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Extract from the IHF report

Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2005 (Events of 2004)

Romania¹

IHF FOCUS: freedom of expression, free media and information; judicial system and independence of the judiciary; torture, ill-treatment and police misconduct; conditions in prisons; freedom of religion and religious tolerance; right to privacy; national and ethnic minorities.

The year 2004 was characterized by a deterioration in the status of civil rights and liberties. The Social Democratic Party (PSD), the party which ruled the country until mid-December 2004, tried – and largely succeeded – to control nearly all sectors of political, economic, social and cultural life.

Developments in the second half of the year were dominated by the parliamentary and presidential elections, which were held on 28 November and 12 December. Particularly in the run-up to the elections, the government and the ruling PSD clearly controlled the most important media reporting. Under these circumstances, a group of NGOs established a Coalition for a Clean Parliament (CCP) in the spring of 2004, which successfully disseminated accurate information about the candidates who were nominated to run in the elections, so contributing to voters' choices based on full and impartial information.

Some steps were taken to bring the criminal procedure in line with European standards, but many crucial questions regarding the judicial system remained unsolved, showing a lack of genuine will to make the judiciary truly independent.

The demilitarization of the police force (carried out in 2002) did not show any improvements in the accountability for ill-treatment and other misconduct by law enforcement officers. New cases of ill-treatment were reported, including unlawful use of firearms, which in some cases led to death. The unregulated period that police officers could keep a person in custody (after “leading him/her to a police station) was the time when the most cases of ill-treatment took place.

The most important development in 2004 regarding the penitentiary system was its demilitarization. Local monitors hoped that as a result of this measure, for example, the professional standards of penitentiary administration would raise and the relationship between detainees and staff would improve.

¹ Based on the *Annual Report 2004* of APADOR-CH (the Romanian Helsinki Committee, IHF member), except for the section on the Roma minority, which is primarily based on information from the European Roma Rights Centre (ERRC, IHF cooperating organization).

In August 2003, the government issued a decision on setting up an Integrated Information Service (IIS), a secret service with enormous powers and with no transparency in its operation or accountability for it. However, there was no legal basis to set up the agency.

Religious minority groups faced harassment and the representation of national or ethnic minorities in political life was restricted by new legal provisions. Generally, the over two-million Roma minority faced discrimination in all sectors of life. Their life was characterized by poverty, unemployment, pitiable housing conditions, poor education, meager public participation, and the lack of identity documents.

Elections

Coalition for a Clean Parliament (CCP)

The parliamentary and presidential elections, which were held on 28 November and 12 December, were the main political event in Romania in the second half of 2004. In the course of the year, and increasingly in the run-up to the elections, control by the government and the ruling PSD party over the media grew more open and obvious.

According to statistics, over 80% of the population received information on the elections via television, mainly the public television, with all most influential TV stations being biased in favor of the PSD and its ally, the Romanian Humanitarian Party (PUR). The situation was similar with regard to radio stations. The few large newspapers, which were critical of the ruling party, did not reach rural areas and small towns. As a result, the majority of the electorate received only the kind of information that suited the government, the ruling party and their candidates.

Under these circumstances, a group of ten NGOs, including APADOR-CH (Romanian Helsinki Committee, IHF member), which had established a Coalition for a Clean Parliament (CCP) in the spring of 2004, started a series of actions aiming at providing the public with impartial information about the elections and the candidates of the main political parties. The role of APADOR-CH was to advise the CCP on legal issues, to contribute to the selection of the “tainted” candidates, to publicly support actions of the CCP, to react to accusations from the political parties, and to provide legal assistance to the CCP and/or its members in judicial proceedings that were initiated against them.

The CCP drew up a list of candidates of all political parties (except for the extremist party Romania Mare that refused to cooperate) who were under serious suspicion of having committed wrongdoings such as having been exposed as a member or informer of the Communist secret service (*Securitate*) or having been involved in dubious financial or commercial transactions. It sent the lists to the parties before their publication, as a reaction to which the PSD decided to withdraw about 20 politicians from their list but maintained over 90 of the allegedly “tainted” candidates; the PUR declined any adjustment; the liberals dropped many of the “undesirables”; and the Democratic Party went further and asked their affiliates all over the country to endorse the CCP criteria while selecting the candidates. The UDMR (the Hungarian party) publicly released the list of their candidates for the parliament too late for the CCP to check it. Even so, it contained names that had been repeatedly mentioned in the media in connection with wrongdoings.

