

STATE RESPONSIBILITY IN THE PREVENTION OF TORTURE AND INHUMAN AND DEGRADING TREATMENT

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Abstract

To produce intentional, systematic and cruel physical or mental suffering, acting on their own initiative or on the basis of order, in order to compel certain persons to confess or give information, was defined as torture.

To put a person in serious danger through actions, measures or treatments of any kind, affecting physical or mental condition is inhuman and degrading treatment.

The European Convention on Human Rights stated, with the overriding value, by the provisions of Article 3 that: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment", imposing, by the provisions of the article, the obligations of the state authorities not to apply no form of suffering or inhuman treatment of persons under their jurisdiction, and the obligation to protect the physical and mental integrity of such persons.

On 9 October 1990, by promulgating Law No.19, Romania adheres to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and has thus established a mechanism for the prevention of torture and inhuman and degrading treatment.

The establishment of independent internal mechanisms for the prevention of torture and inhuman and degrading treatment is an express requirement contained in Part V of the Optional Protocol to the Convention for the Prevention of Torture. The scope of the institutions in which the mechanisms for the prevention of torture and inhuman and degrading treatment are exercising is largely covering both the penitentiary system, the detention and preventive arrest centers, the medical-social institutions for the persons with mental disabilities and other units in which may engage in inhuman or degrading treatment.

Keywords: *torture, inhuman and degrading treatment, Convention, mechanism*

Introduction

Respect for fundamental human rights as well as the formation of a system to guarantee these rights has been, since antiquity, a problem debated by important historical personalities. Thus, in 1770, Hammurabi's Code regulated social relations and promoted rules of social justice and humanitarian spirit¹, and from the beginning of the period of Stoicism and that of Christianity, the teachings on the principle of equality between people were developed. These principles were tinted in the modern era, during the Enlightenment, when the first legal provisions on human rights were formulated and edited in documents such as the "Magna Charta Libertatum" (Great Book of Freedoms) where it was stated for the first time that neither a free man can not be imprisoned without being tried, or the "Law of Rights" voted by the British Parliament in 1689, which definitively laid the foundations of the constitutional monarchy in England, formulating for citizens a series of rights.²

An important step on the line of human rights assertion was represented by the United States

Declaration of Independence, which associates liberation from British domination with a series of citizens' rights and freedoms, underlining that "all people have been created equal, are endowed by their creator with certain inalienable rights, and among them are life, freedom and the pursuit of happiness. The Declaration constituted the fundamental act underlying the elaboration of the Constitution of the United States of America in 1787, which is maintained, with some modifications occurring along the way, and at present³.

The first European constitution based on democratic principles was the Polish Constitution of 3 May 1791 and introduced equality of political rights between townspeople and nobility, placing peasants under the protection of the government and alleviating the worst abuses against the serfs⁴. Until the Second World War, the constitutions of most states with democratic regimes contained extensive human rights provisions, but the tragedy of millions of victims during the Second World War revealed, among other things, that the great mid-century conflagration The XX has been unleashed precisely because the fundamental rights and freedoms of man and peoples have not been respected⁵.

The stories of World War II have highlighted the need for global provisions to ensure the safeguarding of

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¹ I.MoroianuZlatescu, R.Demetrescu, From the History of Human Rights, Romanian Institute for Human Rights, Bucharest, 2003, p.5;

² <http://www.scriitub.com/stiinta/stiinte-politice/Drepturile-fundamentale-ale-om92277.php>

³ Ibidem 2

⁴ https://ro.wikipedia.org/wiki/Constitu%C8%9Bia_de_la_3_mai_1791

⁵ I.MoroianuZlatescu, R.Demetrescu, From the History of Human Rights, Romanian Institute for Human Rights, Bucharest, 2003, p.5;

human rights. Thus, on December 10, 1948, the United Nations considered that “ignoring and despising human rights led to acts of barbarism that revolted the conscience of mankind, proclaiming the” Universal Declaration of Human Rights, “specifying in the preamble of the act that this statement is a “common ideal to which all peoples and nations must strive, so that all persons and all organs of society strive, having this permanent statement in mind, to develop respect for these rights and freedoms through education and education, and to ensure, through national and international progressive measures, their universal and effective recognition and application both within the peoples of the Member States and those of the territories under their jurisdiction⁶.

