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and the need for legal reform



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ROMANIA

Excessive use of firearms by law enforcement officials

and the need for legal reform

Amnesty International wishes to reiterate its concern about the use of lethal force by law enforcement officials in Romania. The organization has received new reports of incidents which reinforce its concern. Amnesty International is moreover concerned that Romanian law allows law enforcement officials to use firearms in circumstances prohibited by international standards, such as the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which can lead to breaches of Romania's obligations under the International Covenant for Civil and Political Rights (ICCPR). Currently proposed amendments to Romanian law would fail to address this problem.

New cases of reported excessive use of firearms by law enforcement officials

Mugurel Soare. In a widely reported incident which occurred in Bucharest on 18 May 2000, a police officer shot Mugurel Soare, a 20-year-old Roma man, in the head, as a result of which he was seriously injured and paralysed. Reports in the media, including the daily newspapers *România Liberă* and *Ziua*, in the days immediately following 18 May, adopted information provided by the police that Mugurel Soare had been armed with a knife and used it to wound a police officer, who shot him in self-defence. However, subsequent investigation by the Romanian Helsinki Committee, APADOR-CH (*Asociația Pentru Apărarea Drepturilor Omului - Comitetul Helsinki* - the Association for the Defence of Human Rights - Helsinki Committee) revealed that there were eyewitnesses to the shooting who report that Mugurel Soare was unarmed, and that a police officer shot him in the back of the head at point-blank range, after ill-treating him. Moreover, these eyewitnesses are themselves reported to have been subjected to arbitrary detention and intimidation by police officers and a prosecutor after the incident.

Between 7 and 8pm on Thursday 18 May 2000 three plainclothes officers of the Bucharest police department for combating car theft were sitting in an unmarked car by the "Caritas" hospital on strada Agricultori ("Farmer street") in Bucharest's sector two. Reportedly, it was raining. A man came running along the road and they stopped him. His name was Sorin Cutea and he claimed that two men who were running after him wanted to kill him. The two men were Mugurel Soare and his 25-year-old brother Vipan Soare. Sorin Cutea is their former brother-in-law. As the two brothers approached the car the three plainclothes officers stopped Mugurel Soare, yet his brother Vipan ran on past them and continued to chase Sorin Cutea.

Police sources appear to have briefed journalists that a scuffle ensued between Mugurel Soare and one of the three police officers. Mugurel Soare had a knife in his hand and used it to wound the police officer in the abdomen. This police officer drew out his service pistol, intending to fire a warning shot. Yet he was knocked off balance by Mugurel Soare's knife assault, and as a result, the shot he fired hit Mugurel Soare in the head.

The police officers put Mugurel Soare in their car and drove him to the Floreasca emergency hospital. He went into a coma, from which he emerged five days later. Over the next month two surgical operations were performed on him. The right side of Mugurel Soare's body remains paralysed and he is unable to speak. Reportedly, he is unlikely to make a full recovery.

The circumstances in which the police officer who claimed to have suffered a knife wound reported his injury give rise to doubts about the veracity of this claim. Reportedly, the officer did not seek immediate medical assistance. According to a witness the officer reported his own injury to the Floreasca emergency hospital two hours after Mugurel Soare was admitted there. Newspapers reported that the officer had a "Z" shaped scratch on his abdomen which did not require any medical attention, let alone hospital admission. Moreover, this officer is reported to have made inconsistent comments to Mugurel Soare's uncle, Alexandru Soare, at the hospital. Alexandru Soare had gone to the hospital as soon as he learned about the incident. The officer told him that he had shot his nephew, because "Mugurel had butchered one of his friends". The officer did not present himself as the victim of the reported knife attack, nor is he reported to have had any blood marks or rips and tears on his uniform. Alexandru Soare inquired with the hospital whether any wounded police officer had been admitted, and was told not. A little later the same officer who spoke to Mugurel Soare's uncle presented himself as the victim of the putative knife attack, and showed the "Z" shaped scratch on his abdomen.

