

Concluding observations on the second periodic report of Romania

ADVANCE UNEDITED VERSION

1. The Committee against Torture considered the second periodic report of Romania (CAT/C/ROU/2) at its 1296th and 1299th meetings, held on 23 and 24 April 2015 (CAT/C/SR.1296 and CAT/C/SR.1299), and adopted the following concluding observations at its 1316th meeting (CAT/C/SR.1316) held on 7 May 2015.

A. Introduction

2. The Committee expresses its appreciation to the State party for having submitted its second periodic report but regrets that the report was submitted with a delay of 18 years, which has hindered cooperation and limited its ability to carry out its functions under article 19 of the Convention.

3. The Committee appreciates the quality of its dialogue at this time with the State party's delegation and the responses provided orally to the questions and concerns raised during the consideration of the report.

B. Positive aspects

4. The Committee welcomes the State party's becoming a party to the following international instruments:

(a) Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, on 2 July 2009;

(b) Optional Protocol to the International Covenant on Civil and Political Rights, on 20 July 1993;

(c) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 18 October 2001;

(d) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 10 November 2001;

(e) Optional Protocol to the International to the Convention on the Elimination of Discrimination against Women, on 25 August 2003;

(f) 1954 Convention relating to the Status of Stateless Persons, in 2006;

(g) 1961 Convention on the Reduction of Statelessness, in 2006;

(h) Convention on the Rights of Persons with Disabilities, on 31 January 2011;

(i) Rome Statute of the International Criminal Court, on 11 April 2002.

5. The Committee welcomes the State party's revising its legislation in areas of relevance to the Convention, including the adoption of: Law No. 429/2003 on the revision of the Constitution; Law No. 678/2001 on preventing and combating trafficking in human beings, amended by Government Decision No. 299/2003; Law No. 682/2002 regarding the protection of witnesses; Law No. 39/2003 on preventing and combating organized crime;

Law No. 217/2003 on preventing and fighting domestic violence; Law No. 211/2004 on some measures for the protection of victims of crimes; Law No. 272/2004 protecting and promoting the rights of the child; Law No. 302/2004 on international judicial cooperation in criminal matters; Law No. 304/2005 ratifying the European Convention regarding compensation to victims of violent offences; The new Criminal Code (Law No. 286/2009); The new Civil Code (Law No. 287/2009), entry into force on 1 October 2011; The new Civil Procedure Code (Law No. 134/2010); The new Criminal Procedure Code (Law No. 135/2010).

6. The Committee also welcomes the State party amending its policies, programmes and administrative measures to give effect to the Convention, including:

(a) Establishment, by Government Emergency Ordinance No. 51/2008, of the public legal aid system in civil matters;

(b) Approval, by Government Decision No. 1142/2012, of the National Strategy against Trafficking in Human Beings for 2012-2016, of the National Action Plan for 2012-2014 for its implementation and the establishment of the National Agency for Preventing Trafficking in Human Beings and for Monitoring the Assistance accorded to the Victims of Trafficking in Human Beings (Government Decision No. 1083/2006);

(c) Approval, by Government Decision No. 1156/2012, of the National Strategy on preventing and fighting domestic violence for 2013-2017, and of the Operational plan for its implementation;

(d) Adoption of the Strategy for the Development of the Penitentiary System for the periods 2013-2016 and 2015-2020;

(e) Adoption of the Strategy for the Inclusion of Romanian citizens belonging to the Roma Minority for the period 2012–2020, and of sectoral action plans for its implementation.

C. Principal subjects of concern and recommendations

Fundamental legal safeguards

7. The Committee is concerned that detained persons do not enjoy in practice all the fundamental legal safeguards from the very outset of deprivation of liberty, in particular in police detention and arrest centres. It is also concerned that there is no unified national register concerning deprivation of liberty. (arts. 2, 12, 13 and 16)

The State party should take effective measures to guarantee that all detained persons are afforded in practice all the fundamental legal safeguards from the outset of deprivation of liberty, in accordance with international standards, including:

(a) **To be informed about the charges against them and about their rights, both orally and in writing, in a language they understand;**

(b) **To have prompt access to a lawyer from the very outset of deprivation of liberty and, if necessary, to legal aid, including during initial interrogation;**

(c) **To have immediate access to an independent medical examination free of charge;**

(d) **To notify a member of family or another appropriate person of their own choice.**

The State party should establish a proper system of registration, with a single unified national register of detention that includes factual details about detention, including

justification for the detention, transfers, and ensure that it contains the exact date, time and place of detention from the outset of deprivation of liberty.