After re-checking all lists, the final lists were dispatched to the political parties and, after a mutually agreed deadline, the CCP published them. Simultaneously, about two million flyers containing the names of the “undesirable” candidates and short explanations of each of them were printed and distributed. The PSD and PUR reacted by trying to stop the distribution of the flyers, but failed. They then printed faked flyers, under the CCP logo, containing only names of candidates from the opposition. The CCP lodged a complaint with the General Prosecutor’s Office. The case was still pending at the end of 2004.

Fourteen lawsuits were lodged by PSD members against either CCP members or the CCP as an organization for “insult and calumny.” All the court cases were taken over by APADOR-CH lawyers and were still pending at the end of 2004.

The impact of the CCP campaign was huge. It raised awareness among the voters about the value of each ballot; it made the political parties reconsider – at least partially – the reputation of their own members; and it brought up again the disputed matter of the electoral system which should become uninominal (currently, the electoral system is based on lists of political parties).

The new parliament that was sworn in in December, contains fewer “tainted” politicians – at least from those identified as such. The new government does not include at least at ministerial level any of the contested persons.

Freedom of Expression, Free Media and Information

The new Criminal Code brought about some improvements in the field of freedom of expression and the media by abolishing criminal insult as an offence against public officials, however, many problematic provisions were retained. Despite a new freedom of information act, access to information of public importance or interest was still not fully guaranteed in practice.

The Criminal Code: Libel and False Information

The Romanian government took some measures to bring the Criminal Code in line with European and international standards, including amending provisions dealing with freedom of expression and media freedoms. The code had been repeatedly amended (the largest number of amendments were made in 1996) by law and government ordinances, but never thoroughly reformed. The new version of the Criminal Code passed the parliament in June 2004 and came into force in June 2005.

The new Criminal Code eliminated a number of provisions that posed threats to freedom of expression: it abolished criminal insult and offence against state authorities, insult of national and other nations’ flags and symbols, and spreading abroad false or biased information about Romania. It also eliminated the possibility of exerting pressure on the press, TV and radio stations through court decisions in criminal cases.

Libel was retained but it can no longer be punished with imprisonment. A journalist who has libeled a person can be punished by a daily fine which, even if failed to pay, can no longer be turned into a prison term. “Spreading false news, which may jeopardize Romania’s national security or international relationships” was amended by adding “knowingly.” The fact that libel and spreading false news still remain in the Criminal Code – as well others provisions regarding, for example, overprotection of state and professional secrets and of high-ranking foreign officials, etc. – remains a matter of serious concern. International human rights standards require that such wrongdoings be covered by the Civil Code.

Access to Information

In the course of over two years that the Freedom of Information Act (FOIA) has been in force, APADOR-CH has made multiple efforts to promote it, including by suing the authorities for not granting access to information of public importance or interest, and encouraging the public to do the same.

In a FOIA case of 2004, APADOR-CH and a group of other NGOs succeeded in bringing down the enormous fees required for photocopies of public documents established by a local council apparently in order to deter people from invoking FOIA. The organization also published a digest of nine important FOIA court cases in Romania.

Several applications for access to public information were sent to the Ministry of Administration and Internal Affairs, the Ministry of Foreign Affairs, and the National Prison Administration. The replies were relatively satisfactory. It appeared that APADOR-CH's activities in the last years regarding the implementation of FOIA (including taking such cases to court), training, issuing guidelines, manuals and a digest of cases finalized by December 2004, began to yield results at the level of both central and local authorities.

In parallel, APADOR-CH continued its older court cases regarding FOIA matters and dating back to 2003.² These proceedings yielded awards for moral damages, established by courts in cases won by APADOR-CH. The sums were insignificant but underscored the principle of the matter, i.e., that authorities must fully respect court decisions and execute them.

According to APADOR-CH, the main flaws of the FOIA are: too many public institutions are not accountable under FOIA; some procedures to appeal a refusal to access information are parallel and confusing; and the price per copy of public documents that authorities are allowed to charge is left to the discretion of the authorities. In addition, other laws in force, in particular the law on classified information, made the implementation of FOIA difficult. All this led to the conclusion that FOIA and other laws must be amended in order to guarantee individuals free access to important public information.

