

Romania and Article 3 of the ECHR in the Recent Case-Law of the European Court of Human Rights

Associate Professor Bianca SELEJAN-GUȚAN, PhD
„Lucian Blaga” University of Sibiu

*The study presents the main requirements of Article 3 of the European Convention on Human Rights, with a special regard to the cases against Romania judged by the Strasbourg Court. A special focus is placed upon the police violence which amounted to „torture” in the case *Bursuc v. Romania* and to inhuman and degrading treatments in some other cases. The nine cases solved by the European Court on the merits and in which it stated upon the respect by Romania of the physical and moral integrity of the person are not, probably, sufficient from a quantitative point of view so to allow a pattern of police and/or penitentiary violence. But the seriousness of the facts that amounted to ill-treatments in these cases can raise some question marks.*

§1. Article 3 of the ECHR – General Jurisprudential Landmarks

Article 3 of the ECHR prohibits torture and other inhuman and degrading treatments or punishments. In the famous *Soering* case, the Strasbourg Court established the principle that the prohibition of torture and other inhuman or degrading treatments or punishments represents „one of the fundamental values of the democratic societies that form the Council of Europe”. Therefore, the protection of the physical and moral integrity of the person against torture and other ill-treatments has an absolute character.

In the terms of Article 3, „no one can be subjected to torture and other inhuman or degrading treatments or punishments”. This guarantee is thus an intangible right, being an inalienable characteristic of the human being, based on the common values of all cultural heritages and modern social systems and can therefore suffer no restriction or derogation.

The effective application of Article 3 is somehow hardened by the lapidary wording that determines imprecision as to the identification of the key-notions’ sphere. The relevant case-law of the Commission and of the Court imposed as a determinant criterion for the applicability of Article 3 the threshold of seriousness of the induced sufferings. The evaluation of the existence of this criterion is relative: „it depends on all the circumstances of a case, like the duration of the treatments, their physical and mental effects and, in some cases, the age and health of the victim etc.”¹.

It was then the mission of the European Court to intervene in order to clarify the notions used by Article 3, stating that the difference between them is one of intensity and not of nature. Practically, any torture is in the same time an inhuman and degrading treatment and any inhuman treatment is in the same time degrading. However, a distinction must be done, in order to determine the extent of the caused damage and of the State responsibility on the matter. In a recent judgment, the Court stated the non-applicability of Article 3 in the case

¹ ECtHR, *Ireland v. UK* (1978).

of corpse mutilation, but such a situation could be considered as inflicting ill-treatments upon the relatives of the deceased person.²

The main obligation that belongs to the States in this field is to abstain from inflicting torture or other ill-treatments to the individuals under their jurisdiction. In determining the respect of this negative obligation, the Court noted that the State can be considered responsible for the acts perpetrated by its agents outside their official duties (*ultra vires* acts). Thus, the Court said that a State cannot argue in its favour the unknowing or ignoring the behaviour of its agents: „it is unconceivable that the superior authorities of a State do not have any knowledge or the right to have any knowledge about such practices”³.

States have, according to the European Court, also a series of positive obligations for protecting the physical and moral integrity of the person. In the case *Costello-Roberts v. UK* (1993), the Court established the existence of the State’s positive obligation to ensure the legal protection of the individual against ill-treatments inflicted by private individuals. That particular case regarded the corporal punishments in private schools. In more general words, States are compelled to protect any person from any danger of violation of his/her right to physical integrity.⁴

States are also compelled to incriminate torture and any other ill-treatments. For instance, in the case *A.v.UK* (1998), the applicant, a 9-year old, was being systematically ill-treated by his stepfather, the latter being declared innocent by the national courts. The Court, in stating the violation of Article 3, showed that the domestic law was not offering a sufficient protection to the applicant against the treatments and punishments contrary to Article 3.

Another important positive obligation of the State is the procedural one: to pursue efficient official investigation when a person claims that he/she was subjected to treatments of this nature by official agents or by private persons⁵. The imposition of such an obligation by the Court is useful under two aspects:

It seeks to ensure that the victims of unlawful maltreatment by public officials will be able to demand an effective domestic inquiry, potentially leading to the punishment of the culpable officials. Secondly, the Convention duty to conduct such an inquiry may act as a deterrent, to prevent ill-treatment, as officials may fear discovery and punishment when an inquiry is held⁶.

