

## ***Council of Europe contribution for the 15<sup>th</sup> UPR session regarding Romania***

### **Prevention of Torture**

#### *CPT ad hoc visit to Romania in September/October 2009*

On 26 August 2010, the Council of Europe's Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) published the report on its *ad hoc* visit to Romania in September/October 2009, together with the response of the Romania Government. Both documents are attached below<sup>1</sup>.

The main objective of the visit was to review the situation of residents and patients at Nucet Medico-Social Centre and at Oradea Hospital for Neurology and Psychiatry (Bihor county), in the light of the recommendations and comments made by the Committee concerning these two establishments in the report on its 2006 visit.

A complete list of the CPT's recommendations, comments and requests for information is contained in the Appendix to the report.<sup>2</sup>



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#### *CPT periodic visit to Romania in September 2010*

On 24 November the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published the report on its periodic visit to Romania (5 to 16 September 2010), together with the response of the Romanian Government. Both documents are attached below<sup>3</sup>.

During the visit, the CPT reviewed the measures taken by the Romanian authorities following the recommendations made by the Committee after its previous visits. In this connection, particular attention was paid to the treatment of persons detained by the police and the conditions of detention in a number of police establishments. The Committee also examined in detail various issues related to prisons, in particular the situation of juveniles, life-sentenced prisoners and prisoners classified as "dangerous".

A complete list of the CPT's recommendations, comments and requests for information is contained in Appendix I to the report.<sup>4</sup>



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<sup>1</sup> Available in French only.

<sup>2</sup> pp. 27-31.

<sup>3</sup> Available in French only.

<sup>4</sup> pp. 65-79.

## Fight against racism and intolerance

### *European Commission against Racism and Intolerance (ECRI)*

On 21 February 2006, ECRI released its third report examining racism, xenophobia, antisemitism and intolerance in Romania (attached below).<sup>5</sup>

While recognising the positive developments that have occurred in Romania ECRI details, however, in its report continuing grounds for concern. The Romanian authorities have adopted an anti-discrimination law and set up the National Council Against Discrimination, which is the body responsible for applying this law. However, ECRI noted that this legislation has hardly been applied at all as neither public officials nor the general public are aware of its existence. The Roma community continues to be discriminated against in all areas, including the labour market and access to education, public places and decent housing.

The report contains findings and recommendations regarding the following issues:

- International legal instruments<sup>5</sup>
- Constitutional provisions and other basic provisions<sup>7</sup>
- Criminal law provisions<sup>8</sup>
- Civil and administrative law provisions<sup>9</sup>
- Administration of justice<sup>10</sup>
- Legal aid<sup>11</sup>
- Specialised bodies and other institutions<sup>12</sup>
- Education and awareness-raising<sup>13</sup>
- Reception and status of non-citizens<sup>14</sup>
- Vulnerable groups<sup>15</sup>
- Antisemitism<sup>16</sup>
- Conduct of law enforcement officials<sup>17</sup>
- Media<sup>18</sup>
- Monitoring the situation<sup>19</sup>

Of specific issues ECRI draws attention to the situation of the Roma community in Romania.<sup>20</sup>



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<sup>5</sup> A summary of the report can be found on p. 6.

<sup>6</sup> p. 7.

<sup>7</sup> pp. 8-12.

<sup>8</sup> pp. 12-13.

<sup>9</sup> pp. 13-16.

<sup>10</sup> pp. 16-17.

<sup>11</sup> pp. 17-18.

<sup>12</sup> pp. 18-21.

<sup>13</sup> pp. 22-23.

<sup>14</sup> pp. 23-25.

<sup>15</sup> p. 25.

<sup>16</sup> pp. 25-26.

<sup>17</sup> pp. 26-27.

<sup>18</sup> pp. 27-28.

<sup>19</sup> p. 28.

<sup>20</sup> pp. 29-35.

## **Council of Europe Commissioner for Human Rights**

On 16 December 2010, the Commissioner for Human Rights, Thomas Hammarberg, published a letter addressed to the Prime Minister of Romania, Emil Boc, following the Commissioner's visit to Romania in October 2010. "Roma continue to face persistent poverty and discrimination in Romania. Political determination and comprehensive action are urgently needed to improve their situation", he said.

The Commissioner was concerned about the anti-Roma rhetoric expressed by some public figures and media, as well as about the weak implementation of anti-discrimination legislation. "Roma are discriminated against in various areas, not least in employment, education, housing and health care. The government should strengthen its efforts and find inclusive solutions".