Prolonged detention in police detention and arrest centres

8. While noting the reduction in the number of pre-trial detainees in 2014 due to the use of alternative measures, the Committee is concerned about the continued use of pre-trial and administrative detention during criminal prosecution in police detention and arrest centres, which can be extended up to 180 days. It is particularly concerned at the continued and prolonged detention of sentenced prisoners in police detention centres. It is also concerned at overcrowding and poor material conditions in police detention facilities. (arts. 2 and 11)

The State party should put an end to the practice of prolonged pre-trial and administrative detention in police detention and arrest centres and should ensure that their use is clearly regulated, subject to judicial supervision all the time, which guarantees fundamental legal and procedural safeguards. The State party should consider alternatives to incarceration, taking into account the provisions of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules). All sentenced detainees held in police detention facilities should be promptly transferred to prisons under the National Administration of Penitentiaries. The State party should continue to renovate police detention centres with a view to bringing the conditions of detention in line with international standards.

Excessive use of force by law enforcement officials, statements made as a result of torture and ill-treatment

9. The Committee is concerned at reports alleging cases of violence by law enforcement officials, including of minors, at the time of arrest, detention and interrogation, amounting to ill-treatment and torture, inter alia, with the purpose to elicit confessions, some of which have allegedly resulted in deaths. It is particularly concerned about the treatment at the Ilfov Police Inspectorate of two persons reported to the European Committee for the Prevention of torture and corroborated by medical reports which were of such gravity as to amount to torture. The Committee is also concerned with the low number of prosecutions and convictions of such cases. The Committee is concerned further at reports that police holding cells contain non-standard items which are not in conformity with regulations and which may allow for ill-treatment and torture. (arts. 2, 15 and 16)

The State party should:

(a) Provide the Committee with information on how many cases of violence by law enforcement officials have been investigated, perpetrators prosecuted for acts of torture and ill-treatment and the penalties applied for those found guilty;

(b) Carry out prompt, impartial, thorough and effective investigations into all allegations of the use of violence, including torture and ill-treatment, by law enforcement officials and prosecute and punish those responsible; provide information to the Committee on the outcome of investigations into the treatment of two persons at the Ilfov Police Inspectorate;

(c) Establish an independent monitoring and oversight mechanism in order to avoid the investigation of complaints by peers, through internal disciplinary procedures of the Ministry of the Interior;

(d) Ensure that judges, and more particularly Judges for Rights and Freedoms are automatically notified of all cases of ill-treatment and torture in police detention facilities, regardless of the visibility of injuries and equip all places of

deprivation of liberty with video devices for recording interrogations and ensure that persons who have complained about allegations of torture and ill-treatment are protected from reprisals;

(e) Reiterate at the highest political level the adherence to the policy of “zero tolerance” for the use of violence against persons deprived of their liberty, including to elicit confessions;

(f) Ensure the removal from police stations of all non-standard item that may allow for ill-treatment and torture.

Violence against the Roma

10. While taking note of the strategy for Roma inclusion and the new legal provisions making racist motivation an aggravating circumstance for all offences under the Criminal Code, the Committee is seriously concerned by:

(a) The persistence of reports on acts of racist hate crimes against the Roma;

(b) The vulnerability of Roma suspects who are “administratively conveyed” to police stations by law enforcement officials with increased risks of ill-treatment and torture;

(c) The reported excessive use of force by law enforcement officials against Roma, including the death in police custody of 26 year-old Gabriel-Daniel Dumitrache on 4 March 2014. According to reports, the police officer currently being prosecuted has been charged with assault, where racial motivation is only an aggravating circumstance, resulting in involuntary manslaughter under article 195 of the Criminal Code instead of being charged with torture resulting in death under article 282(3) of the Criminal Code. Mr. Dumitrache’s family members who identified the body reportedly indicated that it showed signs of severe beating, a broken leg, injuries to the abdomen and burn marks on the chest which were not consistent with the information provided by the police;

(d) Instances of racist hate speech directed against the Roma and the high incidence of anti-Roma rhetoric and negative stereotypes in public and political discourse, by state and non-state actors. (art. 2, 12, 13, 14, 15 and 16)

The State party should:

(a) Combat impunity and prevent discriminatory police misconduct by ensuring that all cases of excessive use of force by law enforcement officials against members of the Roma community are promptly and effectively investigated, prosecuted under appropriate articles of the Criminal Code taking into consideration any racist motives and that those responsible are brought to justice and victims provided with adequate compensation, and as full rehabilitation as possible;