The obligation to ensure medical treatment is another positive obligation stated by the Court⁷ within the protection of the right provided for by Article 3. In *Algür v. Turkey* (2002), the Court refined the contents of this obligation, stating that the right to demand to be examined by a doctor chosen by the detainee is a fundamental guarantee to ensure preventing ill-treatments in detention places. In a recent case the State has been considered responsible for violating Article 3 for not complying with the duty to stop the deterioration of the health of a heroin-addicted detainee.⁸

² ECtHR, *Akpınar & Altun v. Turkey* (2007).

³ Ibidem.

⁴ Sudre, *Droit international et européen des droits de l’homme*, (Paris: PUF, 1999), at 207.

⁵ See: ECtHR, *Assenov v. Bulgaria* (1998) and *Aktaş v. Turkey* (2003).

⁶ Mowbray, *Cases and Materials on the European Convention on Human Rights* (London: Butterworths, 2001), at 85; see also *Bursuc v. Romania* (2004).

⁷ See ECtHR, *Hurtado v. Switzerland* (1994).

⁸ ECtHR *McGlinchey and others v. UK* (2003)

§2. Romania and Article 3 – Types of Cases

In the fourteen years since it has been a party to the ECHR, Romania has been the subject of many complaints where Article 3 was invoked. Some of these have been solved on the merits by the European Court, so we can already seek a “typology” of cases against Romania from the point of view of the facts and of the Court’s reasoning.

Firstly, there are the cases where the ill-treatments have been inflicted by police officers – the so-called “police-violence” cases. In this category stands out the case *Bursuc v. Romania*, 2004, where the Court stated that the ill-treatments amounted to “torture”. Secondly, there are the cases of police violence or of treatment of detainees where the ill-treatments do not reach the threshold of torture, being thus qualified as inhuman treatments (case *Pantea v. Romania*, Judgment of 3 June 2003 or case *Cobzaru v. Romania*, Judgment of 26 July 2007) or degrading treatments (case *Barbu Anghelescu v. Romania*, Judgment of 5 October 2004). Some of the violations that the Court found in charge of the Romanian authorities were due to the non-compliance with the procedural positive obligation to conduct an effective investigation regarding the alleged violations of personal physical integrity done either by authorities or by private individuals (case *Macovei and others v. Romania*, Judgment of 21 June 2007) . I have chosen some of these cases in order to illustrate Romania’s place in the rather “colourful” puzzle of the European Court’s jurisprudence on this article of the Convention, the respect of which is an extremely important landmark of the rule of law.

2.1. Torture (*Bursuc v. Romania*, 2004)

Romania has been “convicted” by the Strasbourg Court for acts of torture in the case *Bursuc* from 2004, joining thus the “exclusive club” of States-parties to the ECHR which have seen the same label. The facts of the case have been divergently presented by the parties, but the Court, based on the evidence, acquiesced to the applicant’s version. He claimed that he had been stopped by two police officers at approximately 8 p.m. on the evening of 27 January 1997 while in a bar at the local headquarters of the Democratic Party. They had asked him for his identity papers in an offensive manner and he had replied in the same tone. The police officers had then set about him with their batons and kicked him before dragging him away in handcuffs to a car parked some fifty metres or so away. The applicant was given a further beating by the police officers in the car and had lapsed into semiconsciousness. He was taken to the central police station where he alleged that he was violently assaulted by some eight officers who threw him to the floor, stamped on him, hit him with their batons, kicked him, sprayed him with water and spat and urinated on him. The applicant was subjected to this treatment for more than six hours and lost consciousness several times. At about 4 a.m. he was taken to the Piatra-Neamț Psychiatric Hospital where he was given tranquillisers before being sent to a neurosurgery unit on account of his condition. On 29 January 1997 the applicant was admitted to the hospital neurosurgery service in a serious condition and diagnosed as suffering from “concussion and diffuse cerebral oedema following cerebral cranial trauma”. A medical report drawn up on that date referred *inter alia* to acute closed cranial trauma resulting from assault, swelling to the face including the right eye, excoriation and bruising to the face and hands, pain in the thorax and head, and dizziness. The applicant left the hospital on 4 February 1997 and the following day attended Mureș Provincial Clinic for tests which the doctors had refused to perform. He was