As concerns housing in particular, Commissioner Hammarberg noted that most Roma live in communities segregated from the majority population, without access to basic services such as electricity, running water, central heating, and waste disposal. Forced evictions of Roma families who do not have proof of tenancy pose serious problems: "The right to adequate housing should be safeguarded at all times, and alternative decent shelter should be provided by the authorities in all cases of evictions".

The Commissioner also underlined the need to strengthen the capacity of local authorities and non-governmental organisations to undertake action to improve the living conditions of Roma and foster their social inclusion. In this context, he welcomed the government's plan to create mobile units that would assist municipalities in creating community projects aimed at fighting Roma marginalisation, and recommended the swift implementation of the plan in co-operation with Roma civil society.

Commissioner Hammarberg pointed at the high rates of unemployment among Roma as an additional obstacle to the efforts aimed at alleviating their poverty. "Discrimination in access to employment on grounds of Roma ethnic background is an obstacle for many Roma seeking employment. Resolute action is urgently needed to ensure the long-term integration of Roma into the labour market".

As regards access of Roma to education, the Commissioner was deeply worried by the fact that a large number of Roma children do not attend schools, and by their high drop-out rates. He also deplored the continuing segregation of Roma students in schools. "In spite of promising initiatives undertaken by the authorities in recent years to tackle this problem, in some communities Roma students are still in separate classrooms or schools. More effective efforts are needed to establish a truly inclusive educational system in line with the member states' undertakings contained in the Strasbourg Declaration on Roma, adopted last October".

Finally, the Commissioner recommended the systematic teaching of the Council of Europe's Factsheets on Roma History in schools, crucial to increasing understanding and respect. "Knowledge about the persecution endured by the Roma populations throughout the centuries is essential for better understanding this minority, and is a key element in fighting prejudice", added the Commissioner.

The letter from the Commissioner for Human Rights and the reply from the Romanian Minister are attached below.



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## Protection of Minorities

### *Framework Convention for the Protection of National Minorities*

On 23 May 2007, the Committee of Ministers adopted a resolution on the protection of national minorities in Romania (attached below). The resolution contains conclusions and recommendations, highlighting positive developments<sup>21</sup> but also mentioning issues of concern<sup>22</sup>. Moreover, it mentions a number of areas where further measures are needed to advance the implementation of the Framework Convention for the Protection of National Minorities.

In addition to the measures to be taken to implement the detailed recommendations contained in Sections I<sup>23</sup> and II<sup>24</sup> of the Advisory Committee's opinion, the authorities are invited to take the following measures to improve further the implementation of the Framework Convention:

- increase awareness-raising measures among the public, politicians and the media regarding the importance of tolerance and respect for diversity and ensure that educational curricula reflect, in an appropriate manner, the diversity of Romanian society; take effective measures to strengthen interethnic dialogue and mutual understanding in areas populated by persons with different ethnic, cultural and religious backgrounds, including where persons belonging to the majority are in a minority position;
- take more resolute action to prevent and combat discrimination and social exclusion of the Roma and address, as a matter of priority, the difficulties they face in employment, housing, health and education;
- envisage ways to provide more convenient time-slots for minority television programmes and the possibility of extending the time of broadcasting service for national minorities in their language, especially at local level, taking into account the economic constraints within which public stations operate; promote better access of the Roma to the local radio;
- pursue and strengthen the initiatives taken in order to improve the situation of the Roma in the field of education and to develop the teaching of their language; pursue and monitor the measures taken to prevent and combat the isolation of Roma children within the educational system; pursue the efforts aimed at improving the situation of national minorities in the field of education and teaching of and in their languages;
- increase efforts, which require also an increase of the general budget for education, to ensure the availability of sufficient and qualified teachers and textbooks for education of or in minority languages, in particular for numerically smaller minorities;
- promote further the participation of persons belonging to national minorities in public affairs at central and local levels, in particular as regards the Roma and the numerically smaller minorities; encourage pluralism within minorities and develop contacts with organisations which are not represented in the Council of National Minorities, in order to avoid unnecessary politicisation of minority organisations;
- evaluate the effects of the process of restitution of property on the situation of vulnerable minority groups; accelerate the implementation of the restitution of religious and community properties of minorities, while taking into account the complexity and implications of this process;

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<sup>21</sup> Part 1 a) of the resolution

<sup>22</sup> Part 1 b) of the resolution.

<sup>23</sup> pp. 4-6.

<sup>24</sup> pp. 7-35.