(b) Stop the targeted practice of “administratively conveying” Roma to police stations;

(c) Provide information to the Committee on the outcome of the criminal prosecution on the death in custody of Mr. Gabriel-Daniel Dumitrache;

(d) Continue to recruit members of the Roma community in law enforcement agencies and police academies;

(e) Unequivocally punish hate crimes and condemn all forms of hate speech, in particular that based on racial and discriminatory motives, monitor its incidence and vigorously implement national anti-discrimination legislation;

(f) Train public officials to recognize, report, effectively investigate and sanction crimes committed with a racist motive;

(g) Conduct public campaigns to raise awareness of the local population regarding the need to respect the dignity and human rights of the Roma.

Trafficking in human beings

11. While taking note of the National Strategy and Agency relating to trafficking in human beings and for monitoring assistance to victims, the Committee is concerned that the State party remains a country of origin, transit and destination for human trafficking, in particular for sexual and labour exploitation and forced begging. (arts. 2, 10, 12, 13 and 16)

The State party should:

(a) Continue taking measures to prevent and eradicate human trafficking, including by providing specialized training to public officials on the identification of victims, investigation, prosecution and sanctioning of perpetrators;

(b) Allocate sufficient funds to combat trafficking and vigorously implement national legislation; continue conducting national prevention campaigns about the criminal nature of such acts;

(c) Provide the Committee with comprehensive disaggregated data on the number of investigations, prosecutions and sentences handed down for human trafficking and on the provision of effective redress to the victims.

Situation of asylum-seekers and aliens

12. The Committee is concerned that persons in need of international protection do not have unhindered access to asylum procedures, including refugee status determination, in accordance with international standards. It is also concerned about the reportedly unnecessary detention of: (a) asylum-seekers who are to be transferred under the Dublin III Regulation, and (b) rejected asylum-seekers and other aliens, including those pending removal. It is concerned at the absence of a statelessness determination procedure in the State party. (arts. 3, 14 and 11)

The State party should:

(a) Ensure that all persons applying for international protection have access to a fair refugee determination procedure and are effectively protected against refoulement to countries where they risk torture; and consider establishing a statelessness determination procedure;

(b) Refrain from detaining asylum-seekers and aliens and promote alternatives to detention and revise policy in order to bring it in line with the Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum Seekers and Alternatives to Detention of the Office of the United Nations High Commissioner for Refugees.

Conditions of detention and treatment in penitentiary facilities

13. The Committee is concerned about the increase in the prison population, continued overcrowding in spite of projects for the construction of new prisons. It is also concerned at the poor prison infrastructure and material conditions, including the Gherla Penitentiary Institution built in 1540, persistent under-staffing, which gives rise to inter-prisoner violence, the shortage of medical staff and the absence of psychiatrists in the penitentiary health system. The Committee is particularly concerned by the use of special intervention units in prisons whose actions are reported to often result in ill-treatment of inmates. The Committee is also concerned that prison doctors are required to certify that prisoners

sanctioned with disciplinary procedures are fit to undergo punishment. (arts. 2, 11, 12, 13 and 16)

The State party should:

(a) Enhance steps to improve material detention conditions in line with relevant international norms and standards, including by renovating existing prison facilities, closing those unfit for use, speeding up the scheduled building of new prisons and ensuring that living space conforms to at least minimal international standards and report to the Committee on progress made in the implementation of the “Modernization Through Repairs” strategy of the penitentiary system for 2015-2020;

(b) Enhance further the measures taken to reduce overcrowding, including increased resort to alternatives to incarceration, such as probation, bail, mediation, community service and suspended sentences, taking into account the provisions of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);

(c) Ensure adequate staffing of the penitentiary health system and in particular the hiring of psychiatrists, and strengthen the monitoring of vulnerable prisoners; in order to maintain the relationship between patients and doctors, prison doctors should not be required to certify that prisoners are fit to undergo disciplinary sanctions;

(d) Provide systematic medical examination of detainees within 24 hours of their admission to prison; make available appropriate treatments, especially to detainees infected with tuberculosis and HIV/AIDS; implement programmes related to the distribution and monitoring of medicines taken in all penitentiary facilities;

(e) Put an end to the permanent presence and use of special intervention units in penitentiary facilities through improved prison management, increasing the ratio of staff to prisoners and training prison staff on communication with and managing of inmates;

(f) Ensure that all persons suspected of having committed physical or psychological torture or ill-treatment and wilful negligence are prosecuted and, if found guilty, punished in accordance with the gravity of their acts; and provide information to the Committee on the number, type and outcome of such cases;

(g) Establish an independent mechanism to deal with the complaints of inmates about their conditions of detention and treatment, provide effective follow-up to such complaints for the purpose of remedial action and ensure that inmates who file complaints are not subjected to reprisals;

(h) Ensure that the Ombudsman acting as the national preventive mechanism and other independent bodies are able to regularly visit all places of detention and exercise their functions effectively.