Starting from the provisions of Article 1 of the Universal Declaration of Human Rights, which states that “all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and must act one another in the spirit of fraternity, “and corroborating Article 5 of the same statement that” no one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment degrading, we show that the recognition of equal and inalienable rights is the foundation of freedom and justice and assures the inherent dignity of the human person.

Also, by defining the notions of torture, inhuman and degrading treatment, the mode of violation of inalienable rights is reversed. To produce intentional, systematic and cruel physical or mental suffering, acting on their own initiative or on the basis of order, in order to compel certain persons to confess or give information, was defined as torture. This definition is also found in the Tokyo Tokyo Declaration on Torture and Degrading Treatment in 1975, developed by the World Medical Association, a declaration to which Romania has joined and is currently a party, and putting a person in serious danger through action, treatments of any kind, affecting physical or mental condition, are inhuman and degrading treatment.

From the perspective of human rights, the definition of “torture” involves four aspects:

- torture as a violation of human rights;
- torture as dehumanization, cruelty and degradation;
- prophylaxis of torture;
- the moral reward of the victim and her psychological recovery.⁷

The history of torture has its origins since antiquity when prisoner torture was a practice accepted and maintained by special methods and equipment, and these forms of torture have always had physical, mental and social consequences on the victims. For a period of time in the nineteenth century, torture has disappeared

from Western Europe, as evidenced by Victor Hugo's speech at the International Peace Congress of August 21, 1849, when he said that “a day will come when the cannon is a piece of museum, such as the tools of torture today. And we will wonder that these things have ever existed! “But the twentieth century was the culmination of the ways of physical and mental torture.

As a result of these issues, in 1950, the European Convention for the Protection of Human Rights and Fundamental Freedoms stated, with imperative value, by the provisions of Article 3 that: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment” .

Definitions of the concepts in Article 3 of the European Convention have been made by jurisprudence. In the case of Ireland v. The United Kingdom (1978), the Court differentiated the three basic notions of Article 3 by the degree of severity of treatments or punishments:

- a) torture: intentional inhuman treatment that causes very serious and very cruel suffering; the three main elements of torture are, therefore, the intensity of suffering, intent and purpose.
- b) inhuman treatment or punishment: the application of intense, physical or mental suffering.
- c) degrading treatment: treatment that creates a feeling of fear, restlessness and inferiority to the victim, which humiliates, degrades and eventually breaks his physical or moral resistance. Degrading treatment considers those grave human dignity, proving to be capable of descending the social status of a person, its situation or reputation may be considered to constitute such treatment, within the meaning of Art. 3 of the Convention, if it reaches a certain degree of severity.⁸

In ECHR case law, Article 3 is particularly applicable in cases considered inhumane, such as the situation of excessive police procedures in the event of arrest or interrogation, failure to ensure detention conditions, overcrowding of penitentiaries, failure to provide adequate medical care for private individuals the situation of degrading conditions in the case of hospitalization of mental health patients in psychiatric services, extradition or deportation to a country that does not guarantee the assurance of respect for human rights etc.

Thus, the provisions of the article also imposed the obligations of the state authorities not to apply any form of inhuman or degrading treatment to persons under their jurisdiction and the obligation to protect the physical and mental integrity of such persons.