In addition to FOIA, the low level of awareness about the law on transparency of legislative activities of the central and local administration caused concern – as did the failures of the authorities to abide by it. The law reads that every central and local authority (except for the parliament) should make public every draft bill/rule/regulation, wait for comments for 30 days, analyze them and possibly amend the draft accordingly. Only after that may the initiator submit the draft to the government for approval – if it is a law – which would then send it to the parliament, or to debate it in the local councils (if it is a local decision). In force since the spring of 2003, it is little known or used. APADOR-CH prepared the first case under this law and submitted it to an administrative court to complain about a violation of the law by the Ministry of Justice. The ministry had posted a draft bill on prisons on its website before the public was given a chance to comments on the law within 30 days as the law on transparency stipulates. APADOR-CH had sent its comments and recommendations to the ministry in due time but, obviously, they were ignored as the government had already endorsed the initiator's version.

On the basis of a joint order of October 2003 by the Ministry of Justice and the Ministry of Health, the death of a detainee in prison should be investigated by a joint commission but the findings about the medical treatment prior to death would be classified secret. APADOR-CH contested this decision in court. In January 2004, at the first hearing, the two ministries announced that that provision would be dropped, which actually happened soon after that.

European Court of Human Rights

In the case of *Sabou and Pircalab v. Romania* – two journalists sentenced to imprisonment for libel, the European Court of Human Rights (ECtHR), in a final judgment, found that Romania was in breach of provisions on freedom of expression (article 10) and the right to privacy (article 8) of the European

² See IHF, *Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2004 (Events of 2003)*, http://www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=3860.

Convention for Human Rights and Fundamental Freedoms (ECHR). The ruling on the privacy matter was very important as it could and should lead to another modification of the criminal law. According to the current law, an individual sentenced to prison automatically loses some rights, including those related to parenthood.

Judicial System and Independence of the Judiciary

Some steps were taken in 2003 and 2004 to amend the Criminal Procedure Code and other legislation – largely to meet the requirements of the EU by the deadline of end of June 2004, in view of possible negotiations for EU accession. Some of the amendments indeed brought the judicial system and independence of the judiciary closer to European standards, however, many problems remained unresolved.

The latest version of the Criminal Procedure Code was passed in June 2003, but the implementation of some of its provisions was delayed until January 2004. Positively, the amendments eliminated (with effect as of the end of September 2004) the extraordinary appeal procedure, which the general prosecutor could use to reverse a final court judgment. In addition, the period of the pre-trial detention was limited to the maximum of six months³; pre-trial detention, arrest, wiretapping and search warrants must now be issued by a judge (earlier, a prosecutor could order them); and the right to remain silent was introduced. However, several matters remained unresolved; for example, the defense counsel can still be excluded from preliminary investigation interviews.

In addition, the three laws on the independence of the judiciary – the law on the organization and functioning of the judiciary, the statute of the magistrates and the law on the organization and functioning of the Superior Council of Magistracy – still fell short of European standards. For example, the powers of the minister of justice over the judiciary were not eliminated (although reduced); courts remain financially dependent on the executive branch (with the exception of the Supreme Court of Justice); and the prosecution, which is part of the executive power, still remains on an equal footing with the judiciary.

The many flaws in the above-mentioned three bills can be explained by the lack of political will to have a truly independent judicial system, stated APADOR-CH. In addition, the government and the parliament rushed the bills through practically behind closed doors. The MPs were voting article after article while the government was allegedly awaiting suggestions from the public opinion. It is obvious that the three laws, which are crucial for a real independence of the judiciary, must be amended soon.

Torture, Ill-Treatment and Police Misconduct

The demilitarization of the police that was carried out in 2002 was expected to increase the officers' accountability, to raise their professional standards and to improve their relationship with the public. By the end of 2004, no significant signs of such improvements were to be seen.

The main problems concerning police conduct remained the same as in previous years. In addition to the 24-hour police custody regulated by the Criminal Procedure Code, police were able to deprive an individual of his/her freedom for up to 24 hours as an administrative measure. The measure was called "leading to the police station," during which time an individual did not benefit from the legal protections guaranteed to detainees, such as the right to legal aid, the right to inform the family about his/her whereabouts, etc. This was also the very period when many cases of police abuse took place.

³ Previously, the maximum period was half of the maximum prison term that the crime provided.

In addition, police resorted to using fire arms in too many situations, exceeding by far the European standards according to which using fire arms is an extreme measure that can be taken only if there is a real threat to somebody's life. Further, police raids were only mentioned under the law on the police and regulated only via internal police rules and regulations, which were not available to the public. Finally, the use of masks even during minor events (raids on prostitutes and pimps, interventions in brawls, etc.) was common and mostly unnecessary.

Several cases of serious police abuse were investigated by APADOR-CH in 2004.

