The SRI falls under the management of Romania's Supreme Council of National Defense (CSAT).*

¹⁶ EU Today. "Romania's secret services under parliamentary scrutiny". 19 December 2017.

<https://eutoday.net/news/politics/2017/romania-secret-services-under-parliamentary-scrutiny>

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Flux24. „Şeful Securităţii comuniste, invitat special la aniversarea SRI“. 24.05.2016. Web Accessed: <http://www.flux24.ro/seful-securitatii-comuniste-invitat-special-la-aniversarea-sri/>

²¹ *Judicial body with a constitutional duty to "guarantee the independence of the judiciary".*

On 11 August 2015, Romania Libera revealed that magistrates in key positions had obtained doctoral degrees at the SRI Academy.²² This academy is not only under the jurisdiction of the SRI but it is the school in which future SRI officers are trained. In the summer of 2015 the academy initiated a programme with European funds to ‘train’ a targeted group of 1,000 magistrates, out of which 500 had to be in leadership positions in courts or prosecutors’ offices. Enrolling magistrates had to provide their personal information to the academy and at the end of the training they were evaluated by SRI officers.

There are approximately 6,979 judges and prosecutors currently in office in Romania.²³ Therefore, having 1,000 judges and prosecutors trained by the SRI has an enormous impact on the judiciary. In order to understand the extent of the SRI’s influence, the UNJR asked the SRI academy to provide the names of all magistrates that took part in its classes and trainings. The request was based on the law on access to public information, but was ultimately rejected.

On 16 March 2016, the paris-based Magistrates Association MEDEL (Magistrats europeens pour la Democratie et les Libertes) published a declaration entitled “Is Europe under Seige?”, in which it stated:

In Romania, a general of the Romanian Intelligence Service (SRI) has admitted that the courts became ‘tactical fields’ for this secret service, that all judges are profiled using behavioral patterns and that this secret intelligence agency is currently ‘maintaining its interest/attention until a final court decision has been reached in each case’.

...In almost a year since this scandal erupted, the Romanian authorities have failed to clarify the involvement of the SRI in the judicial process. The SRI director stated publicly that this secret service agency is in partnership with the prosecutors to conduct criminal investigations, an activity that is forbidden by law. At the same time, invoking classified procedures and secret protocols, the Romanian authorities have failed to explain in a transparent way how they conducted the investigation to conclude that there are no undercover agents of any intelligence agencies among the magistrates. ...this raises serious doubts about the respect for basic human rights and the guarantee of a fair and just trial of any person accused by the state.²⁴

The Romanian government ‘fixed’ this scandal via an emergency ordinance that allowed the SRI to conduct penal investigations. The SRI involvement in the judiciary process undermines its independence. This is a clear violation of the rule of law and separation of power principles. Such institutional links reveal a deep-rooted trend of corruption that will not be reversed with a simple shuffling of leadership.

Evidence gathering: coercion, intimidation & falsified evidence

²² News20.ro « Cine sunt magistratii si sefii de institutii facuti doctori degeneralul-politician Gabriel Oprea ». Web Accessed : <http://bit.ly/21Y3ZkI>

²³ Marica, Irina. “Over half of Romanian judges and prosecutors are against proposed changes to justice laws”. Romania Insider. 11 October 2017. <https://www.romania-insider.com/judges-prosecutors-changes-justice-laws/>

²⁴ Magistrats Europeens pour la Democratie et les Libertes. « Is Europe Under Siege ? » 12.03.2016. Web accessed : <http://bit.ly/2nkZ0dX>

What has now become apparent is that the DNA's praised 'success' rates are not indicative of a successful anti-corruption campaign. In pair with the corrupt judicial system that can seemingly easily bend to the wishes of the DNA and SRI, there are a number of reports that have recently surfaced that call into question the tactics of these organizations during investigations.

In February 2016, Romania's Constitutional Court ruled that the use of SRI phone-tapping evidence by the DNA is unconstitutional, even with a warrant. One month later, the government issued an emergency ordinance reversing this ruling despite that it was deemed unconstitutional.

Several former officials from Romania have stepped forth and questioned the practices of the DNA and SRI. The following allegations are seemingly typical complaints that have been voiced by members of Romanian society.