Several bystanders witnessed the incident on strada Agricultori. Two of them were Angela Vlasceanu and her neighbour Dorel Baicu, both of whom live in the vicinity. They reported that they had both been sheltering from the rain in the entrance of the "Caritas" hospital, when Dorel Baicu crossed the street and saw that a man was beating another man on the street corner. Both the assailant and the victim appeared to be civilians. The victim appeared to be unarmed. The assailant had a pistol. Dorel Baicu beckoned to Angela Vlasceanu to cross the street to look at what was happening, and she did. Both witnesses saw the assailant knock his victim's head against a wall, causing the latter to begin to fall to his knees. At this moment the assailant stuck the barrel of a pistol into the back of the victim's neck and shot him. The latter slumped to the ground in a pool of blood. Several bystanders gathered at the scene within seconds. Angela Vlasceanu attempted to apprehend the assailant. She caught him from behind and shouted to the other gathered people to call the police. The assailant detached himself from her and dragged the victim to his car, aided

by two companions. They drove off. The police were called and arrived at the scene 10 minutes later. In the meantime Angela Vlasceanu marked out what she understood to be a crime scene with a piece of chalk.

Amnesty International is concerned about reports which suggest that the investigation initiated by the Romanian authorities into the shooting of Mugurel Soare may not be impartial and thorough. Angela Vlasceanu and Dorel Baicu were held at the Bucharest 10th precinct police station from 9pm on 18 May 2000 until 7am the next morning, and were allegedly denied water during these 10 hours. They were reportedly questioned in an intimidating way, in turn by police officers and an investigator of the military prosecutor's office. The investigator allegedly threatened Dorel Baicu that he risked being accused of incitement to scandal if he continued to maintain his version of the shooting incident. Amnesty International is concerned that the Romanian authorities may have violated their obligation under Article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that: "Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given." The organization requests the Romanian authorities to state whether the remit of the investigation includes the determination of whether the use of firearms by the police officer complied with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Petre Letea and Marian Pilos. According to a report in the newspaper *Evenimentul zilei* of 22 May 2000, a police officer shot and killed Petre Letea and wounded Marian Pilos in Bucharest on 21 May 2000 as they were attempting to escape in a car, after they were suspected by the officers of attempting to burgle an apartment. At around 12.30pm two police officers reportedly approached Petre Letea, a 44-year-old Roma man from Călărași, who had parked a Dacia car by an apartment block in the vicinity of Râmnicu Vâlcea street, and asked him what he was doing. He is reported to have said that he was waiting for two friends in the apartment block. One of the police officers then entered the apartment block and ascended the stairs. On the sixth floor he encountered two men who were allegedly attempting to break open the door of an apartment. They reportedly fled down the stairs. One of the two men disappeared. The other, Marian Pilos, a 46-year-old man from Bucharest, got into the parked Dacia car, which was then driven away by Petre Letea. The police officer who was still on the street then fired shots from his pistol at the departing car. Reportedly, six bullets penetrated the car. Four bullets went through the windscreen, one into the boot, and one hit a side mudguard. Both the men in the car were hit, and the car reportedly veered out of control and crashed into another car. Petre Letea was hit in the head and was pronounced dead in hospital. Marian Pilos was hit in the back, treated in hospital for a wound reported to be superficial, and then transferred to police detention. Amnesty International requests the Romanian authorities to provide information on whether

a thorough and impartial investigation has been initiated into this incident, in order to determine whether the use of firearms by law enforcement officials complied with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Turkish fishing boats in the Black Sea. In separate incidents reported by Romanian Radio, respectively on 5 May and 9 May 2000, Romanian coastguards are reported to have opened fire on Turkish fishing boats which were allegedly fishing illegally in Romanian territorial waters on the Black Sea. According to information given to the media by coastguard spokesman Constantin Gomeaja, the crew of the Romanian coastguard vessel *Mangalia* shot at the Turkish fishing boats *Kaplank*, *Azizer* and *Kirmer Beni* on 5 May after they refused to submit to an inspection and as they were trying to escape from the *Mangalia* by heading for international waters. It is not clear from media reports whether any of the Turkish fishermen were hit by the bullets. Four days later, on 9 May, the crew of a Romanian coastguard vessel reportedly shot at six Turkish fishing boats, one of which allegedly attempted to ram the coastguard vessel. Again, it is not clear from the reports if any of the Turkish fishermen were hit by the bullets. The organization requests to be informed what steps the Romanian authorities have taken to initiate a thorough and impartial investigation of each incident, to determine, among other things, if any of the Turkish fishermen were hit by the bullets fired by the Romanian coastguards, and to establish, in each instance, whether the use of firearms by Romanian coastguards against Turkish fishing vessels either conformed with or breached national laws, instructions and regulations, and international standards and obligations, including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the ICCPR.