- At the end of 2003, I.G. (aged 16), suspected of having stolen a box of candies, was asked by a police officer in Bacau to give his name and address. Out of fear, I.G. lied about both. The police officer took him away in a car, with the intention of checking that information. When I.G. admitted to having lied, the officer handcuffed him and started punching him. He continued to beat him all the way to the police station and in the precinct. I.G.'s father came to the police station and saw his son with bruises all over his body. The police refused to let I.G. go with the father and released the boy only after several hours. Following the ill-treatment and the shock, I.G. had to be hospitalized in the Iasi psychiatric institution in January and February 2004. The prosecutor's office in Bacau refused to file charges against the abusive police officer, a decision that was contested by I.G.'s parents.
- In June 2004, the 12-year-old M.T. from Fetesti was playing with other children, throwing pebbles into a puddle. By mistake, one of the stones hit a police officer's private car and broke one headlight. The police officer caught M.T. and hit him repeatedly, then left the child lying on the ground with blood running from his nose. Despite many eyewitnesses and medical certificates, the police officer denied the abuse. In the end, he stood trial and was sentenced to pay a small fine. No disciplinary measure was taken against him by his superiors who cited the fact that "the officer was off duty."
- In March, an incident occurred between taxi drivers and police officers in Bucharest. A large number of masked police officers arrived on the scene. At that moment, C.B., who was just passing the spot on his way home, was hit by a police officer, taken away in a police car, beaten and driven to the police station along with some of the taxi drivers. He was released after more than an hour and sent home alone, although he was obviously seriously injured. On the same night, he was taken to an emergency hospital to receive medical care for his injuries. The prosecutor refused to bring charges against the police officers claiming that it was impossible to identify the aggressor.

In some cases, police ill-treatment or unjustified use of fire arms led to death.

- Marius Silviu Mitran (aged 22) was shot in the head in Bucharest in January but survived the incident. He had allegedly stolen a car (he claimed that the car belonged to a friend who had lent it to him for a ride with a girl) and did not realize that he was followed by the police until they starting shooting at him. APADOR-CH believed that in that very incident, the use of firearms by law enforcement officers was not justified as the suspect did not pose a real threat to anybody's life. Moreover, the police who shot him in the head obviously ignored the presence in the car of the other passenger putting her life at risk.
- In May, the police in Calarasi received a complaint from a young girl that Nicusor Serban (aged 31) from the village of Jegalia had raped her the previous night. Without any further inquiry, the police tried to arrest him. Serban, locally known as a "recalcitrant," had repeatedly been beaten by

the police before this incident. This time, he ran away but was fatally shot at by an officer. There was no warning shot and aiming at the legs, as the law requires. Serban was not carrying a weapon and therefore did not pose any threat to anyone. APADOR-CH believes that the police officer used his pistol in an unjustified and unlawful manner. The officer that shot Serban was moved to another police station. By the end of 2004, the prosecutor investigating the case had not decided whether to bring charges.

- In September, Laurentiu Capbun (aged 37) and two friends of his had a verbal dispute in a bar with its owner and an off-duty police officer in the city of Constanta. The three men were asked to leave the bar, which they did but sat down on a bench outside to finish their drinks. Two youths from the neighborhood joined them. Within minutes, the off-duty police officer came back accompanied by several colleagues wearing masks. The officers beat the three adults and one of the youths, then took the three men with them to a police station. At the station, the police continued to beat Capbun and one of his friends. Laurentiu Capbun was a diabetic who had to take insulin on a regular basis. For unknown reasons he did not – or could not – take his dose while in the police section. As he was getting gradually more ill, the police called a doctor who asked him to come to the hospital. Apparently, Capbun refused. The three friends were then released and Capbun went home. No mention of the incident was made in police records; the men had been arraigned as a measure of “leading to the police station,” and held there without an arrest warrant and without any legal reason. Laurentiu Capbun was hospitalized the next morning and died four days later. On the basis of its own findings, APADOR-CH stated that the rapid deterioration of Capbun’s condition followed by death was a result of the severe beating at the hands of the police. The police officers involved denied every accusation. However, they were later disciplined for initiating the whole “operation” without even informing their superiors. By the end of 2004, the prosecutor who was investigating the death of Laurentiu Capbun had not decided whether to bring charges against the officers.

The ECtHR declared the case *Notar v. Romania* admissible.⁴ The case involved a minor who was ill-treated by police officers. Soon after being declared admissible, the case was settled by a friendly agreement between the victim and the Romanian government. In addition to pecuniary compensation, the authorities agreed to grant tax exemptions to victims of torture or ill-treatment by the police who want to sue for damages in domestic courts. Presently, a victim must pay advance taxes for about 10% of the claimed compensation, which many victims cannot afford, especially without knowing if they will be successful in their case. In addition, the minister of interior issued an order for the police to strictly observe the presumption of innocence in their relationship with the media.