- Prime Minister Davian Ciolos (November 2015 - January 2017) stated that the SRI can legally only act as a criminal prosecution body for cases that concern national security and terrorism, only under the judicial control, and only in the presence of a prosecutor.²⁵
- Former intelligence officer of the SRI, Daniel Dragomir, testified at the parliamentary commission, stating that DNA indictments are drafted by SRI employees.²⁶
- Ovidiu Putura testified at the same parliamentary commission, sharing his experience from his own trial. Putura claims that during his hearing, the High Court Judge took a recess, during which he met with a senior figure from the SRI.²⁷

Bringing to light the seriousness of these allegations, recent news has revealed the scale of the corruption. In early 2018, two tapes were released in the media showing DNA prosecutors faking evidence and documents, planting evidence in people's cars and homes, changing witness declarations, faking official records, and blackmailing witnesses.²⁸

In late February 2018, Tudorel Toader, Romania's justice minister, presented a 36-page critical report on the activities of Laura Codruta Kövesi. He ended his presentation by stating that he would begin the procedure to revoke the chief prosecutor.²⁹

Toader's revocation proposal was then sent to the Council of Magistrates (CSM) and to the president for analysis and final decision. While in February, the CSM's prosecutor section initially issued a negative opinion on the request, in March, the Judicial Inspection unit is still

²⁵ Cartwright, Gary. "Justice Romanian Style: Corrupt, Politicised, Unreformed". EU Today. 22 January 2018. https://issuu.com/me76878/docs/justice_romanian_style_report_03

²⁶ Ibid.

²⁷ Ibid.

²⁸ Kassandra. "Has the corruption of Romania's anti-corruption fight been laid bare for the world to see?". New Europe. 12 February 2018. <https://www.neweurope.eu/article/corruption-romania-anti-corruption-fight-laid-bare-world-see/>

²⁹ Romania Insider. "Romania's justice minister asks for the dismissal of the chief anticorruption prosecutor". 22 February 2018. <https://www.romania-insider.com/romania-justice-minister-presents-report-anticorruption-department/>

investigating Kövesi's actions. As of March, President Klaus Iohannis has not decided whether or not he will support revocation of Kövesi or not.³⁰

For the anti-corruption chief prosecutor to be questioned regarding corruption, authenticity, and meddling in trials should alone be a red flag in Romania. Such a position should be held without controversy.

Furthermore, a report by the Henry Jackson Society, claims that:

“...the DNA uses various tactics of intimidation and incorporation to ensure that judges co-operate in keeping the conviction rate as high as possible. One method is for the DNA to open investigations against judges that anger it by acquitting defendants. This creates a climate of fear that skews judicial decision-making.”³¹

However, intimidation tactics are not reserved for judges and officials only:

“In some cases, investigations are opened against members of a suspect's family as a way of exerting pressure and forcing a confession. At other times the objective is to use the threat of indictment to extract a witness statement against another target. In the style of a classic witch-hunt, and with the goal of maximising media impact in mind, minor suspects are offered immunity from prosecution in exchange for implicating someone more important...Pressure is also exerted on suspects through the routine use of pre-trial detention.”³²

Such accounts against the DNA's investigation tactics are not uncommon. In all, we have researched cases that exemplify falsifying evidence, failure to assume innocence, involvement in the SRI, premature evidence gathering, unfair judicial processes, extended pre-trial detention periods, forced confessions, threat of indictments, etc.

Currently, the SRI Secretary-General, Dumitru Dumbrava is facing calls to resign, after Romanian media reports that he was contacting and influencing judicial officials presiding over DNA cases via Facebook.³³

The DNA and SRI have jointly gained control of the judicial system and developed tactics deemed undemocratic in their investigation and prosecution processes. Such issues are systemic, and with frequent overturn of officials, not likely to be changed with the ousting of head officials.

³⁰ Romania Insider. “Romania's anticorruption chief prosecutor to answer before justice body”. 16 March 2018.

<https://www.romania-insider.com/dna-laura-codruta-kovesi-csm/>

³¹ Clark, David. “Fighting Corruption with Con Tricks: Romania's Assault on the Rule of Law”. The Henry Jackson Society.

<http://henryjacksonsociety.org/wp-content/uploads/2017/01/Romania-paper.pdf>

³² Ibid.

³³ Kassandra. “The Corruption of Romania's Anti-Corruption fight”. New Europe. 08 December 2017.

<https://www.neweurope.eu/article/corruption-romaniyas-anti-corruption-fight/>

Some claim that the mass drive in anti-corruption efforts, and the inflated imprisonment rates as a result, are simply a tool Romania is using in order to be accepted into the Schengen zone.³⁴

Reform Proposals

Multiple reforms have been proposed over the last year, albeit none have come into law. Currently, a bill stands that would change the procedures for electing magistrates and set up a council that would monitor and respond to any legal charges against magistrates. Such a shift would result in less powers for the DNA in these matters. In return, the political parties would have a stronger influence in the judiciary. Included in the recent bill packages are also: laws that pertain to investigative journalism, reporting on corruption, etc.