Also, the International Covenant on Civil and Political Rights, the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (known under the English acronym CAT -

⁶ Preamble to the Universal Declaration of Human Rights

⁷ Ruxandra Cesereanu, *Panopticum Essay on Torture in the 20th Century*, 2014, Polirom Publishing House, 2nd Edition, Introduction

⁸ *Cruceanu Andreea – Simona, Prohibition of torture and ill-treatment in terms of subjection to medical treatment*, pg. 2 – 3, footnote note 2 *op.cit.* Corneliu Bărsan, *The European Convention on Human Rights. Comment on articles. Ediția a II-a*, Editura C.H.Beck, București, 2010, pag. 32 , <https://www.avocatnet.ro>

Convention Against Torture) or the European Convention for the Prevention of Torture of the Council of Europe are the most known norms and, at the same time, mandatory for the states that have ratified them. A number of other documents, such as the Beijing Rules (detention regime, mainly for minors), or the Istanbul Protocol with Practical Guides for Doctors and Legal Practitioners, the Minimum Basic Rules in Prisons in the UN version and the The Council of Europe and many others that should be applied by all democratic states or self-defining as such. Besides, there are a lot of studies, textbooks, reports, etc. in the field, drawn up by national and international human rights organizations or by independent experts.⁹

The European Court of Human Rights has the role of supreme protector of human rights norms in Europe. However, the European system of human rights is based on the expectation that Member States will provide the first line of defense. In particular, the national courts are expected to reflect ECHR jurisprudence in their day-to-day practice. This suggests a constructive interaction of national legal systems with the jurisprudence of the European Court of Human Rights. Thus, the focus is clearly and firmly on the national implementation of human rights guarantees.¹⁰

In this context, each State that has adhered to these norms has been required to put in place legislative, administrative or other necessary and effective measures to prevent acts of torture or other inhuman or degrading treatment.

The responsibility of the Romanian state for the prevention of torture and inhuman and degrading treatment was materialized by the following measures:

A. Legislative measures

On 9 October 1990, by promulgating Law No 19, Romania adhered to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and thus has the first legislative measures to establish a mechanism for the prevention of torture and inhuman treatment and degrading.

In the same context, by the adoption of the Constitution of Romania, on 21 November 1991, Chapter II - Fundamental Rights and Freedoms, Article 22 - Right to life and physical and mental integrity, paragraph (2), the provisions of Art. 3 of the European Convention on Human Rights: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Also, in order to express the obligation of the Romanian state to protect people from any act of torture, inhuman or degrading treatment, the domestic criminal law provides for and sanctions these acts as criminal offenses.

According to the provisions of Law no.286 / 2009 on the Criminal Code, torture is found in art. 282 and is

considered by the legislator as a crime against justice, and not as a crime against the person as we would have believed, given that at international level torture is a violation of human rights, being a direct act of the person's physical and mental integrity. In this context, this classification suggests that the main subject of protection is in the proper administration and implementation of justice. Even if history shows that, over time, acts of torture have been committed, most often, in order to obtain information or statements during the exercise of state authority, in the current form of the classification of the legal provision in the Criminal Code, we consider that the protective purpose against the practice of torture is reduced only to the assertion of justice, which would be a restrictive approach to the spirit and nature of the prohibition of torture stipulated in international rights,

The objective aspect of the torture offense referred to in paragraph (1) of Article 282 of the Criminal Code is manifested by the offense of a civil servant who performs a function involving the exercise of authority or other person acting upon his instigation or with his express or tacit consent, , which results in a strong physical and mental suffering to a person. The term "deed" has a general meaning, including any activity or omission that is likely to cause severe physical pain or mental suffering, which may result in the death of the person, and is deemed consumed from the time of their occurrence. Incriminating torture is punishable by imprisonment and the ban on the exercise of certain rights.

As regards the state's responsibility for sanctioning inhuman and degrading treatment, the Romanian criminal law has criminalized these actions under the name of ill-treatment, the provisions of which are found in Article 288 of the Penal Code. The contents of this article bring together acts that affect the work of justice, preventing the pursuit of the purpose of safety or educational measures and of deprivation of liberty.