found to be suffering from dolichosigmoid and angina pectoris that were probably trauma-induced, cerebral cranial trauma with diffuse vasogenic cerebral oedema as a result of an assault, and headaches and dizziness. On 27 February 1997, the applicant lodged a complaint against the police officers who had ill-treated him. He in turn was prosecuted for insulting the police officers who had arrested and detained him. The applicant's complaint was initially investigated by the public prosecutor's office of the Provincial Court, which decided that it had no jurisdiction. Conduct of the investigation was then transferred to the Bacău military prosecutor's office, which on 4 February 1998 decided to take no further action on the grounds that it had not been proved that the eight police officers concerned had committed an offence. The applicant's appeals against that decision were dismissed. In dealing with this case, the Court reminded its position from the previous case-law, where it admitted that if a person suffers physical damages whilst in police custody, the Government must give plausible explanations on the causes of such damages. In the present case, the Government maintained that the serious trauma presented by the applicant were self-induced intentionally or caused by a fall in the bar, before the arrival of the policemen, because the applicant suffered of a mental illness and was also drunk. The Court noted also that the forensic reports given during the investigation indicated the fact that the afflictions were caused by beating and were not self-induced or caused by a fall. Moreover, there was no evidence of a mental illness of the applicant, except for a report drafted after the aggression, at his release from hospital, where it was noted that there was a "neurosis, psychomotorial emotion, weak concentration and memory". Also, the Court found that the statements obtained by the prosecutors after the incident were contradictory and imprecise, whilst there was no statement taken from the applicant. As the Government has not provided any proof to support its allegations and in the absence of any plausible explanation, the Court considered that the applicant's injuries were caused by the treatment for which the responsibility of the authorities must be engaged. The intensity of the beatings caused the applicant multiple head injury, including cranio-cerebral trauma, diffuse cerebral oedema with long term effects. The ill-treatments lasted a few hours and the applicant found himself in an especially vulnerable position, being taken to the police station at night, alone, by at least five police agents. Under these circumstances, the Court decided that the violence to which the applicant has been submitted were extremely serious and cruel and likely to cause severe pain and sufferings. Therefore, these treatments amounted to **torture** – the most serious form of violating Article 3 of the Convention.

2.2. Inhuman Treatments – Treatment of Detainees and Police Violence

In the case *Pantea v. Romania* (2003)⁹, stating the violation of Article 3 by Romania, the European Court highlighted the **positive obligation** of the authorities to protect the physical and moral integrity of the person, obligation with a special impact with regard to detained persons. This obligation involves the State responsibility even when the injuries have been provoked by other detainees. In this case, there is an obligation of the guards to prevent any risk of violence and to ensure the protection of detainees against such violence. Moreover, the particular situation of the applicant (the frailty of his health) imposed a

⁹ See B.Selejan-Guțan, H.A.Rusu. *Hotărârile CEDO în cauzele împotriva României (1998-2006)*, Editura Hamangiu, București, 2006, pp.32-51.

particular care of the authorities and their lack of diligence contributed to the violation of Article 3.

As regards the alleged ill-treatments and their gravity, the Court started by reminding that, in order to be included in the sphere of application of Article 3, the treatments must attain a minimum gravity, depending on the circumstances of the case, like the duration of the treatments, their physical and psychological effects on the victim and, in some case, the victim's sex, age, health etc. As shown in *Tekin v. Turkey*, when a person is deprived of liberty, the use against him/her of physical violence, if this is not determined by the very behaviour of the victim, breaches the human dignity and represents, in principle, a violation of the right protected by Article 3. In appreciating the alleged facts, the Court used the criterion of "proof beyond a reasonable doubt"; such a proof may result from an ensemble of clues or presumptions, sufficiently serious, precise and convergent.

In the present case, the Court established that, in the absence of any proof to sustain the allegations of the applicant (that he was forced, during hospitalisation in the penitentiary hospital Jilava, to lay on the same bed with an HIV-positive prisoner and that he was denied, during more months while being hospitalised, the right to daily walks in the courtyard, or regarding the infliction of cranial fracture or losing a fingernail), it cannot be proven that he was subjected to such ill-treatments. The Court considered, though, certain the fact that, during his arrest, the applicant suffered injuries caused by beating, as results from the medical reports. In the Court's view, these were factual elements clearly established and which, by themselves, are sufficiently serious to amount to inhuman and degrading treatments prohibited by Article 3 of the Convention.