The announcement of the bills resulted in mass protests in Romania. Across the EU, there has been warning shots against these reforms claiming that they would further undermine the independence of the judiciary.

What has become apparent after sorting through the reports coming from Romania, is that there is no clear best option for who should be the watchdog of the judicial system. While the current system is corrupt with the influences of the DNA and SRI, the proposed system would hand over the responsibilities to political parties. The changing of responsibilities and organisation in the proposed manner does not diminish the lack of independence of the judiciary, and nor does it guarantee that fair trials will be held.

Furthermore, the meddling of the DNA and SRI in the judiciary are not the only problem. There have also been complaints surrounding the ability for defendants and their legal teams to access and submit evidence properly and in a timely manner, for example.³⁵

Widespread Human Rights Violations

A lack of judicial independence and the subsequent denial of a fair trial is not the only concern for those who are prosecuted in Romania. HRWF has also recognised a severe issue in the pre-trial practices, conditions of detention facilities, and in the treatment of prisoners.

Romania's prison and pre-trial detention system are severely below internationally accepted standards, so far as to constitute cruel or inhuman treatment. These include treatment within this system, access to necessary facilities (hygiene, recreation, etc.), overcrowding, and unacceptably lengthy pre-trial detention.

³⁴ Kassandra. "All Carrot, No Stick: the EU's Schengen criteria is encouraging the wrong kind of crackdown". *New Europe*. 01 February 2018. <https://www.neweurope.eu/article/carrot-no-stick-eus-schengen-criteria-encouraging-wrong-kind-crackdown/>

³⁵ *In the European Court of Human Rights 2015 case of Coniac v. Romania, the applicant alleged that the criminal proceedings in his case were unfair, on the account that the court did not hear evidence from the defendant or witnesses during the trial. The European Court of Human Rights ruled that Romania had violated article 6(1) of the convention (the right to a fair trial). The same complaints were again heard in the European Court of Human Rights on 09 January 2018 in the case of Ghincea v. Romania. Once again, the court ruled that Romania had violated article 6(1).* Source: European Court of Human Rights. *Case of Coniac v. Romania (Application no. 4941/07)*. 06 October 2015. <https://www.juridice.ro/wp-content/uploads/2015/10/CASE-OF-CONIAC-v.-ROMANIA.pdf> . European Court of Human Rights. *Case of Ghincea v. Romania (Application no. 36676/06)*. 09 January 2018. <https://www.juridice.ro/wp-content/uploads/2018/01/CASE-OF-GHINCEA-v.-ROMANIA.pdf> .

Pretrial detention

Several international observers have noted the prevalence lengthy pre-trial detention periods. Case law of the ECHR establishes that unexplained delays at any point in legal proceedings is unacceptable, and has the potential to stagnate the process and create further negative outcomes for the defendant beyond what is reasonable.³⁶ In Romania, the maximum period of pre-trial detention that can be ordered is 30 days, with extensions to a maximum of 180 days. In 2016, former president Traian Basescu noted that over 100 people arrested by the DNA has been held for an excessive period before their hearings.³⁷

This is by no means an anomaly. In 2015, the Association for the Defense of Human Rights in Romania-the Helsinki Committee noted two cases in which defendants accused of crimes related to electronic commerce spent more than four years in pre-trial detention.³⁸ Similarly, in 2013 the ECHR found a period of two years of pre-trial detention to be excessive in the cases of *Hamvas v. Romania*, *Anderco v. Romania* and *Leontin Pop v. Romania*, among others.³⁹

Detention Conditions

Overcrowding remains an issue of particular concern. In June 2017, Romania's detention capacity was noted to be 7,955 places short.⁴⁰ The total number of people held in 2017, according to the National Penitentiary Authority was 23,440.⁴¹ When turnover is accounted for the system is at 122.8% capacity.⁴² These figures would have been worse if not for the fact that in the fall of 2017 the government allowed the early release of more than 500 inmates, including convicted thieves, murderers and rapists.⁴³ To help alleviate overcrowding, they undermined the rule of law. This problem persists at all levels of judicial detention, from pre-trial detention to long-term incarceration.