The aggravating variant of the offense of subjection to ill-treatment, provided for in paragraph (2) of Article 281, is formulated under the influence of the provisions of the European Convention on Human Rights and has the following content:

"(2) The subjection to degrading or inhuman treatment of a person in detention, possession or execution of a security or educational measure, depriving of liberty, shall be punished by imprisonment from one to five years and the prohibition of the exercise of the right of to hold a public office. "

Taking into account that the provisions of art. 281 Penal Code are aspects requiring the correct execution of criminal law sanctions measures, the legislator addressed these obligations both in the Law no.253 / 2013 on the execution of punishments, educational

⁹ <https://andreivocila.wordpress.com/2011/01/30/prevenirea-torturii-si-a-pedepselor-sau-tratamentelor-inumane-sau-degradante-2/accesat-in-18.03.2019>

¹⁰ Jim Murdoch Vaclav Jiricka, Penitentiary System Manual on Prevention ill-treatment in penitentiaries, combating ill-treatment in penitentiaries, Cover and Format: SPDP, Council of Europe, page 11 <https://rm.coe.int/2>

measures and other non - Freedom by the judicial bodies in the course of criminal proceedings, art. 7 paragraph (2), which states that the execution of punishments, educational measures and other measures ordered by the judicial bodies can not involve the application of inhuman or degrading treatment, No.254 / 2013 on the execution of sentences and detention measures ordered by the judiciary in the criminal proceedings, where, under Article 5, imperative, it is forbidden to obey any person in the execution of a sentence or a measure depriving himself of liberty torture, inhuman or degrading treatment or other ill-treatment.

B. Administrative measures to prevent torture, inhuman or degrading treatment

The daily improvement of the protection of human rights is one of the fundamental tasks of the Council of Europe. To this end, he has set four main lines of action:

- establishment of effective control and protection systems for fundamental rights and freedoms;
- identifying new threats to human rights and human dignity;
- raise public awareness of the importance of human rights;
- promoting education and training in the field of human rights¹¹.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is set up at European level in 1987 to establish effective control and protection systems for fundamental rights and freedoms¹².

Following the European model, in order to monitor the promotion and respect of human rights, the Romanian State created an independent and autonomous institution, called the People's Advocate Institution, with the purpose of protecting the rights and freedoms of individuals in their relations with public authorities . The institution was established by Law no. 35/1997 on the organization and functioning of the People's Advocate Institution, and has been designated as the only national structure that fulfills the specific attributions of the National Mechanism for Torture Prevention in places of detention.

The field of prevention of torture in places of detention within the People's Advocate Institution resolves petitions addressed to the institution about torture, cruel, inhuman or degrading treatment in places of detention, and visits or inquiries to address these issues. In the prevention and monitoring of acts of torture or ill-treatment, the People's Advocate Institution cooperates with the representatives of NGOs, as the participation of representatives of non-governmental organizations is mandatory for the visits to the places of detention.

The People's Advocate presents reports to the Romanian Parliament annually or at his request, and part of these reports also refer to the field's activity to prevent torture in places of detention.

Also, the Ministry of Justice and the National Penitentiary Administration oversee the observance of the rights of the persons deprived of their liberty through the control structures (the Control Corps of the Minister of Justice and the Penitentiary Inspection Department) and check any activity that raises suspicions of the act of torture or bad treatments.

As has already been pointed out, in domestic criminal law, in the case of torture in the type variant, the guilt is the direct intention, but a subjective part is included outside the intent. In this context, in order to establish the existence of the torture offense, it must be committed for the purpose of obtaining information or statements or for the purpose of punishing the person for an act which he has committed or is suspected of committing or intimidating or to put pressure on it or on a ground based on any form of discrimination. If the deed is followed by the death of the victim, then the conditions of the aggravated variant are fulfilled, and in case of subjection to ill-treatment, their pursuit is only criminalized if the victim is in the state of restraint, detention or in the execution of a safety measure or educational deprivation of freedom. With such a case, which took the form of a crime of torture and other ill-treatment, faced the Romanian penitentiary system, in 2010, when 13 civil servants with special status of the Galati Penitentiary were sent to trial due to the eviction treatments for CS prisoner aged 36, who degenerated with the death of the victim on June 4, 2010. The person of liberty C.S. was in custody of the Galati Penitentiary on June 1, 2010, as a result of a term of execution of a three-year prison sentence for theft. When placed in a penitentiary, the medical assessment did not reveal acute medical conditions, but it was established that the person in question was known as a chronic alcohol consumer, for whom he had received medical care 1 year ago. On June 4, 2010, the National Penitentiary Administration announced that the person in custody died as a result of a delirium tremens due to sudden alcohol withdrawal, a syndrome that culminated in a cardio-respiratory arrest. At that time, apparently the person deprived of liberty did not show signs of bodily violence, had been washed and cared for, but the autopsy one day after death revealed that the person deprived of liberty had "straight C6-C11 fractures with anterolateral C7 - C9, retroperitoneal right haematoma and thoraco-abdominal trauma with hepatic crack and renal rupture ", medical certificate of death no. 293 / 05.06.2010 establishing that the person deprived of liberty died as a result of a cardiac arrest caused by the traumatic shocks he was subjected to.