The Court also showed that the seriousness of the treatments was increased by the fact that the applicant was handcuffed in the same cell with the authors of the aggression, was transported for hundreds of miles in a train wagon, just ten days after suffering the injuries and has not benefited by a surgical examination. For all these reasons, the Court concluded that the treatments which have been afflicted to the applicant during his arrest were contrary to the provisions of Article 3.

As regards the authorities' responsibility to supervise the detainees, the Government contested the existence of any liable behaviour of the authorities, either intentional or by negligence. The Court though reminded that Article 3 imposes to the authorities of the Contracting States not only to abstain from subjecting a person to such ill-treatments, but also to take practical preventive measures, necessary to ensure the protection of corporal integrity and health of persons deprived of liberty¹⁰. Given the nature of the protected right, it is sufficient that the applicant proves that the authorities have not done what it was reasonably expected from them to avoid a real and immediate risk for the applicant's physical integrity, risk of which they had or should have been informed.

It is not then surprising the Court's conclusion: the authorities could have reasonably foreseen on one hand that the applicant, given his mental state, was more vulnerable than an ordinary detainee and, on the other hand, that his arrest could exacerbate his feeling of depression, inherent to any deprivation of liberty, as well as the augmentation of his irascibility, which has already been manifest towards other detainees. The Court also said that an attentive supervision of the applicant had been necessary and it subscribed to the applicant's argument that his transfer into a cell with hardened offenders and convicted prisoners was contrary to the domestic legal provisions on execution of judgments as long as

¹⁰ ECtHR, *Keenan v. UK* (2001)

the applicant was an arrested person. The Court also noted that the guardian did not immediately intervene to stop the aggression against the applicant.

For all these reasons, the Court stated that the Romanian authorities did not comply with their positive obligation to protect the applicant's physical integrity, within their competence to ensure the protection of persons deprived of their liberty. Therefore, Article 3 has been violated in substance.

It is relatively easy to ascertain that the jurisprudential rules determined by the Court as regards the treatment of detainees are simple and rather harsh as regards the authorities. The positive obligations doctrine has found here a fertile ground for development: not only the procedural obligation to achieve an effective investigation, but also the obligation to prevent Article 3 violations against detainees, due to the high level of vulnerability of such persons vis-à-vis prohibited ill-treatments.

Recently, in the judgment *Cobzaru v. Romania* (2007), the European Court established again the violation of Article 3 in both its dimensions, by stating that the Romanian Government has not provided sufficient evidence to refute the causal presumption established by the Court's case-law regarding the ill-treatments of persons in police custody.¹¹

2.3. Degrading Treatments: Again on Police Violence

In the judgment *Barbu Anghelescu v. Romania* (2004), the European Court analysed both dimensions of the protection offered by Article 3 – the substantial one and the procedural one.

The applicant in the case had been pulled over, on 15 April 1996, by a traffic police agent (B.), an altercation between the two took place and a second police agent interfered (Z.). B. reproached the applicant that he'd be intoxicated with alcohol, telling him that he'd be "dead drunk" and insulting him. Then, he allegedly strangled the applicant with his own scarf, called his colleague Z., who was standing at a 50 yards distance. Upon Z.'s arrival, B. aggressed again the applicant, causing him injuries which needed 4-5 days of medical treatment, according to the forensic certificate. The applicant tried to escape, but was caught by the two policemen. These facts have been established by the Pitesti Court of Appeal. The Romanian Government supported a different statement of facts: when the applicant was pulled over, the policemen asked for his papers and also asked him to make a blood alcohol test and that he allegedly had tried to escape; the policeman then tried to immobilize him, in order to prevent him from escaping, but the applicant had become aggressive; as a result, both the applicant and one of the policemen were injured, according to forensic certificates. In the Government version, the lesions presented by the applicant and provoked by the policeman were accidentally produced, while the agents were trying to neutralize the applicant and stop him from escaping. In a forensic report on the applicant, a few days after the incident, more lesions were evidenced, which could have been produced by blows with a hard object or by compression with fingers and fingernails.

In the same evening, the applicant had been retained and escorted to the hospital in order to be drawn biological samples to establish his blood alcohol. As results from a certificate of 5 September 2000 and signed by the hospital's director, the sample was taken by the police in order to be deposited at the forensic laboratory. At 16 April 1996, the prosecutor's office decided to start the criminal pursuit against the applicant for prejudice

¹¹ See also *Tomasi v. France* (1992) and *Assenov v. Bulgaria* (1998).

against the authority of a police agent and refusal to submit to a drawing of biological sample. The prosecutor also ordered the arrest of the applicant for 30 days. 10 days after, the applicant was released on bail.