Situation in psychiatric hospitals and institutions for persons with mental disabilities

14. The Committee is gravely concerned by:

(a) The treatment and living conditions of persons with disabilities, both adults and minors, placed in psychiatric wards and hospitals and specialized social care institutions, which have reportedly resulted in numerous deaths of patients due to neglect, lack of basic care, use of mechanical restraints, denial of medical and psychological treatment, severe malnutrition amounting to inhuman and degrading treatment;

(b) The absence of investigations into the reported deaths of the 16 patients at the Poiana Mare Psychiatric Hospital, of several hundred patients between 2001 and 2004, and of some 2000 persons between January 2011 and August 2014 in institutions for persons with mental disabilities in approximately half of the country owing to extremely bad living conditions and inferior medical treatment, such as always being kept in dark rooms and sedated, tied with ligatures to their beds and fed while lying on their back, fed insufficient and inadequate food, being screamed at and beaten and denied life-saving external medical treatment, which results in serious medical or psychiatric related stress, as was the case with patients at the Gheorghe Serban Centre for Recuperation and Rehabilitation of Neuropsychiatry;

(c) The absence of legal capacity of patients and legal safeguards regarding explicit consent to placement and medical treatment in psychiatric institutions, combined with the absence in files of official decisions on placement, which amount to forced institutionalization and forced medical treatment;

(d) The absence of judicial review concerning initial placement and continued stay of mental health patients in psychiatric institutions which amounts to unlawful and indefinite detention but is nevertheless designated as “voluntary” by circumventing provisions in mental health legislation and preventing the right of appeal;

(e) The high numbers of persons with psycho-social disabilities and of mental health institutions which reflect lack of progress in the transition from institutional to community-based care and family centres. (arts. 2, 11, 12, 13, 15 and 16)

The State party should:

(a) Amend legislation in order to provide persons with mental and psychosocial disabilities with the right to legal capacity and ensure the effective supervision and monitoring by judicial organs of any placement in psychiatric hospitals and institutions of persons with mental and psychosocial disabilities; ensure the patient’s right to be heard in person by the judge ordering the hospitalization and that the court always seeks the opinion of a psychiatrist who is not attached to the psychiatric institution admitting the patient;

(b) Ensure that every patient, whether voluntarily or involuntarily hospitalized, is fully informed about the treatment to be prescribed and given the opportunity to refuse treatment or any other medical intervention; ensure that involuntary placements are subject to automatic periodic review

(c) Ensure effective legal safeguards for persons in such institutions, including the right of effective appeal; establish an independent complaints mechanism and ensure that patients are granted independent legal representation enabling them to have their complaints relating to the conditions, their health and treatment examined before a court or another independent body and provide redress to victims;

(d) Urgently improve conditions and treatment in psychiatric hospitals and institutions for persons with psycho-social disabilities;

(e) Promptly and effectively investigate all cases of deaths in psychiatric hospitals and institutions, prosecute those responsible for acts of torture, ill-treatment or wilful negligence, punish them with appropriate penalties and provide redress to victims.

Secret detention centres and rendition flights

15. The Committee is concerned at persistent allegations of illegal detention of persons in secret CIA detention facilities and rendition flights into and out of Romania in the context of its international cooperation in countering terrorism. It is also concerned that in his application filed in 2012 with the European Court of Human Rights Mr. Abd al-Rahim Hussayn Muhammad Al-Nashiri claimed that he had been illegally detained and tortured in a CIA detention facility in Romania, which is currently investigated by the Romanian Prosecutor General. The Committee is also concerned at the discrepancy between the information provided by the State party and the statements made in December 2014 by the former head of the Romanian intelligence service indicating that the authorities had allowed the CIA to operate between 2003 and 2006 detention facilities where inmates allegedly suffered inhumane treatment. (arts. 2, 3, 12 and 16)

The Committee encourages the State party to continue its investigations into allegations of its involvement in a programme of secret detention centres and of the use of its airports and airspace by flights involved in “extraordinary rendition” and inform the Committee on their outcome. It requests the State party to provide the Committee with information about the outcome of any ongoing investigations conducted regarding the case of Mr. Abd al-Rahim Hussayn Muhammad Al-Nashiri.