Radu Marian and other alleged cigarette smugglers in Bucharest. In another incident, on 27 October 1999 in Bucharest, police officers shot at people suspected of involvement in cigarette smuggling, with the result that one person was killed and two were injured. A law enforcement officer reportedly shot dead Radu Marian, a 40-year-old Roma man, and wounded two of his companions, as they fled from a detachment of police officers and Ministry of Interior special forces, who were conducting an operation to apprehend a group of suspected cigarette smugglers by a railway line in the Giulești district of Bucharest. Most of the group of suspects reportedly surrendered when the police and special forces detachment confronted them, but Radu Marian was one of three who attempted to run away. The law enforcement officers fired shots at the three men. Radu Marian was hit by a bullet which entered the back of his head and he died instantly. Amnesty International requests the Romanian authorities to provide information on whether a thorough and impartial investigation has been conducted into this incident, in order to determine whether the use of firearms by law enforcement officials complied with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Compliance with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials define the circumstances under which law enforcement officials may use force and firearms. According to these principles, which have been accepted internationally, law enforcement officials shall only use firearms if other means remain ineffective or without any promise of achieving the intended result. Firearms may be used against people only after giving warning, in order to prevent death or serious injuries, where less extreme means are insufficient to achieve such objectives. In doing so, law enforcement officials must respect and preserve human life, and minimize damage and injury. The principles underscore that intentional lethal use of firearms may be made only when it is strictly unavoidable in order to protect life. Principles 4, 5, 9 and 10 state the following:-

“Principle 4 - Law enforcement officials, in carrying out their duty, shall as far as possible apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”

“Principle 5 - Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

- a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- b) Minimize damage and injury, and respect and preserve human life;
- c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
- d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.”

“Principle 9 - Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life”.

“Principle 10 - In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.”

Principle 7 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials states that: “Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.” Amnesty International requests information on the law governing the use of firearms by Romanian coast guards and whether that law incorporates the above requirement of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

In all the above reported cases, Amnesty International requests the Romanian authorities to inform the organization of the scope, methods and the results of all investigations, and to make the findings public. The organization urges the authorities to bring to justice any law enforcement officials reasonably suspected of having used firearms in a manner inconsistent with international norms. In any case in which such use of firearms may have violated the rights to life, freedom from torture or cruel or degrading treatment or punishment, and to security of the person, as guaranteed by Articles 6, 7 and 9 of the ICCPR, reparation, including financial compensation, should be made to the victim, or to the family of the victim if he or she has died. Such measures are recommended in order to ensure that the Romanian authorities meet their obligations under the ICCPR.

The Human Rights Committee and the ICCPR

Amnesty International is concerned that Romanian law currently allows police officers to use firearms in circumstances prohibited by international standards, particularly the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Article 19, letter d, of Law number 26/1994 Concerning the Organization and Functioning of the Romanian Police allows police officers to shoot “to apprehend a suspect who is caught in the act and attempts to escape without obeying an order to stay at the scene of the crime”.

The Human Rights Committee, which is the body of independent human rights experts that monitors compliance by states parties with provisions of the ICCPR and its covenants, considered Romania’s fourth periodic report regarding fulfilment of its

obligations under the ICCPR in July 1999¹ and stated that it was “disturbed at continued incidents involving the use of firearms by the police, especially in cases of petty offences committed by minors”, and recommended that: “The use of firearms by the police should be closely regulated in order to prevent violations of the right to life and personal security”.