The blood samples drawn on 15 April 1996 have never been taken to the laboratory, as stated in a letter dated 3 October 1996 and requested by the court of first instance.

I have presented this statement of facts in a detailed way in order to better illustrate the Court's arguments in this case as regards the violation of Article 3.

As far as the substantial dimension of the protected right is concerned, the Court acquiesced to the findings of the domestic courts regarding the facts, i.e. that the policemen had been the first to aggress the applicant, in the absence of reasons justifying this behaviour. Taking into account these facts, and also the nature of the applicant's injuries, and following its own jurisprudential criteria on inhuman and degrading treatments, the Court considered that the incriminated facts amounted a **degrading treatment** within the meaning of Article 3.

2.4. Violating the Procedural Dimension of Article 3

In the *Pantea* case, the Court analysed the application from the perspective of the obligation to achieve an effective investigation. In this context, the Court reminded that, when a person claims to have been subjected to treatments contrary to Article 3 by police agents or other similar authorities, this Convention text, combined with the general obligation imposed by Article 1 of the Convention to recognise to any person within its jurisdiction the rights and freedoms protected therein, all these impose to the State to initiate and achieve an effective official investigation. There must be here reminded also the Court's argument in *Ilhan v. Turkey*, that any person who claims, in a well-founded way, that it has been subjected to treatments contrary to Article 3, must dispose of an effective remedy.

In evaluating the diligence of the official investigation, the Court noted that in this particular case there has been an enquiry, following a complaint filed by the applicant on 24 July 1995 and that the criminal investigation regarding the facts started on 17 August 1995. The Court also found that, two years after the start of the investigation, the prosecutor's office rejected the complaint against the fellow detainees as being filed belatedly. Moreover, the applicant, in his complaint, qualified the treatments he's been subjected to as being attempted murder or attempted serious corporal injury, crimes for which the criminal action must be opened *ex officio*, without any prior complaint in a certain period of time. On the contrary, the prosecutor considered that the facts constituted beatings or other violences, crimes which need a prior complaint.

It was also highlighted that, only after one year from the complaint, the prosecutor's office ordered a forensic expert research and its report had been finished only after more than 2 years and 7 months from the incident.

As to the rejection of the applicant's complaint, the Court especially disapproved the fact that the prosecutor so rapidly concluded that the injuries caused the applicant a temporary work incapacity of 18 days, finding based on a medical report which stated in the first place that the applicant had not been present to the recommended medical tests.

With regard to the investigation against the guardians, the Court reminded that the obligation of the authorities to ensure an effective remedy to a person who claims („*grief defensible*”), that he/she was subjected to treatments contrary to Article 3 does not imply necessarily the sanctioning of the perpetrators. The Convention only imposes the initiation

and achievement of an investigation capable to lead to the sanctioning of the responsible persons.

The fact that the authorities remained idle was not sufficient for the Court to exonerate the State from its responsibility from the procedural viewpoint, to the dispositions of Article 3: the authorities must under no circumstances suggest that they are likely to leave such treatments unpunished.

Finally, the Court stated that the authorities did not accomplish a profound and effective investigation with regard to the applicant's complaint on the ill-treatments to which he claimed in a well-founded way that he had been subjected during his arrest. Article 3 has been therefore violated.

In *Barbu Anghelescu*, the applicant initiated a procedure against the police agents for abusive behaviour. Only at more than one year from the complaint, the military prosecutor's office ordered the start of the criminal pursuit against B. and after another 6 months, it decided to stop proceedings against B. and not to start any proceedings against Z. As to the applicant's injuries, the prosecutor considered that they were not intentionally caused by B.; as regards the disappearance of the biological samples, the military prosecutor considered that the responsibility of the policemen could not be established. Following a hierarchical appeal filed by the applicant, the military prosecutor's office by the Supreme Court confirmed the decision of the departmental prosecutor's office. The applicant continued proceedings at the military court of Timisoara, which admitted his appeal and redirected the case to the military prosecutor's office on grounds on incomplete investigation. Upon hearing the accused policemen, the military prosecutor's office decided not to start criminal proceedings against them. No other investigation has been done.