National Preventive Mechanism (NPM)

16. The Committee welcomes the establishment of the national preventive mechanism under the Optional Protocol to the Convention. The Committee is concerned that the NPM is reportedly not functioning as a fully operational NPM. (art. 2)

The State party should allocate adequate financial and staffing resources to ensure the independence of the office of the Ombudsman in order to enable it to function effectively in its distinct role as the NPM. It should also ensure that it has a multi-disciplinary team, including persons with medical and psychiatric expertise and visits regularly all places where persons are deprived of their liberty. The Committee encourages the NPM to take advantage of the experience of civil society organizations in this field.

Juveniles

17. While noting that amendments to the Criminal Code abolished the penalty of imprisonment for minors, the Committee is concerned that numerous children continue to be held in detention centres with prison-like conditions. It is also concerned that children are often questioned by law enforcement officials in police stations without the presence of their lawyers or legal representatives. (art. 2)

The State party should bring the functioning of institutions dealing with minors in compliance with national legislation abolishing the penalty of imprisonment for minors and develop a system of juvenile justice that guarantees international standards, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), and the Guidelines for Action on Children in the Criminal Justice System. Children questioned by law enforcement officials should be afforded fundamental legal safeguards.

Training

18. While taking note of the training provided to public officials involved in custody-transfer and public order, the Committee is concerned at the absence of specific methodologies to evaluate the effectiveness and impact of such training on torture and ill-treatment. It is also concerned that training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (the Istanbul Protocol) is not provided systematically to all officials documenting and investigating cases of torture. (art. 10)

The State party should:

(a) Further develop and strengthen training programmes to ensure that all public officials, including law enforcement, prison and immigration officers, as well as judicial staff are aware of the provisions of the Convention;

(b) Provide systematically training on the Istanbul Protocol for medical personnel and other officials involved in the documentation and investigation of cases of torture;

(c) Develop methodologies to assess the effectiveness and impact of training programmes on the prevention and absolute prohibition of torture and ill-treatment.

Redress, including compensation and rehabilitation

19. The Committee takes note that the State party is transposing into national legislation the Directive 2012/29/EU of the European Parliament and the Council of Europe establishing minimum standards on the rights, support and protection of victims of crime. It is concerned at the slowness of the proceedings and the meagre results so far, given the magnitude of the acts committed, of the investigations conducted by the Institute for the Investigation of the Crimes of Communism in Romani and the National Institute for the Memory of the Romanian Exile (IICCRNIMRE) that have identified 35 persons who held management positions and are suspected of having committed political crimes during the communist regime, and to which there appears to be no follow-up regarding the identification of victims and the provision of redress. (art. 14)

The State party should enact legislation to include explicit provisions on the right of victims of torture and ill-treatment to redress, including fair and adequate compensation and rehabilitation, in accordance with article 14 of the Convention. It should, in practice, provide all victims of torture or ill-treatment with full redress, in line with General Comment No. 3 (2012) on the implementation of article 14 by States parties.

Data collection

20. The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill treatment by law enforcement, security, military and prison personnel in a unified register, as well as on trafficking and domestic and sexual violence, including the nationality and ethnicity of victims.

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment, extrajudicial killings, enforced disappearances, trafficking and domestic and sexual violence as well as on means of redress, including compensation and rehabilitation, provided to the victims.

Follow-up procedure

21. The Committee requests the State party to provide, by 15 May 2016, follow-up information in response to the Committee's recommendations relating to: (a) prolonged detention in police detention and arrest centres; (b) excessive use of force by law enforcement officials; and (c) the National Preventive Mechanism (NPM), as contained in paragraphs 8, 9 and 16 respectively of the present document.

Other issues

22. The Committee invites the State party to consider ratifying the other United Nations human rights treaties to which it is not yet party, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

23. The Committee recommends that the State party consider making the declarations envisaged under articles 21 and 22 of the Convention, in order to recognize the competence of the Committee to receive and consider communications.

24. The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations in appropriate languages through official websites, the media and non-governmental organizations.

25. The State party is invited to submit its next report, which will be the third periodic report, by 15 May 2019. For that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.