- continue to improve the implementation of the national legislation concerning the practice of indicating place names in administrative-territorial units in which people belonging to national minorities represent over 20% of the local population;
- make an assessment of the legal and institutional effects as well as the budgetary implications of the draft Law on the Status of National Minorities and take the available measures to conclude the adoption of the law, as soon as possible, while ensuring its compliance with the principles embodied in the Framework Convention.

The resolution is largely based on the corresponding Second Opinion of the Advisory Committee on the Framework Convention on Romania<sup>25</sup>. The concluding remarks, contained in Section III<sup>26</sup>, serve as the basis for the Committee of Ministers' Resolution. The Opinion of the Advisory Committee and the comments on the Opinion by the government of Romania are attached below.

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The Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities adopted its third Opinion on Romania in March 2012, but for the time being it is still restricted.

#### *European Charter for Regional or Minority Languages*

On 13 June 2012, the Council of Europe Committee of Ministers made public the first report on the application of the European Charter for Regional or Minority Languages in Romania. The report drawn up by a committee of independent experts, which monitors the application of the Charter, is contained in the attachment below. It includes the Committee of Ministers' Recommendation on the application of the European Charter for Regional or Minority Languages by the Romania.

On the basis of the report, the Committee of Ministers calls on Romania to adopt a structured approach for the implementation of the Charter, in co-operation with representatives of the national minorities.

Measures to develop comprehensive educational models for teaching in/of Tatar and Turkish should also be taken.

The Council of Europe also recommends the Romanian authorities to take measures to provide the basic and further training of a sufficient number of teachers for German, Hungarian, Turkish and Ukrainian.

The Romanian authorities are also called upon to continue to develop a comprehensive offer of teaching in/of Romani, taking account of the needs and wishes of the Roma. Furthermore, the Council of Europe recommends to reconsider the thresholds for official use of minority languages in administration and to improve the offer of radio and television broadcasts in certain minority languages.

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<sup>25</sup> A summary of the report can be found on p. 1.

<sup>26</sup> pp. 36-37.

## **Social and economic rights**

Romania ratified the Revised European Social Charter on 07/05/1999 and has accepted 65 of the Revised Charter's 98 paragraphs.

Romania has not ratified the Additional Protocol providing for a system of collective complaints.

### Cases of non-compliance

#### *Thematic Group 1 "Employment, training and equal opportunities"*

► Article 1§1 – Right to work – Policy of full employment

The measures taken to remedy long-term unemployment and youth unemployment rate are inadequate for achieving substantial improvement of the situation.  
(Conclusions 2008, p. 6 'Conclusion')

► Article 1§2 – Right to work – Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

The length of alternative service excessively restricts the workers right to earn a living in an occupation freely entered upon.  
(Conclusions 2008, p. 9 'Conclusion')

► Article 1§3 – Right to work – Free placement services

The right to free employment services is not guaranteed.  
(Conclusions 2008, p. 10 'Conclusion')

► Article 1§4 – Right to work - Vocational guidance, training and rehabilitation

Mainstreaming of persons is not effectively guaranteed in the field of education and training as the number of children with disabilities attending special education is high and a considerable number of children with disabilities is left without education.  
(Conclusions 2008, p. 11 'Conclusion')

► Article 15§1 – Right of persons with disabilities to independence, social integration and participation in the life of the community – Vocational training for persons with disabilities

The mainstreaming of persons with disabilities is not effectively guaranteed in education and training. The number of children with disabilities attending special education is high and a considerable number of children with disabilities is left without education.  
(Conclusions 2008, p. 15 'Conclusion')

► Article 18§3 – Right to engage in a gainful occupation in the territory of other States Parties – Liberalising regulations

Formalities governing the access of foreign workers to the national labour market are not simplified.  
(Conclusions 2008, p. 18 'Conclusion')

#### *Thematic Group 2 "Health, social security and social protection"*

► Article 3§1 – Right to safe and healthy conditions – Health and safety and the working environment

The national policy on health and safety does not include training, information, quality assurance and research in a satisfactory manner.  
(Conclusions 2009, p. 6 'Conclusion')

► Article 3§2 – Right to safe and healthy working conditions – Safety and health regulations

The domestic workers are not covered by occupational health and safety regulations.  
(Conclusions 2009, p. 8 'Conclusion')

► Article 3§3 – Right to safe and healthy working conditions – Enforcement of safety and health regulations

Statistics on occupational accidents are not reliable.  
(Conclusions 2009, p. 10 'Conclusion')

► Article 11§1 – Right to protection of health – Removal of the causes of ill-health

Infant and maternal mortality rates are too high and measures taken to reduce them are inadequate. The conditions in certain psychiatric hospitals are manifestly inadequate and reasonable health care waiting times as well as the management of waiting lists are unsatisfactory.