Having to judge the respect of the procedural dimension of Article 3, the Court first made an institutional finding: the independence of the military prosecutors who led the investigation can be doubted, taking into account the domestic regulations in force at the time of the facts. According to Law no. 54/1993, the military prosecutors were active officers, as well as the policemen. They were a part of military structures, based on the principle of hierarchical subordination. Moreover, the Court found that a court considered, in a definitive decision, that the investigation had been incomplete and redirected the case to the prosecutor. In such circumstances, the Court found extremely striking the fact that the military prosecutor's office did not respect the findings of the military court of Timisoara. As a result, the Court obviously found that the authorities had been in breach of their obligation to achieve a profound and effective investigation on the applicant's claims to have been subjected to ill-treatments and had been therefore in violation of Article 3 in this respect.

Recently, in the case *Filip v. Romania* (2007), the Court was once again confronted with the procedural obligation derived from Article 3. In this case, the Court did not find a violation of this article in its substantial dimension.

The applicant had been confined into a hospital, following an order of the prosecutor, with a view to pursue a psychiatric examination to establish whether he had power of discernment. The decision was taken by virtue of Article 114 of the Criminal Code, for an undetermined period of time. The applicant was confined to a mental institution, the Psychiatry Hospital „Al.Obregia” of Bucharest, in a surveillance room. According to his medical file, the psychiatrist who examined him at 72 hours after arrival concluded that he suffered from “paranoid disorders”. The applicant started thereafter to address multiple complaints against the measure of confinement, to the President of Romania and to the

Minister of justice. He was informed by the minister and by the cabinet of the President that his complaints had been redirected to the prosecutor's office by the Bucharest Municipal Court and to the prosecutor's office by the Bucharest Court of Appeal.

On 17 December 2002, by virtue of art. 434 of the Code of criminal procedure, the applicant filed a complaint against his deprivation of liberty, to the 6th district court of first instance. He claimed that he was confined without suffering of any mental illness and without any forensic expertise ordered by a court. Following more complaints, on 22 January 2003, the prosecutor's office ordered the leave of the provisional measure of medical confinement and the subjection of the applicant to a compulsory psychiatric treatment. On 29 January 2003, the chief-prosecutor rejected the applicant's complaint against the confinement, as lacking its object. On 30 January 2003, the applicant was released.

Stating on the alleged violation of Article 3, the Court first showed that it cannot conclude the violation of the substantial side of this Article and reminded the procedural obligation of States to pursue an effective investigations whenever a person claims to have been a victim to acts contrary to this Convention provision. In the present case, the Court found that the applicant's claim from 2 December 2002, addressed to the court of first instance regarded the conditions of detention unadapted to his health state, and that in the complaint of 5 January 2003, he claimed to have been subjected to ill-treatments by another patient.

The Court reminded that in its admissibility decision of 8 December 2005, it stated upon the claim of non-exhaustion of domestic remedies raised by the Government and that, on this occasion, it found the passive attitude of the Romanian authorities regarding the criminal complaints of the applicants. Although the applicant had informed the competent authorities about the alleged violations of Article 3, it seems that the prosecutor did not state on the merits of the police conclusions, according to which there was no sufficient evidence. Moreover, the Court noted that the Government did not present any document to prove that a preliminary investigation had been led by the police under the authority of the public ministry and that to the moment of its judgment, the Government has not provided supplementary information regarding such an investigation on the applicant's complaints. Under these circumstances, the Court found a violation of Article 3 in its procedural side.

§3. In lieu of conclusions

The nine cases in which the European Court stated on the merits with regard to the respect of Article 3 of the Convention by Romanian authorities (in some of these cases, by virtue of the "horizontal effect" of the Convention) are probably not sufficient, from a mere quantitative point of view, so to allow us to infer a pattern of violence within Romanian police forces and penitentiaries. Let us not neglect the fact that, on one hand, these are only the cases declared admissible by the Court and solved on the merits; on the other hand, the facts claimed and mostly proved in these cases entitle us somehow to presume that they were not totally isolated cases. Moreover, the seriousness of the facts in some cases (torture in *Bursuc*, participation of policemen in arson, in *Moldovan and others v. Romania* (no.2), 2005) raises some question marks. One must not oversee the fact that in almost all cases, the Court found the violation of the positive obligation of the authorities to conduct an effective investigation against the authors of ill-treatments. Although some legislative measures have been taken (for instance, as regards the military prosecutors' offices), we believe that there

are more steps to be taken until the attitude of the authorities towards the respect of the rights protected by Article 3 will be a normal one.