Two of APADOR’s older cases of police abuse were declared admissible by the ECtHR (*Carabulea v. Romania*, in September, and *Rupa v. Romania* in December). *Carabulea v. Romania* is the first Romanian case under article 2 (right to life, as the victim died as a result of torture) of the ECHR declared admissible by the court. The admissibility decision was extensively covered by the largest newspapers.

Conditions in Prisons

The most important development in 2004 regarding the penitentiary system was its demilitarization. It was expected that this measure would raise the professional standards of penitentiary administration; the selection of the future prison staff would follow objective criteria; the relationship between detainees and staff would improve; and that the individual accountability of prison staff would be implemented more rigorously.

⁴ *Notar v. Romania*, Application No. 42860/98, 13 November 2003, www.echr.coe.int.

After the reform, prison staff members who are accused of having resorted to abuse are investigated by civil prosecutors – previously, they were investigated by military prosecutors. It is hoped that the inquiries by civil prosecutors will be more objective.

Another important step was the adoption in June 2004 of a new law on prisons, which came into force in June 2005. The new law prescribes that each prison is under the direct supervision of a specially designated judge. Until then, a prosecutor (who is part of the executive power), supervised the penitentiaries.

In the anticipation of possible improvements ensuing from the prison reform and the new law on prisons, conditions in prisons remained a cause for serious concern in 2004.

After ten years of systematic monitoring of Romanian prisons and reporting on conditions of detention, APADOR-CH in 2004 decided to focus especially on the situation of juvenile delinquents (under age 18), including looking into the facilities they are held in and on the probation system, in force in Romania since 2000. APADOR-CH visited all the five Romanian facilities for juveniles (the fifth one, at Buzias, was not yet fully operational), looked closely into the curricula and the vocational training and discussed with probation officers.

There were three re-education centers and two juvenile facilities in Romania, and most normal penitentiaries also had a section for juveniles. The three re-education centers – Gaiesti, Tg.Ocna and the new Buzias center – had better material conditions than prisons. In them, boys and girls under 18 attended regular school classes (grades I-VIII), benefited from vocational training and were involved in various projects. The centers' staff took them out for regular contacts with the world outside and encouraged permanent contacts with families.

While the Prison Administration had clearly made efforts to improve conditions in the three re-education centers for juveniles, several problems remained. Of particular concern were the use of isolation as punishment and the low standard of vocational training.

Juvenile inmates could still be punished by placing them in isolation for up to ten days for violating the internal rules of the facility. Usually, an inmate punished with isolation would attend school in the mornings and a special class in the afternoons on how to control anger. But there were also juveniles labeled as “serious cases” who were taken out of the isolation cell only for school and daily exercise. Those “serious cases” had their reputation mostly from “insulting” or “being arrogant” at prison or teaching staff. APADOR-CH noted that, no minor should be sanctioned by isolation, least of all for just uttering disrespectful remarks at the staff, and urged that isolation be abolished as a sanction in re-education centers.

While vocational training was supposed to develop skills to help the juveniles to find a job after their release and so help them to re-integrate in society, all facilities offered only a very limited range of training, many for professions which are not (or no more) in demand on the labor market. In addition, the equipment and machines in the centers' workshops were obsolete.

The two juvenile prisons (Craiova and Tichilesti) not only had worse detention conditions than the re-education centers but also a tougher disciplinary regime. Punishment by isolation was much more frequent. Prison staff even resorted to using handcuffs as a method of restraint to immobilize a “recalcitrant” or a juvenile regarded as dangerous, a measure commonly used in any adult penitentiary. Both facilities were understaffed to give instruction for cultural and educational subjects. The few officers available were not able to cope with the high number of detainees and did not show special interest in the

future of the inmates. A tragic incident that happened in 2004 in the Craiova juvenile prison speaks for itself.