(Conclusions 2009, p. 13 'Conclusion')

► Article 11§2 – Right to protection of health – Advisory and educational facilities

There is no public awareness-raising and information campaigns on the subject of infant and maternal mortality. It has not been established that health education activities are organised on the harmful effects of smoking and alcoholism and the prevention of sexually transmitted diseases and Aids.

(Conclusions 2009, p. 15 'Conclusion')

► Article 12§1 – Right to social security – Existence of social security system

The adequacy of old age benefit, survivors' benefit and employment injury benefit is unsecured.  
(Conclusions 2009, p. 20 'Conclusion')

► Article 12§2 – Right to social security – Maintenance of a social security system at a satisfactory level at least equal to that required for the ratification of the European Code of Social Security

The maintenance of a social security system does not meet the requirements of the European Code of Social Security.

(Conclusions 2009, p. 21 'Conclusion')

► Article 12§4 – Right to social security – Social security of persons moving between states

The retention of accrued benefits for persons moving to a State Party which is not covered by Community regulations or not bound by an agreement with Romania is not guaranteed and nationals of States Parties not covered by Community regulations or not bound by an agreement concluded with Romania have no possibility of accumulating insurance or employment periods completed in other countries.

(Conclusions 2009, p. 25 'Conclusion')

► Article 13§1 – Right to social and medical assistance – Adequate assistance for every person in need

The level of social and medical assistance is inadequate. It has not been established that the possibility of withdrawal of assistance in response to the failure to undertake community work does not amount to a complete deprivation of means of subsistence for the person concerned. The right of appeal in cases related to inadequate assistance is not effectively guaranteed.

(Conclusions 2009, p. 28 'Conclusion')

### *Thematic Group 3 "Labour rights"*

► Article 2§2 - Right to just conditions of work - Public holidays with pay

The right of workers to a longer rest period in compensation for work carried out on a public holiday is not guaranteed.

(Conclusions 2010, p. 5 'Conclusion')

► Article 4§1 - Right to a fair remuneration - Decent remuneration

The minimum wage is manifestly unfair

(Conclusions 2010, p. 9 'Conclusion')

▶ Article 4§2 - Right to a fair remuneration - Increased remuneration for overtime work  
The right of workers to a longer rest period in compensation for overtime work is not guaranteed.  
(Conclusions 2010, p. 10 'Conclusion')

▶ Article 4§4 - Right to a fair remuneration - Reasonable notice of termination of employment  
The notice period is too short for employees with over six months' service.  
(Conclusions 2010, p. 11 'Conclusion')

▶ Article 4§5 - Right to a fair remuneration - Limits to deduction from wages  
It has not been established that deductions from wages will not deprive workers and their dependents of their very means of subsistence.  
(Conclusions 2010, p. 12 'Conclusion')

▶ Article 5 - Right to organise  
The requirement of Romanian nationality for the representation of the two sides of industry at the Economic and Social Council is excessive.  
(Conclusions 2010, p. 15 'Conclusion')

▶ Article 6§4 - Right to bargain collectively - Collective action  
A trade union may take collective action only if it fulfils representativeness criteria which unduly restricts the right of trade unions to take collective action;  
Employers may have recourse to compulsory arbitration in circumstances which go beyond those permitted by Article G of the Revised Charter.  
(Conclusions 2010, p. 22 'Conclusion')

#### *Thematic Group 4 "Children, families, migrants"*

▶ Article 7§1 – Right of children and young persons to protection – Prohibition of employment under the age of 15 light work is not defined by national legislation or practice;  
prohibition of employment under the age of 15 is not guaranteed in practice.  
(Conclusions 2011, p. 5 'Conclusion')

▶ Article 7§3 – Right of children and young persons to protection – Prohibition of employment of children subject to compulsory education  
The right of children to fully benefit from compulsory education is not guaranteed due to the ineffective application of the legislation.  
(Conclusions 2011, p. 7 'Conclusion')

▶ Article 7§5 – Right of children and young persons to protection – Fair pay  
The right to young workers and apprentices to a fair wage or other appropriate allowances is not guaranteed in practice due to the ineffective application of the legislation.  
(Conclusions 2011, p. 8 'Conclusion')

▶ Article 7§6 – Right of children and young persons to protection – Inclusion of time spent on vocational training in the normal working time  
It has not been established that the right to have time spent on vocational training considered to be working time and remunerated as such is guaranteed in practice.  
(Conclusions 2011, p. 9 'Conclusion')

▶ Article 7§7 – Right of children and young persons to protection – Paid annual holidays  
It has not been established that the right to paid annual leave is guaranteed in practice.  
(Conclusions 2011, p. 9 'Conclusion')

► Article 7§10 – Right of children and young persons to protection – Special protection against physical and moral dangers the simple possession of child pornography is not a criminal offence; it has not been established that measures taken to combat trafficking and sexual exploitation of children are sufficient.