The Human Rights Committee framed its concerns about police use of firearms in Romania in terms of possible breaches of Articles 6, 7 and 9 of the ICCPR. Amnesty International believes that Principles 4, 5, 9 and 10 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide a standard of measure to determine whether or not law enforcement officials have, in a particular case, violated an individual's rights, enshrined in Articles 6, 7 or 9 of the ICCPR.

The representative of the Ministry of Justice in the delegation of the Romanian government to the UN Human Rights Committee session on 20 July last year informed the Committee that the provisions of the ICCPR take precedence over any conflicting domestic law, and that ICCPR provisions are directly invoked in Romanian courts. Given that the Human Rights Committee has raised concern that the use of firearms by police which is currently allowed by Romanian domestic law may lead to violations of Articles 6, 7 and 9 of the ICCPR, Amnesty International requests the Romanian authorities to inform the organization whether the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which this organization believes provide a standard of measure for determining whether violations of Articles 6, 7 and 9 of the ICCPR have occurred, have been given precedence over Article 19, letter d, of Law number 26/1994 Concerning the Organization and Functioning of the Romanian Police by the authorities investigating the cases detailed above, and in deciding whether to bring to justice any law enforcement officials reasonably suspected of violating the rights of individuals enshrined in Articles 6, 7 and 9 of the ICCPR.

Review and Reform of laws governing the use of firearms by law enforcement officials

Romania is beginning negotiations for accession to the European Union and will assume the chairmanship of the OSCE in 2001. These two prospects offer Romania an opportunity and a context for thorough-going review and, where necessary, reform of its laws, regulations and practice in order to ensure that its human rights obligations are met to the fullest extent. The excessive use of firearms by law enforcement officials, in a manner inconsistent with the UN Basic Principles on the Use of Force and Firearms by Law

¹ Concluding Observations of the Human Rights Committee: Romania. 28/07/99. CCPR/C/79/Add.111.

Enforcement Officials, and which can lead to violations of Articles 6, 7 and 9 of the ICCPR, remains one of Amnesty International's primary concerns in Romania. The organization has already addressed the Romanian authorities about this concern on several occasions, and has made these concerns public, publishing them worldwide, such as in the reports: *Romania: Unlawful use of firearms by law enforcement officials* (AI Index: EUR 39/01/97), issued in March 1997, and *Romania: New reports of unlawful use of firearms by law enforcement officials* (AI Index: EUR 39/30/98), issued on 1 October 1998. Amnesty International believes that Romania must take action to ensure that its law and the actions of its law enforcement officials are in accordance with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, in order to meet its international human rights obligations, including its obligations under Articles 6, 7 and 9 of the ICCPR.

The Romanian authorities presented a broad package of draft reforms of the Penal Code, Penal Procedure Code, and the laws governing the police and prisons to parliament in September 1999. The organization is concerned to learn that the proposed revision of Article 19, letter d, of Law number 26/1994 Concerning the Organization and Functioning of the Romanian Police fails explicitly to bring the law into harmony with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and Articles 6, 7 and 9 of the ICCPR. The draft revision of the law eliminates the list of five circumstances in which police officers may currently resort to the use of firearms, and merely stipulates that firearms may be used "in accordance with the law". It is assumed that this refers to Law 17/1996 On the Use of Firearms and Ammunition, Article 47 of which lists no less than 10 situations under which firearms may be used. These include the use of firearms against persons "posing a threat to a guarded objective/target"; against "persons who illegally enter or exit guarded areas or premises"; and against "groups of persons or persons who unlawfully try to enter the premises of public authorities and institutions". Such situations clearly fall outside those under which the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials permit the use of firearms by law enforcement officials. The Principles permit firearms to be used against persons only for the purpose of preventing death or serious injury, when less extreme measures are insufficient to achieve those objectives. If confirmed, such a revision would worsen rather than improve the situation, and present an expanded risk of violations of Articles 6, 7 and 9 of the ICCPR. It would represent not only a refusal to implement the recommendations of the Human Rights Committee, but a move in a contrary direction to them.

KEYWORDS: USE OF EXCESSIVE FORCE / POLICE / LEGISLATION / ICCPR /
IMPUNITY / UN