The problems represented in these figures are exacerbated by poor facilities, including no air conditioning during the summer months, poor personal hygiene, insufficient medical care

³⁶ 'Guide on Article 6 of the European Convention on Human Rights (Right to a fair trial)'. European Court of Human Rights. 30 April 2017. Para. 343(3). http://www.echr.coe.int/Documents/Guide_Art_6_ENG.pdf.

³⁷ 'Basescu: Justice has to be defended from those who do injustice in the judiciary. Those who ordered pre-trial arrest of acquitted defendants should be arrested'. Nine O'clock. 16 May 2016. <http://www.nineoclock.ro/basescu-justice-has-to-be-defended-from-those-who-do-injustice-in-the-judiciary-those-who-ordered-pre-trial-arrest-of-acquitted-defendants-should-be-arrested/>.

³⁸ 'Is pre-trial detention used as last resort measure in Romania?'. Association for the Defence of Human Rights in Romania-the Helsinki Committee (APADOR-CH). September 2015. Pg. 33. <https://www.fairtrials.org/wp-content/uploads/Pre-trial-detention-in-Romania-by-APADOR-CH.pdf>.

³⁹ 'Affaire Hamvas c. Roumanie (Requête no 6025/05)'. European Court of Human Rights. 9 July 2013. [https://hudoc.echr.coe.int/eng#{"itemid":\["001-122170"\]}](https://hudoc.echr.coe.int/eng#{); 'Affaire Anderco c. Roumanie (Requête no 3910/04)'. European Court of Human Rights. 29 October 2013. [https://hudoc.echr.coe.int/eng#{"itemid":\["001-127386"\]}](https://hudoc.echr.coe.int/eng#{); 'Case of Leontin Pop v. Romania (Application no. 1956/06)'. European Court of Human Rights. 1 October 2013. [https://hudoc.echr.coe.int/eng#{"itemid":\["001-126558"\]}](https://hudoc.echr.coe.int/eng#{).

⁴⁰ 'UPR National Report'. UN Human Rights Council. 27 December 2017. Para. 72.

https://www.upr-info.org/sites/default/files/document/romania/session_29_-_january_2018/a_hrc_wg.6_29_rou_1_e.pdf.

⁴¹ 'Situația privind capacitatea de cazare a unităților și efectivele acestora pe regimuri la data de 29.12.2017'. Administrația Națională a penitenciarelor. 29 December 2017. <http://anp.gov.ro/wp-content/uploads/2017/04/29.12.2017-Situație-pe-regimuri.xls>.

⁴² 'Romania'. World Prison Brief. 2018. <http://prisonstudies.org/country/romania>.

⁴³ Marica, Irina. 'How many thieves, murderers benefited so far from Romania's new law on early release?'. Romania Insider. 27 October 2017. [https://www.romania-insider.com/thieves-murderers-early-release/?ct=\(RI_NL_Oct_30_2017\)_29_2017](https://www.romania-insider.com/thieves-murderers-early-release/?ct=(RI_NL_Oct_30_2017)_29_2017).

(including no psychiatric personnel), poor nutrition, mould and insects in cells and kitchen areas, and insufficient recreational facilities.⁴⁴ In its 2016 report on the human rights situation in Romania, the US State Department noted that:

Such facilities were often located in basements and had no natural light and inadequate sanitary and water accommodations. In some pre-trial facilities and prisons, there was no possibility for confidential meetings between detainees and their families or attorneys.⁴⁵

At every stage of the detention system, there are insufficient facilities. Therefore, persons in contact with the judicial system face these human rights violations regardless of the outcome of any given trial.

Treatment of Inmates

In addition to the poor facilities, there are widespread cases of torture or other physical mistreatment of prisoners by staff and other inmates alike. In its most recent UPR on Romania, the UN noted that:

The Committee against Torture was concerned at alleged reports of violence by law enforcement officials, including against minors, at the time of arrest, detention and interrogation, which had amounted to ill-treatment and torture and which had been aimed at, among other things, eliciting confessions, some of which had allegedly resulted in death.⁴⁶

These problems are exacerbated by a lack of enforcement of such violations.⁴⁷ This impunity allows these problems to perpetuate themselves. Both physical violence and extended pre-trial detention are contraventions of the UN Convention Against Torture, of which Romania is a signatory.

The European Arrest Warrant

The EAW is an important tool in combating serious cross-border crime. An efficient system of extradition within the European Union is needed, especially to fight terrorism and criminal activities successfully. However, functioning inter-state cooperation in judicial matters inside the EU must not be at the expense of basic principles of fairness and justice.