¹¹ European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment - Convention text and Explanatory report, Series of European Treaties - 126. Amended text in accordance with the provisions of Protocol Nr. 1 (STE No. 151) and Nr. 2 (STE No 152) which entered into force on 1 March 2002

¹² Jim Murdoch Vaclav Jiricka, Penitentiary System Manual on Prevention ill-treatment in penitentiaries, combating ill-treatment in penitentiaries, Cover and Format: SPDP, Council of Europe, page 11 <https://rm.coe.int/2>

In this context, informing the National Administration of Penitentiaries and the criminal investigation bodies was immediate, but there were many unknowns about this negative event. Immediately the National Administration of Penitentiaries established a first control team to carry out the first checks at the Galati Penitentiary, which would identify that the person deprived of liberty had suffered several psychomotor agitation episodes for which he had been immobilized in bed with means of immobilization - handcuffs metal, and during this time he made his physiological needs in bed. At this first check from the National Penitentiary Administration, in collaboration with the criminal investigation authorities, it was argued that the detainee could have been beaten to death by the other detainees. However, the documents drawn up by the penitentiary, both operative and medical, gave rise to certain misinterpretations in the description of the event, which led to the creation of a new control team, of which he was also a member. For an uninterrupted period of two days, all the aspects that have been carried out were analyzed and all the attempts to cover up the employees of the Galati penitentiary were countered. The images recovered from the surveillance cameras also had a significant impact on the control team, and the moments when the detainee was handcuffed and lengthened on the detention facility's lobby were punched and legged by penitentiary employees and dragged along the length of the hall, while the hitting of the employees continued.

Following this event, the National Penitentiary Administration has stepped up its training and awareness actions on the obligation to respect a person's physical and mental integrity, irrespective of their status or judicial status.

Ensuring material conditions of detention

The constant development of jurisprudence regarding the treatment of detainees is directly attributable to the impact of CPT standards. The European Court of Human Rights states that the effects of prolonged exposure to degraded material conditions of detention may be such as to constitute ill-treatment or, alternatively, may exacerbate other forms of treatment or punishment so as to rely on Article 3 of the Convention. The CPT request is that each detainee has at least 4 m² of personal space in cells for multiple accommodation, this being the minimum standard. The standardization provided by the CPT, which has been driven by concerns not only to prevent ill-treatment but also to combat the psychological effects of imprisonment, has directly prompted the European Court of Human Rights to adopt a firmer approach to detention conditions. Thus, it is to be expected that the state authorities will ensure that the detainee's detention under conditions that are "compatible with respect for his human dignity, that the manner and method of

execution of the measure do not subject him to an attempt or suffering of an intensity exceeding the inevitable level of suffering inherent in detention and that, given the practical requirements of incarceration, and that his or her health and well-being are adequately ensured, in particular by providing the necessary medical assistance."¹³

In this context, ensuring the conditions of detention is another responsibility of the Romanian state against the application of ill-treatment and one of the main preventive actions is the reduction of overcrowding in penitentiaries.