- On 24 September, six minors set afire the cell they were sharing in protest of prison staff failing to deliver to the right addressee a package and to remedy this failure. Unfortunately, the fire got out of control and the youths got stuck behind the doors they had blocked from the inside and which the prison staff needed to break to get in. Five youths were immediately taken to hospital while the sixth miraculously escaped with minor burns. Three youths died and the other two were still fighting for their lives in October when APADOR-CH visited Craiova. The governor and his deputy in charge of prison security were immediately removed. Other members of the staff were called before the disciplinary commission of the Prison Administration. APADOR-CH concluded that that tragic incident was a logical consequence of the lack of interest on the part of the prison staff in the “small” problems of the underage inmates, which can grow out of proportion if unaddressed. Apart from that, it appeared that the prison staff selected for educational activities only the obedient inmates who never objected or criticized. APADOR-CH stated that all minors should be included in such activities and, if this is not possible, the “difficult” prisoners should have priority. One of the dead minors in Craiova (apparently the instigator) was one of these “difficult” inmates.

Juveniles held in adult prisons were in the worst position of all juvenile delinquents. With very few exceptions, they were idle most of the day apart from regular daily exercise. There was no schooling, no vocational training, and no cultural and educational activities. They could mainly watch TV, if they had a TV set in the cell, or watch TV in the prison club for 2-3 hours a day. Virtually nothing was done to help them re-integrate into society after release.

The Reintegration and Supervision Service (RSS, established in 2000) was understaffed and underpaid. The RSS had offices only at the district level and was unable to cope with probation, parole and training before release. Nevertheless, the RSS’s role seemed to grow, although at an insufficiently fast pace.

APADOR-CH underscored that juveniles under age 18 should not be put in prisons at all, whatever their crime or offense. Alternatives to imprisonment – including probation, community service (to the extent the Labor Code allows) – or, at the most, a suspended prison term should be preferred. Only in cases of very serious crimes should a minor be deprived of freedom and if that was necessary, they should be placed in re-education centers designed for juveniles.

Freedom of Religion and Religious Tolerance

Some religious minority groups were characterized as dangerous “sects” by public authorities and were subjected to various forms of harassment.

- Two such groups were Ananda Marga and the Family International, both of which have carried out important work helping homeless children. Some years ago, the Romanian Intelligence Service (SRI) posted on its website a document which warned about dangers and risks which “sects” posed to society and linked them with terrorism, mafia and Islamic fundamentalism. Ananda Marga and the Family International were described as “dangerous” organizations, using wrong quotations, extracts of religious texts taken out of context, and outdated information. As a result, the two communities had many troubles in particular with the local authorities they were co-operating with. Family International was eliminated from the SRI “high-risk list” only at the end of 2004. Ananda Marga sued the SRI and won in a domestic court. However, at the end of 2004, the misinformation was still on the SRI Web site.

- In March, over 300 police and gendarmes, prosecutors and SRI agents (the majority of them wearing masks) burst into 16 buildings where followers of the Movement for Spiritual Integration in the Absolute (MISA, a group that promotes yoga philosophies and practices) were accommodated. The agents broke down doors and smashed windows, although none of them were locked. They ill-treated every MISA member they found. Some MISA members were handcuffed and kept at gunpoint for hours. Their personal belongings were confiscated without due mention in official police reports. All actions were filmed by TV crews and aired in such a way as to give the public the idea that MISA was a criminal and dangerous organization. Moreover, some scenes showed MISA members filmed in embarrassing situations (a woman on the toilet seat, a syringe on the floor, thus suggesting the idea of drug use, people half naked, etc.). No MISA member was arrested during or after the raid. In the following days, over 20 additional searches were performed in the MISA community and tons of MISA documents were seized. MISA had already before the raid been a target of sporadic harassment by the police and prosecutors. In addition, the media had published dramatic reports about parents whose grown-up children had abandoned them to join MISA. Such anti-MISA campaigning reached a peak first in 1995-1996, and again in 2004, now characterized by more violence. TV, radio and the print media continued the defamation campaign after the raid, taking for granted all the alleged crimes the prosecutors publicly linked with the community, including pornography, trafficking in women, and dealing in drugs. APADOR-CH strongly protested the law enforcement officials' actions against MISA members calling them disproportionate acts which involved unjustified use of excessive force and other misconduct – particularly in light of the fact that no one resisted the law enforcement officers. It noted that MISA, as an association, could not and should not be collectively accused of possible wrongdoings of its individual members. However, harassment against MISA, including the media campaign, continued until the spiritual leader fled Romania. Later he was accused of sexual intercourse with an underage MISA member, with the charges based solely on fragments of her intimate diary. The investigators put her under serious pressure to confess to having had sex with the spiritual leader. Moreover, she was forbidden any contact with other MISA followers and was placed under the strict surveillance of her sister. By the end of 2004, the problem remained unsolved from a judicial point of view. No known measures had been taken against the law enforcement agents for their unlawful actions. Confiscated personal belongings were not returned to their owners. Only the MISA spiritual leader was shortly detained in 2004 (before he fled) under a totally different pretext.