Currently there are a number of flaws in the EAW system that need to be remedied if we want to avoid future cases of injustice and increased mistrust in the EAW system. One of them is that EAWs are executed despite serious and well-founded human rights concerns.

The Preamble of the Framework Decision regulating the European judicial cooperation reads:

⁴⁴ 'Romania 2015 Human Rights Report'. US State Department. 2015. Pg. 4. <https://www.state.gov/documents/organization/253103.pdf>.

⁴⁵ 'Romania 2016 Human Rights Report'. US State Department. 2016. Pg. 5. <https://www.state.gov/documents/organization/265676.pdf>.

⁴⁶ 'Compilation of UN Information'. UN Human Rights Council. 9 November 2017. Para. 18.

https://www.upr-info.org/sites/default/files/document/romania/session_29_-_january_2018/a_hrc_wg.6_29_rou_2_e.pdf.

⁴⁷ Ibid. Para. 19.

"No person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment."⁴⁸

Two main arguments that are usually invoked to deny the surrender of a wanted person to another EU member state: the risk of an unfair trial and the detention conditions.

The EAW system is founded on mutual recognition, a principle which itself relies on mutual trust in the justice systems of *all* EU Member States. Unfortunately, the reality is very different. Not all EU Member States have a justice system that is in line with EU standards, including Romania.

Romania and the ECtHR

In 2015 alone, the ECtHR delivered 72 judgments (each citing at least one violation) against Romania, the highest number of any EU member state. Among the 47 member states of the Council of Europe, Romania ranked the third highest human rights abuser after the Russian Federation (109 judgments) and Turkey (79 judgments). 27 of those violations in Romania were for inhumane or degrading treatment (Article 3), with many relating to the **appalling conditions and treatment in Romanian prisons**. In 13 cases, the violations were due to the **lack of effective investigation** and in 13 other cases to the **lack of a fair trial**.

In 2017, Romania remained a perennially prolific human rights abuser with the most cases brought before the ECtHR of any country in the EU (69 in total), and fourth among the 47 nations of the Council of Europe behind just Russia (305), Turkey (116) and Ukraine (87).⁴⁹

⁴⁸ Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States. (2002/584/JHA). <http://eur-lex.europa.eu/%20LexUriServ/LexUriServ.do?uri=CELEX:32002F0584:en:HTML>

⁴⁹ 'Violations by Article and by State 2017'. European Court of Human Rights. 2018. Pg. 2. http://www.echr.coe.int/Documents/Stats_violation_2017_ENG.pdf.

Of these, there have been 20 cases involving the prohibition of torture or inhuman treatment brought before the ECtHR in 2017, with several new cases in 2018.⁵⁰

Worryingly, another 32 cases involved a lack of effective investigation (9), the right to liberty and security (5), the right to a fair trial (11), the length of proceedings (6) or non-enforcement (1).⁵¹

As of 1 January 2018, Romania even surpasses Russia and Turkey in the number of pending applications allocated to the judicial formation⁵²:

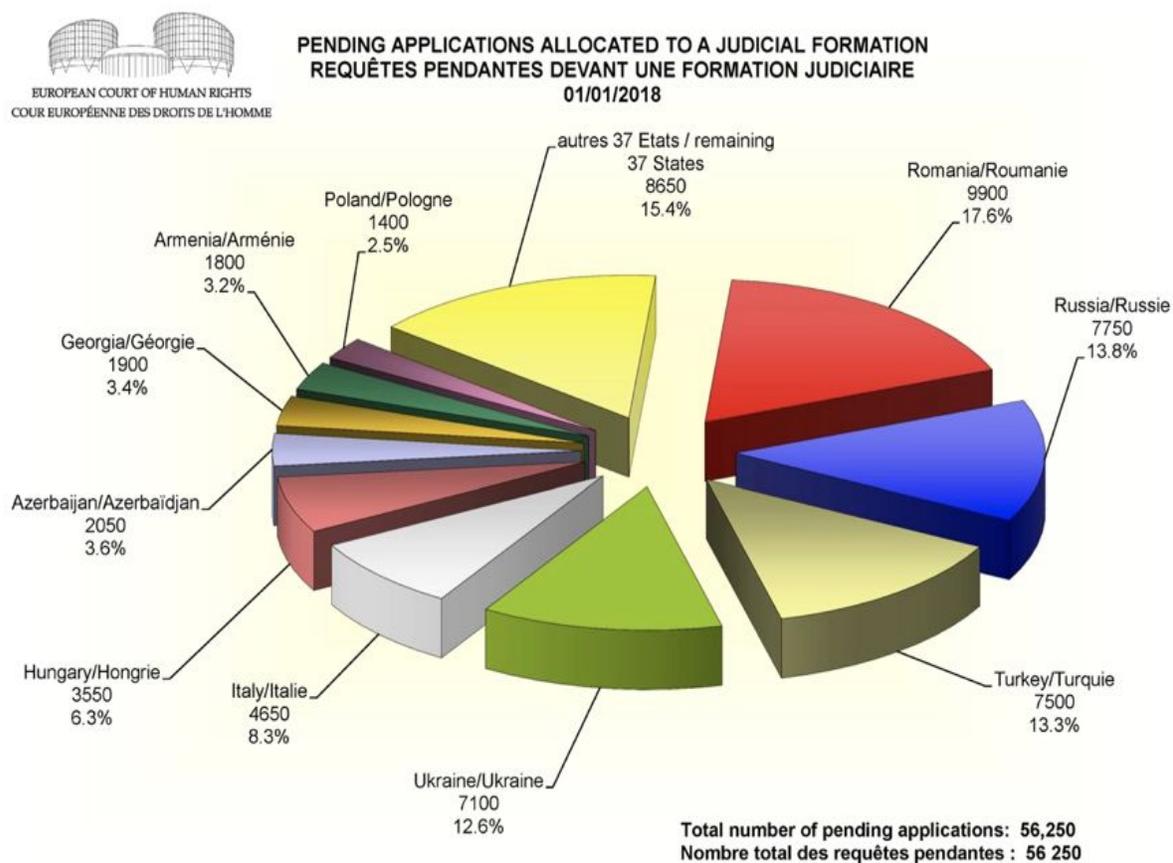


Image source: 'Violations by Article and by State 2017'. European Court of Human Rights. 2018.
http://www.echr.coe.int/Documents/Stats_violation_2017_ENG.pdf.

⁵⁰ 'Case-Law'. Hudoc – European Court of Human Rights. 2018. <https://hudoc.echr.coe.int/>.

⁵¹ 'Violations by Article and by State 2017'. European Court of Human Rights. 2018. Pg. 2.
http://www.echr.coe.int/Documents/Stats_violation_2017_ENG.pdf.

⁵² 'Violations by Article and by State 2017'. European Court of Human Rights. 2018.
http://www.echr.coe.int/Documents/Stats_violation_2017_ENG.pdf.

Members of the European Parliament voice their concerns

A number of MEPs have tried to alert the European Commission about the unwilling complicity in an unfair trial in which EU member states might dangerously be involved if they automatically follow up a request by Romania of handing over an alleged criminal.

On 27 January 2017, British MEP Claude Moraes, Chair of the European Parliament’s Civil Liberties, Justice and Home Affairs Committee, expressed his concerns in a parliamentary question in which he asked the European Commission about extradition requests how it plans “to implement safeguards to prevent abuses of the EAW system” and what action it plans “to take to ensure that Member States adhere to reforms in response to concerns about fair trials and detention conditions for those suspected or accused of a crime.”⁵³

On 28 March 2017, Věra Jourová, Commissioner for Justice, Consumers and Gender Equality, published an answer that was not very informative and convincing, saying among other things that “The Commission is aware of the concerns raised by the Honourable Member related to difficulties that sometimes are encountered in the operation of the European Arrest Warrant (EAW)” and “has been taking a number of actions aimed at improving the way in which the EAW system operates.” However, she announced that “the Commission is finalising a comprehensive handbook on how to issue and execute a EAW. It is expected to result in a more proportionate use of the EAW.”⁵⁴

A parliamentary question tabled by Finnish MEP Hannu Takkula on 31 January 2017 released some troubling statistics targeting countries of concern.

Takkula said that “during the 2010-16 period, Poland and Romania issued to the UK 13,722 and 6,033 requests respectively, while the UK only issued 73 and 49 requests to these countries. One of these cases concerns Alexander Adamescu, a German citizen living and working in the UK, whose father died in prison after he was denied an early release despite being seriously ill (in a coma) and aged 68.”⁵⁵

Takkula added that each surrender procedure had a cost: at least €25,000. He concluded by asking the Commission how it would “guarantee that such a disproportionate use of the EAW is put to an immediate end in law and in practice” and how it should “ensure that criminal justice standards and prison conditions in the EU are raised before the courts step in and block further transfers due to the possible violation of the person’s fundamental rights.”⁵⁶

Interestingly, the same Commissioner, Věra Jourová, answered on 27 June 2017 on behalf of the European Commission saying that it “is aware that sometimes European arrest warrants (EAWs) are being used in a non-proportional manner, meaning that the issuing judicial authorities use it

⁵³ Moraes, Claude. Question for written answer to the Commission Rule 130. Subject: European Arrest Warrant: guaranteeing fair trials and fundamental rights. 27 January 2017.