Combating overcrowding in penitentiaries

The first cases of convictions in the European Court of Human Rights against the Romanian state were recorded in 1998. In July 2012, a ruling was made in the case of Iacov Stanciu, where the ECHR noted that, despite the efforts of the Romanian authorities to improve the situation conditions of detention, there is a structural problem in this area. The decisive element in this context was the pilot judgment of 25 April 2017 in Rezmiveș and Others v. Romania, whereby the Court requested the Romanian State to provide within a period of 6 months from the date of the final judgment of the decision to provide a calendar precisely for the implementation of appropriate general measures to address the problem of overcrowding and inadequate detention conditions, in accordance with the principles of the Convention.¹⁴

As a result of these issues, new legislative measures have been developed to impose the standardization of detention facilities in line with international recommendations and in particular those of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. By the Order of the Minister of Justice no. 2772/C/17 October 2017 were approved the mandatory minimum standards regarding the conditions of accommodation of persons deprived of their liberty, stipulating in Article 1, paragraph (1) of the Annex to the norms, that the spaces intended to accommodate persons deprived of their liberty must respect human dignity and meet minimum sanitary and hygienic standards and, in accordance with paragraph (3), the accommodation rooms shall be arranged (...) for the purpose of allocating more than 4 spaces m² for each person deprived of liberty". The National Penitentiary Administration permanently monitors the number of persons deprived of their liberty in each subordinate unit in terms of accommodation capacity (calculated at 4m², 6m² and 7m² depending on the specifics of the place of detention), the number of beds installed and the occupancy index.

Therefore, the new legal provisions require minimal detention conditions. Also, the entry into force of Law no. 169/2017 by establishing a compensatory mechanism for the benefit of detainees consisting of 6

¹³ Jim Murdoch Vaclav Jiricka, Penitentiary System Manual on Prevention ill-treatment in penitentiaries, combating ill-treatment in penitentiaries, Cover and Format: SPDP, Council of Europe, pg.27 <https://rm.coe.int/2>

¹⁴ National Administration of Penitentiaries, Annual Activity Report 2018, p.8

days deemed to have been executed for a period of 30 days in custody in detention facilities was an acceleration in order to implement the measures taken at the national level, in the wider context of the Memorandum on the “Approval of the 2018-2024 timetable for the resolution of overcrowding and detention conditions in the execution of the judgment in Rezmiveş and Others v. Romania, delivered by the ECHR on 25 April 2017”.¹⁵

The entry into force of the Compensation Act directly influenced the evolution of the number of detainees detained by the penitentiary system. Thus, since the entry into force of the Law, there has been a steady decrease in the number of custodial detainees, with direct positive consequences on accommodation standards, the increase of the minimum individual space insured in the detention room, but also the easier access to the range of activities and programs available in the detention environment.¹⁶

Since 2017, other measures to reduce overcrowding have focused on increasing and modernizing accommodation capacity by investing in design services for the design of 2 new penitentiaries - the Berceni Penitentiary with 1000 seats and the Unguriu Penitentiary with 900 accommodation places, as well as on improving the material conditions of detention.

Providing medical assistance to persons deprived of their liberty

The provisions of Article 3 of the Convention prohibiting torture, punishment or inhuman or degrading treatment are closely linked to the protection of the right to life provided for in Article 2, implicitly by guaranteeing an adequate state of health.

Thus, medical care must be given to each detainee properly and failure to guarantee the physical integrity of a detainee by providing appropriate medical care can lead to a violation of Article 3 of the Convention. The essential point is that inappropriate healthcare can quickly generate situations that fall under Article 3, which prohibits “inhuman or degrading” treatment. A sudden deterioration in the health of a prisoner inevitably gives rise to problems related to the adequacy of health care, and state authorities will be obliged to respond to the treatment they apply to inmates. Thus, there is a need to ensure that a detainee's health is monitored on a regular basis not only at the time of receiving, but also throughout the discharge of deprivation measures.¹⁷

Concerning the provision of medical assistance in prisons, the following principles are closely monitored by the CPT:

- a) Access to doctors;
- b) Equivalence of medical assistance from the penitentiary to the public health system;
- c) Patient Consent and Privacy;

- d) Preventive health care (hygiene, communicable diseases, prevention of suicide and violence, social and family ties);
- e) Humanitarian medical assistance (vulnerable: mother and child, adolescents, pathological personalities, serious conditions / disease terminals);
- f) Professional independence of medical staff;
- g) Professional competence

In this respect, Romania's intention to improve the medical assistance of persons deprived of their liberty has materialized through the organization of their own health care network for the provision of medical assistance to detainees, under the coordination of the National Administration of Penitentiaries. The sanitary network of the National Penitentiary Administration serves the entire penitentiary population on the territory of Romania in order to maintain, improve health, and has subordinate family medicine cabinets, dental clinics and 6 hospital penitentiaries.