Right to Privacy

The law on which the national security services⁵ base their activities was adopted in 1991 and is outdated. In 2004, there were five draft bills on national security pending in parliament.

One of the draft bills was submitted by APADOR-CH. It was introduced to the parliament by two of its deputies in 2003. APADOR-CH also commented on the two other drafts on the subject which can realistically be adopted, one by the government initiative, the other by a deputy who was the head of the committee on the national security.

⁵ There were four security services in Romania, and in addition to them, the Integrated Information Service and security structures in the Ministry of National Defence, the Ministry of Administration and Internal Affairs and the Ministry of Justice.

In August 2003, the government issued a decision on setting up an Integrated Information Service (IIS), a huge secret service with enormous powers and with no transparency in its operation and accountability for it. The IIS gathers all data collected by various authorities on every individual and every juridical entity in Romania. There is no possibility to check the way the service uses that information or to appeal.

APADOR-CH and two individuals sued the Romanian government on grounds that the creation of the IIS was illegal; a government decision can be issued only for the implementation of a law, not on something that the law did not provide for, as was the case with the IIS. The plaintiffs made particular reference to the threats the IIS poses to the right to privacy. In the first instance, the government claimed that no domestic court could judge a decision regarding national security and asked the court to reject the complaint. The case was taken to the Constitutional Court, which, on 1 July 2004, decided that domestic courts can rule on matters related to national security. This decision *per se* was an achievement. The case was still pending in court at the end of 2004.

National and Ethnic Minorities

The Law on Local Elections that was adopted in 2004 introduced several restrictions for the minority groups other than those already represented in the parliament.

The most numerous national minorities in Romania are the Hungarians and the Roma. Both minorities are represented in the parliament, the former via a Hungarian Union (UDMR), the latter via a Roma party.

The Roma Minority

Romania has the largest Roma population in Europe, unofficially estimated at 2.5 million. Characterized by poverty, unemployment, pitiable housing conditions, poor education, meager public participation, and the lack of identity documents, their situation gave rise to serious concern also in 2004.

The high level of unemployment among the Romani population meant that a great number of Roma had to rely on social welfare benefits as their main source of income. However, over the past several years, local authorities have enacted legal measures, which have precluded many Roma from having access to state-provided welfare benefits. The outcome of such policies was disastrous for the housing situation of the affected, making it impossible for them to improve the substandard conditions in which they lived.⁶

Most Romani communities were located outside the communities of which they were nominally a part. Their housing settlements were segregated from the majority population and had no legal security of tenure. As a result, they were highly vulnerable to forced evictions, abusive police raids and even destruction of property. In fact, forced evictions of Roma have occurred frequently in recent years, often only with the provision of highly inadequate alternative housing or no alternative accommodation at all. Furthermore, life in segregated settlements increased the level of marginalization experienced by residents and impeded their access to other fundamental rights and freedoms, such as quality education, employment and medical treatment.⁷

⁶ *Comments of the European Roma Rights Center (ERRC) and Center on Housing Rights and Evictions (COHRE) on the Occasion of the Article 16 Review of Bulgaria, Italy and Romania under the Revised European Social Charter Supervision Cycle 2004*, December 2003, http://www.socialrights.org/spip/IMG/pdf/COHRE-Bulgaria-Italy-Romania_2003.pdf.

⁷ Ibid.

The Roma community faced the lowest level of education in Romania, a fact that greatly impeded improvements in the standard of living.⁸ Many Roma were not able to send their children to school, or even worse, they had to use them in various economic activities. Those Romani children who were in school were often condemned to inferior education in segregated school facilities.⁹ However, on 20 April 2004, the Romanian Ministry of Education and Research issued a notification in which it proposed to ensure equality of access to and quality of education for all children, particularly Romani children, irrespective of ethnic origin or mother tongue.¹⁰

An issue closely linked to poor education was the level of public participation of Roma, which was particularly low in Romania. There was little cooperation between various Romani organizations, which resulted in a low level of influence at the local level.¹¹

Another problem that hindered public participation of Roma was the fact that many of them lacked identity documents, which were necessary for voting in elections. Children whose parents married according to traditional practice – and therefore did not register the marriage – did not have identity documents. Additionally, in 2004, the new Law on Local Elections prevented associations of national minorities from participating in the local elections, with the exception of those already represented in the parliament. The consequence was lower representation at the local level, where several associations, particularly of Roma local communities, had previously been represented.¹²