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2017-000455+0+DOC+XML+V0//EN&language=en>

⁵⁴ Jourová, Věra. Answer given by Ms Jourová on behalf of the Commission. 28 March 2017.

<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2017-000455&language=EN>

⁵⁵ Takkula, Hannu. Question for written answer to the Commission Rule 130. Subject: The European Arrest Warrant. 31 January 2017.

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2017-000654+0+DOC+XML+V0//EN&language=en>

⁵⁶ Ibid.

in trivial cases and/or instead of other EU instruments (such as the European Investigation Order or the European Supervision Order).”⁵⁷

Jourová concluded her answer by saying that:

surrender procedures are sometimes also affected by poor prison conditions that may result in risks of violation of the fundamental rights of the person requested under EAW...

...As clarified by the Court of Justice of the European Union in the Aranyosi - Caldararu judgment, the executing national authority must postpone and possibly put to an end the execution of a EAW if, following exchanges with the issuing judicial authority, it finds a real risk of violation of fundamental rights of the requested person in the issuing state.⁵⁸

Assurances

Since 2015, the Romanian Government has responded to the international criticism through policy proposals and through the submission of assurances.

In February 2015, the Romanian Ministry of Justice attempted to ameliorate international concerns by writing an assurance letter to the United Kingdom. The assurance was to apply to every person surrendered from England and Wales to Romania, and guaranteed that those individuals will have individual space exceeding 2 sqm or 3sqm depending on whether they were to serve their sentence in an open or closed regime. The guarantee continues to include that if the prison capacity exceeds 100%, the Romanian authorities will assure that the requested person will at all times be granted the minimum space previously stated.

While such an assurance sounds promising, in the 2015 cases of *Flora v. Romania*, *Florea II v. Romania* and *Blad v. Court of Alesd, Romania*, it became clear that Romania was not complying with the February 2015 assurance. The General Director of the National Administration of Penitentiaries and the Chief Inspector for Penitentiaries stated in a letter that upon their extradition to Romania, these prisoners had been in the ‘quarantine observation period’, during which it is impossible to comply with minimum space standards. The letter continued to remark that on 10 June 2016, the occupancy rate at the Bucharest-Rahova Penitentiary was 126.6%, claiming that the administration is attempting to relieve this overcrowding through diversification of daily schedules and the distributing of detainees throughout the prison.

It has since been analysed that such assurances have caused many other issues in these prisons. For example, extradited prisoners may be given preferential treatment over other prisoners. This means that while a prisoner from the UK will be granted the minimum space, the other prisoners will be pushed into smaller cells with more people in order to make room.

⁵⁷ Jourová, Věra. Answer given by Ms Jourová on behalf of the Commission. 27 June 2017.

<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2017-000654&language=EN>

⁵⁸ Ibid.

Moreover, in the Ombudsman's 2015 report, the practice of diversifying schedules as a means to deal with overcrowding was criticised,

“Measures to offset overcrowding through diversification of inmates’ activities outside detention rooms, by extending the duration of the daily walk, by building new detention facilities and making capital repairs to the existing ones or transfer of inmates in less crowded units, are not enough to manage the overcrowding phenomenon.”⁵⁹

As all of this came to light and impacted extradition cases, the Romanian authorities wrote subsequent letters in June 2016.

The letters reflected that the original minimum space requirements laid out in the February 2015 assurances could be upheld, *except* for the cases in which the inmate has to be transferred to another prison; which can happen upon the inmate's request, or in order to attend a court hearing, or hospital. Additionally, it mentioned that the minimum space requirements can be granted without discriminating against other inmates.

In the August 2016 case of *Timis County Court (Romania) vs. Rusu*, the Romanian authorities submitted additional information regarding prison conditions for UK extradites in three letters dated 4 August 2016, 12 September 2016, and 7 October 2016.