The medical staff in the facilities shall ensure that the persons deprived of their liberty are protected in case of aggression, so any traumatic bodily injury found in the medical examination of the detainees (especially as a result of violent incidents in the penitentiary, but also in other situations where integrity is affected body of detainees) is duly documented, with three key points being pursued:

- a) recording as accurate as possible of objective findings regarding traumatic lesions (number, type, anatomical location, shape, color, dimensions, etc.);
- b) recording the detainee's statements about the circumstances and how to produce the traumatic bodily injuries found (whether or not he / she declares in writing how the injuries have occurred, the medical establishment that he / she has found is obliged to summarize - under his / her signature - the detainee stated in his presence), and in the case of a refusal to declare or an inability to speak, a record of the fact that the person refuses / does not wish to declare the origin of the traumatic injuries is drawn up;
- c) The examining physician distinctly records his conclusions on the compatibility of the objectively ascertained with the detainee's statements (ie, if the injuries are consistent with, or consistent with, those declared; However, this conclusion of the examination is by no means a finding forensic medicine on the cause or origin of injuries in terms of a causal relationship, but expresses only the opinion of the examining physician on the findings made - namely the extent to which the physician perceives or not a discrepancy between the declared and the established ones, thus a possible

¹⁵ National Administration of Penitentiaries, Annual Activity Report 2018, p.3

¹⁶ National Administration of Penitentiaries, Annual Activity Report 2018, p.10

¹⁷ Jim Murdoch Vaclav Jiricka, Penitentiary System Manual on Prevention ill-treatment in penitentiaries, combating ill-treatment in penitentiaries, Cover and Format: SPDP, Council of Europe, pg.33 <https://rm.coe.int/2>

tendency to dissimulate the reality of the facts), the confirmation of these injuries is done by presenting the detainee to legal medicine;

Both the traumatic lesions identified during the examination of the newly detained detainees and those found after the violent incidents with aggression in the penitentiary are recorded chronologically in a unique register called the “Traumatic injuries register”, and each position (current number) in the Register of traumatic injuries corresponds to an information note detailing the lesions found by both a morphological description and an annex containing their topographic representation on predefined topographic anatomical sketches such as those set out in the Istanbul Protocol and the Minnesota Protocol. This Information Note contains the medical information which, in conjunction with information on the circumstances of the occurrence of the event, serves the penitentiary unit when drawing up the immediate notification of the facts, to the territorial unit of the prosecutor's office and informing the judge of the deprivation of liberty about the incident with traces of violence body.

The CPT's recommendation is that there is a positive trust-based relationship between the treating physician and the patient as an essential factor in keeping and promoting the health and well-being of detainees.

According to the ECHR jurisprudence of recent years, the vulnerability of the Romanian state in the provision of medical assistance in the penitentiary system was due to the shortage of specialists employed in the penitentiary system, especially the psychiatrists, the non-dental care and the dental prostheses required for the detainees with dental conditions.

Responsibilities in case of violence among detainees

Along with the negative obligation of essentially not applying ill-treatment or causing the death of a person, the ECHR imposes significant positive obligations on state authorities. These obligations are especially important for penitentiary employees. The basic prerequisite is that detainees are in a vulnerable position precisely because they are in prison and thus state authorities have to counterbalance this vulnerability by adopting effective measures to protect them. This is particularly important in terms of violence among detainees. Penitentiary employees must ensure adequate protection against other detainees known to pose a threat to their offenders.¹⁸

This aspect has been materialized at the level of the penitentiary system in Romania, starting with 2014, through the implementation of a Strategy for the reduction of aggressive behaviors in the penitentiary environment, consisting mainly of the creation of multidisciplinary teams (medical staff at the level of each penitentiary unit), psychologist, operative staff) who analyze all the aggressive behavior of the individuals to be released, interfering and counseling

the persons deprived of their liberty. Annually, data on adverse events is analyzed from a multidisciplinary perspective and at the level of the National Penitentiary Administration in order to establish necessary adjustments for the measures to be integrated into the Annual Implementation Plan.