On a more positive note, on 7 October 2004 it was announced that the Romanian government would establish a National Agency for Roma to replace the Office for Roma Issues that operated under the supervision of the General Secretary of Government's Department for Inter-Ethnic Relations. The National Agency for Roma is an autonomous body directly under the General Secretary of Government and assumes responsibility for the implementation of the Strategy of the Government of Romania for Improving the Conditions of Roma, including budgetary administration and monitoring and evaluating the activities of local and central public administrative bodies.¹³

Meanwhile, discrimination against Roma continued in all sectors of life. In addition, there were reports about coercive sterilizations of young Romani women without their full and informed consent.

- In February, it was reported that family doctors in the village of Cumpâna, Constanța County, refused to treat Romani patients on the grounds that they “smelled bad” and “were dirty.”¹⁴

⁸ Resource Center for Roma Communities, the EU Monitoring and Advocacy Program (EUMAP) and the Roma Participation Program (RPP) of the Open Society Institute (OSI) Budapest, “Monitoring Local Implementation of the Strategy-Romania – Executive Summary and Recommendations,” 27 September 2004, http://www.soros.org/initiatives/roma/articles_publications/publications/romap_20040927/3overview.pdf.

⁹ Cristi Mihalache, “Obstacles to the Participation of Roma in Elections in Romania,” *ERRC Newsletter* No. 4 2003, <http://www.errc.org/cikk.php?cikk=1364&archiv=1>.

¹⁰ ERRC, “Romanian Government Issues Notification on Desegregation in Education,” *Roma Rights Quarterly*, 30 July 2004, <http://www.errc.org/cikk.php?cikk=1971&archiv=1>.

¹¹ Resource Center for Roma Communities, the EU Monitoring and Advocacy Program (EUMAP) and the Roma Participation Program (RPP) of the Open Society Institute (OSI) Budapest, “Monitoring Local Implementation of the Strategy-Romania – Executive Summary and Recommendations,” 27 September 2004, http://www.soros.org/initiatives/roma/articles_publications/publications/romap_20040927/3overview.pdf.

¹² Ibid.

¹³ ERRC, “Romanian Government to Establish New National Agency for Roma,” 7 October 2004, <http://www.errc.org/cikk.php?cikk=2102&archiv=1>.

¹⁴ ERRC, “Roma Refused Medical Treatment in Romania,” <http://www.errc.org/cikk.php?cikk=1879&archiv=1>.

- On 27 February, the uterus of a young Romani woman was removed by doctors of the Constanța County Clinical Hospital without her consent and without informing her about the exact reason as well as about details and consequences of the operation. Following a caesarean section, the young mother appeared to be suffering from abdominal pain, headaches and nausea, which was continuously ignored by the hospital staff. Later an infection was discovered, after which her uterus was removed. In April, another two young Romani women were sterilized at the Constanța County Clinical Hospital. All three had given birth by caesarean section, all three had developed peritonitis and all three had their uterus removed during subsequent operations.¹⁵
- On 11 March, Bela Dodi, a Romani man, died following a conflict with employees of a private security firm at the Coroiești mine in the town of Vulcan, Hunedoara County. Together with some friends, all Romani, he was collecting scrap metal, reportedly with the permission of the mine's guards, when employees of S.C. Protector International SRL, a private security company, arrived at the mine and brutally attacked the men. The security guards caught and severely beat Dodi's friends, leaving them in critical condition. Dodi himself managed to escape but fell as he was running and died after hitting his head on the ground. According to witnesses, the security guards had stated on many occasions that "Gypsies should be killed."¹⁶
- On 14 October, two four-year-old Romani children were denied entrance to a Bucharest's kindergarten and were told to attend a day care center for children with "special needs." Investigations proved that those children did not have "special needs." Following an intervention by the state secretary at the Department of Interethnic Relations, the children were allowed to attend the kindergarten, which also apologized for the incident.¹⁷

¹⁵ ERRC, "Romani Woman Seriously Harmed by Doctors in Romanian Hospital," 27 October 2004, <http://www.errc.org/cikk.php?cikk=1877&archiv=1>.

¹⁶ ERRC, "Romanian Private Security Firm Involved in Second Romani Death in Four Months," 27 October 2004, <http://www.errc.org/cikk.php?cikk=1878&archiv=1>.

¹⁷ ERRC, "Romanian School Officials Refuse Enrolment of Romani Children," <http://www.errc.org/cikk.php?cikk=2187&archiv=1>.