The first letter reiterates the February 2015 assurances, and adds an explanation for their previous non-compliance. The letter claims that the Romanian courts had held that it was obligatory for individual minimum space for detainees, that there was an increase of persons extradited to Romania, and that there were various rulings in Strasbourg that all lead to the non-compliance of the February 2015 assurance. The authorities claim that these were unforeseen events that interrupted their ability to respect the assurance. Upon further notice however, these new rulings and numbers could not have come as a surprise, and would not have changed the fact that the Romanian prisons are overcrowded.

Since Romania would have already been obligated to meet the standards of minimum space requirements for detainees under international law, the policy implementation on a national level through legislation should not have created a large difference. In addition, the overcrowding in prisons was already to such a high level, that it would have been impossible to meet the minimum space requirements for all prisoners. This means that the addition of new extradited prisoners could make matters *worse*, but certainly did not *cause* the non-compliance. We could not find any reason as to why the Strasbourg Court rulings would impact the ability of the Romanian authorities to implement the February 2015 assurances.

The second letter, dated 12 September 2016, further adds exceptions for the compliance of the 2015 assurances. It states that the minimum space requirements will be granted “if the context so requires” during the quarantine period. Such terminology could enable Romanian

⁵⁹ Romania People's Advocate. “Summary of the Speal Report on the conditions of detention in prisons and detention and remand centres, determining factors in respecting human dignity and the rights of persons deprived of liberty”. Bucharest, 2015. Page 20.

authorities to disregard the respect of the human rights of detainees for their initial weeks in detention.

Finally, they remark on 7 October 2016 that the Rahova prison, which was previously reported at over 126% capacity, is able to meet the assurance standards by the reallocation of detainees. This once again concerns HRWF regarding the equal treatment of non-extradited detainees, as well as the practice of reallocating detainees. In addition, it is reported that,

“the continuous moving of a prisoner from one establishment to another can have very harmful effects on his psychological and physical state. Moreover, such a prisoner will have difficulties in maintaining close contacts with his family and lawyer. The overall effect of successive transfers on the prisoner, could, under certain circumstances, amount to inhuman and degrading treatment.”⁶⁰

The movement of detainees is not an adequate way of meeting the assurance laws; particularly when all prisons are reported as overcrowded. An extradition under such an agreement could result in the violation of human rights for other prisoners in Romania.

To further stress proof of the inadmissibility of their letters, the European Court of Human Rights sought that Romania pays for their avoidance of the issue of prison conditions. In 2016, the court ruled that Romania should pay compensations worth over €1.6 million euro to inmates who complained about inhumane detention conditions.⁶¹

It is clear that throughout 2016, the Romanian authorities were unable to comply with their assurances, which has been recognised by international organisations, civil society organisations, and foreign governments.

Looking forward, the future compliance of Romanian assurances is not likely. Their past record has proven that their ability or willingness is not strong enough to counter the serious systemic issue in the penitentiary and judicial branches. Additionally, their plans for future change seem to be largely reliant on foreign funding, leaving improvement as a mere possibility instead of an inevitable transformation.

Conclusion

In conclusion, Romania cannot currently guarantee a fair trial or minimum prison conditions that meet international law. This poor record does not only concern the citizens of Romania but of the EU and all the member states. A number of Romanians living outside the country, as well as other EU citizens, have been indicted on spurious charges and wanted by Bucharest through the European Arrest Warrant. Without significant change, that goes beyond a change in leadership, Romania cannot assure the minimum requirements of human rights standards.

⁶⁰ Romania People’s Advocate. “Summary of the Speal Report on the conditions of detention in prisons and detention and remand centres, determining factors in respecting human dignity and the rights of persons deprived of liberty”. Bucharest, 2015. Page 29.

⁶¹ Romania Insider. “ECHR obliges Romania to pay EUR 1.6mln for prison conditions in 2016.” 23.02.2017. Web accessed: <http://bit.ly/2mXvBlx>

Recommendations concerning the European Arrest Warrant

Considering that not all EU countries have fair legal systems and the EAW is vulnerable to abuse;

Considering that the EAW's own authority is being undermined while innocent people can be imprisoned for months and have their reputations destroyed;

Considering that the EAW is *sometimes* operating in a legal black hole;

***Human Rights Without Frontiers* recommends that the functioning regulations of the EAW system be revised so that:**

- the EAW can only be used for the most serious crimes;
- "wanted person" alerts can only be circulated throughout the EU with its stamp of approval after examination of possible abuses ;
- the EU member state requested to hand over a "wanted person" keeps sufficient margin of appreciation in its decision-making process;
- victims of abuse can have access to redress mechanisms through a fair, open and impartial process.