(Conclusions 2011, p. 13 ‘Conclusion’)

► Article 16 – Right of the family to social, legal and economic protection

The living conditions of Roma families in housing are not adequate.

(Conclusions 2011, p. 20 ‘Conclusion’)

Please see attached below the Conclusions regarding Romania from 2008, 2009, 2010 and 2011, as well as the fact sheet.



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### **Action against Trafficking in Human Beings**

On 31 May 2012 the Group of Experts on Action against Trafficking in Human Beings (GRETA) published its first evaluation report on Romania<sup>27</sup>, together with the final comments of the Romanian authorities. Both documents are contained in the attachment below.

In the report, GRETA welcomes the steps taken by the Romanian authorities to combat trafficking in human beings, including through the adoption of anti-trafficking legislation, the setting up of the National Agency against Trafficking in Persons, and the introduction of a national identification and referral mechanism for victims of trafficking.

However, GRETA considers that the Romanian authorities should reinforce co-ordination and co-operation between all anti-trafficking actors. In the area of prevention, GRETA stresses the need for further measures aimed at tackling the root causes of trafficking, especially through fostering access to education and jobs for vulnerable groups.

Further, GRETA considers that all relevant professionals, including border police staff, should be provided with training in order to improve the identification of victims of trafficking, both Romanian and foreign nationals. GRETA also urges the Romanian authorities to ensure that all assistance measures provided for in law are guaranteed in practice, regardless of the victims' willingness to co-operate with law enforcement agencies, and to facilitate the reintegration of trafficking victims into society. Moreover, GRETA stresses the importance of ensuring effective access to compensation and legal redress for victims of trafficking.

As regards investigation and prosecution, while noting some positive results, GRETA urges the Romanian authorities to step up proactive investigations into trafficking for the purpose of labour exploitations and to investigate any report of alleged involvement of public officials in offences related to human trafficking

A complete list of GRETA's proposals to the Romanian authorities is contained in Appendix I to the report.<sup>28</sup>

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<sup>27</sup> A summary of the report can be found on p. 7.

<sup>28</sup> pp. 44-48.



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## **Preventing and Combating Violence against Women and Domestic Violence**

Romania has not yet signed or ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence. For this reason, it is not yet concerned by the monitoring procedure which will be carried out by a Group of experts on action against violence against women and domestic violence (GREVIO) once the convention enters into force.

## **Execution of judgments and decisions at the European Court of Human Rights**

At 31 December 2011, there were 636 cases pending before the Committee of Ministers (CM) for supervision of their execution. 88 of these cases were “leading cases”, i.e. raising a new structural /general problem and requiring the adoption of general measures.

11 cases or groups of cases are currently examined under the enhanced supervision procedure which is reserved in particular to cases raising important or complex structural problems or requiring urgent individual measures. The five main ones revealing such structural problems are listed below.

1. Inhuman and degrading treatment or torture by the police; ineffective investigations (notably into racially motivated violence) - *Barbu Anghelescu group (application No. 46430/99)*
2. Poor conditions in prisons and police detention facilities, including failures to secure adequate medical care - *Bragadireanu group (application No. 22088/04)*
3. Ineffectiveness of the criminal investigations into the violent crackdown on the December 1989 anti-governmental protests; lack of safeguards in Romanian legislation in the field of secret surveillance measures in cases of alleged threat to the national security – *case of Association “21 December 1989” and others (application No. 33810/07)*
4. Excessive length of civil and criminal proceedings; absence of an effective remedy - *Nicolau group (application No. 1295/02) and Stoianova and Nedelcu group (application No. 77517/01)*
5. Ineffectiveness of the mechanism set up to afford restitution or compensation for properties nationalised during the communist period - *Strain group (application No. 57001/00)*

The document attached presents a brief description of the violations and the last detailed decision taken by the Committee of Ministers and the responses given thereto by the respondent state.



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