Immobilization of detainees

The mode of immobilization of detainees was another issue debated in ECHR judgments against the Romanian state as ill-treatment of detainees. The ECHR convictions in these cases have led to a new legislative approach, through the approval of the Order of the Minister of Justice no. 4800 / C / 2018 on the Regulation on the Safety of Detention Locations, normative act adapted to ECHR requirements and CPT recommendations. Thus, the description of the means of protection and immobilization used in stages, have been transposed as legal provisions in Article 12, paragraph (2), as follows:

“(2) In order to prevent escape during the movement of persons deprived of their liberty, in order to protect persons deprived of their liberty from self-destruction, as well as to prevent the injustice of others or the damage, or to restore order and discipline, as a result of the opposition or resistance of the detainees to a provision of the judicial bodies or the staff of the place of detention shall be used, under the conditions of art. 16 of the Law, as the means of protection and immobilization, the following:

- a) metal handcuffs - a device made up of two metallic rings joined together, which applies to persons deprived of their liberty in accordance with the law, in order to limit their physical mobility;
- b) Immobilisation belts - hand-made handcuffs fitted with a gripping system around the waist, which applies to persons deprived of their liberty who, by their behavior, risk to disturb the order and safety of their activities while traveling to the judicial bodies, sanitary units from outside the penitentiary system or other places outside the place of detention, on the occasion of the transfer from one place of detention to another and for journeys within the place of detention, in duly justified cases;
- c) Hand-held disposable handcuffs - Resistant plastic devices to restrict the physical mobility of the upper limbs. (...);
- d) means of immobilization during the movement / transport - hand-held metal handcuffs and legs of metal legs, which allow movement and are applied to the persons deprived of their liberty, following the analysis of the risk situation for each of them. These means apply during travel to the judicial organs, sanitary facilities outside the penitentiary system, other places outside the detention facilities, as well as during the transfer from one place of detention to another, including for journeys inside the place of detention, in duly

¹⁸ Jim Murdoch Vaclav Jiricka, Penitentiary System Manual on Prevention ill-treatment in penitentiaries, combating ill-treatment in penitentiaries, Cover and Format: SPDP, Council of Europe, pg.28 <https://rm.coe.int/2>

- justified situations;
- e) Immobilization belts made of leather or textile material - are used in the case of persons deprived of their liberty who have personality or mental disorders in the decompensated phase, mentally retarded people with behavioral decompensation, those with psychomotor agitation with a high risk of car and / or heteroaggression, of various etiologies, maintaining them until the effects of sedative drugs are established. They can also be used to immobilize other persons deprived of their liberty to prevent escape, or to endanger the safety of possession, threaten the life and integrity of staff or other persons, or to prevent the destruction of property. Immobilizing belts in leather are made to secure, separately, immobilisation of hands or legs. The textile strap can be used if immobilisation by means of leather straps is not sufficient if persons deprived of their liberty seek to destroy or remove medical equipment, attempt to become self-righteous or aggressive; it is applied over the chest and clings to the bed. The straps must be applied in such a way that they do not cause injuries or

cracks, and after each application, check that the safety mechanisms are in operation.

Conclusions

Aspects presented in the essay present only the main responsibilities of the Romanian state in transposing the recommendations of international human rights organizations. In this context, the efforts of the Romanian legislator to comply with the required standards should be emphasized, especially if a comparative analysis is made with the provisions prior to the conventions and pacts to which the Romanian state has joined or participates.

To avoid the emergence of negative aspects in the fight against torture and ill-treatment, it is necessary to strengthen the notion of professionalism among civil servants by adopting ethical standards and responsibilities to avoid any form of discrimination, provocative behavior that can lead to physical or psychological maltreatment.

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