

The response to “Article 46” judgments against Romania

Georgiana Gheorghe, APADOR-CH



*ASOCIAȚIA PENTRU APĂRAREA DREPTURILOR
OMULUI ÎN ROMÂNIA - COMITETUL HELSINKI*

București, Str. Nicolae Tonitza nr. 8A, Sector 3, Tel/Fax: 312 45 28; 312 37 11, e-mail: office@apador.org

APADOR-CH's activity on prison conditions

- ❑ Since 1995 APADOR-CH periodically visits penitentiaries and police arrests
- ❑ Since 2005 the monitoring visits are done without prior notification
- ❑ Monitoring reports, advocacy, ECHR strategic litigation have all substantially contributed to the improvement of detention conditions along the years
- ❑ Openness of the National Administration of Penitentiaries

The response to “Article 46” judgments against Romania

- ❑ In 2024, Romania has 34 penitentiaries, 6 prison hospitals, 2 detention centres and 2 education centres for minors.
- ❑ Between 1990-2012, the number of penitentiaries increased, from 32 to 45, a fact which did not lead to a decrease in overcrowding rates.
- ❑ 2012: 31.817 (number of people deprived of liberty)
- ❑ November 2024: 23.425 (number of people deprived of liberty)

The response to “Article 46” judgments against Romania

- ❑ Prison population decreased significantly between 2015 and 2019, from an occupancy rate **of 164% in January 2015** to **111.33% in October 2019**.
- ❑ November 2024: 119,6% (4sqm standard)
- ❑ November 2024: 89,83 (3sqm)
- ❑ Overall vs. specific, data reliability?
- ❑ Penal reform+ 2017 law on compensatory remedy.

The response to “Article 46” judgments against Romania

- ❑ The **first findings** of an Article 3 violation of the European Convention on grounds of inadequate detention conditions date back in **2007**

The response to “Article 46” judgments against Romania

- The beginning of the prison system reform was initiated in 2012 following the ECHR judgment of *Iacov Stanciu v. Romania*
- The Court: general measures to improve material conditions and effective domestic system of preventive and compensatory remedy

The response to “Article 46” judgments against Romania

Three important enforcement laws have also been adopted:

- ❑ Law no. 253/2013 on the execution of sentences, educational measures and other non-custodial measures ordered by judicial bodies during criminal proceedings
- ❑ Law 254/2013 on the execution of sentences and custodial measures disposed by judicial bodies during criminal proceedings
- ❑ Law no. 252/2013 on the organization and operation of the probation system.

The response to “Article 46” judgments against Romania

- ❑ 2014 major Criminal Code Reform
- ❑ Analysis of the criminal legislation (influenced, *inter alia*, by the Council of Europe [White Paper on Prison Overcrowding](#))
- ❑ Paradigm shift:
 - Deprivation of liberty as a measure of last resort
 - Decriminalisation of minor offences
 - Alternatives to penal proceedings

The response to “Article 46” judgments against Romania

- ❑ The philosophy of the new Criminal Code was to **reduce the limits** of some sentences
- ❑ **Decriminalization of minor offences** (questionable impact on prison overcrowding)
- ❑ Two new institutions created: **waiver of the sentence and deferment of the sentence** (reference to Council of Europe documents)
- ❑ The institution of the **suspension of the execution of the sentence under supervision** (more efficiently regulated)

The response to “Article 46” judgments against Romania

- Alternatives to pre-trial detention such as house arrest, judicial control and judicial control on bail

Year	Total effective 31.12	Arrested on remand/Convicted in the first instance
2011	30.694	13.327
2012	31.817	13.788
2013	33.434	14.373
2014	30.156	11.170
2015	28.334	9.556
2016	27.455	8.363
2017	23.450	4.329
2018	20.792	2.665
2019	20.578	2.301

The response to “Article 46” judgments against Romania

- ❑ Minors deprivation of liberty has become exceptional. The 2014 Code provides for four non-deprivation of liberty **educational measures** (civic traineeship, supervision, curfew on weekend, assistance on a daily basis) and two **custodial measures** (confinement in an educational centre and confinement in a detention centre)

The response to “Article 46” judgments against Romania

- Although the Codes developed the alternatives to detention, the sanctions provided for recidivism and multiple offences as well as the conditions for conditional release have become stricter*
- Mixed bag: leads to release but also to an inflation of those who either stay longer or return to penitentiary
- Recidivism rate for 2023: 36.94%

The response to “Article 46” judgments against Romania

□ 2017 pilot judgement *Rezmives and others v. Romania*

- Accelerated institutional approach
- Two action plans written in collaboration with the Ministry of Justice, the Ministry of Internal Affairs, the Ministry of Finance.
- The ECtHR jurisprudence, the CPT and other Council of Europe recommendations served to lay the foundation of all programmatic documents since 2017 onwards
- Financing were diversified, the monitoring of the implementation was more rigorous.

The response to “Article 46” judgments against Romania

- ❑ Law 169/2017 on compensatory remedies for improper detention conditions
- ❑ The law provided that for every 30 days spent by a prisoner in an inadequate space (>4sqm) 6 days were deducted from his/her original sentence. It was given retrospective effect back to 24 July 2012.
- ❑ The law was abolished in 2019. During 2017-2019, a number of 23,518 people were released from prisons.

The response to “Article 46” judgments against Romania

- **In 2021, the ECtHR remarked that the Romanian national case-law has evolved significantly since the 2017 pilot judgment and that an action in tort based on the Civil Code, interpreted consistently by the national courts represents an effective compensatory remedy since January 2021**
Polgar v. Romania, No. 39412/19, July 2021.

The response to “Article 46” judgments against Romania

2020-2025 Government action plan (II)

- ❑ **investments in infrastructure of penitentiaries/creation of new detention places**
- ❑ The calendar of measures for 2020-2025 involves the creation of **7,849 new accommodation places** and the modernization of **946 accommodation places**
- ❑ Deficit of app. 2000 detention places
- ❑ **Ministry of Justice 2024: prison population is slowly increasing but accomodation has aslo increased. No need for further penal legislative changes.**

The response to “Article 46” judgments against Romania

2020-2025 Government action plan (II)

- ❑ redistribution of detainees within the penitentiary system or in the same penitentiary**
- ❑ In 2018, ANP started implementing an electronic system in order to monitor the accommodation capacity of each prison. Based on this analysis, some detainees are transferred from very crowded prisons to less crowded ones, in order to achieve a balance between penitentiaries**
- ❑ Lacks transparency, transfers perceived as punitive by the detainees**

The response to “Article 46” judgments against Romania

- legislative measures** to improve detention conditions for persons deprived of liberty
- Probation system** operation to facilitate the application of community sanctions

Year	Supervised persons	Number of probation officers
2001	735	106
2024	104.000	876

- Implementation of the social reintegration programs**

The response to “Article 46” judgments against Romania

- ❑ The majority of the relevant Council of Europe recommendations as well as the Courts’ indications in the semi-pilot and pilot judgments are reflected in the legislative and policy reforms adopted at the national level.
- ❑ The problem of overcrowding should be solved by 2025
- ❑ In 2023 the Committee of Ministers *asked the Romanian Government to adopt “legislative action to lastingly address prison overcrowding”* in accordance with the Council of Europe Recommendations

The response to “Article 46” judgments against Romania

□ *“Choosing the best legislative solutions that will have a positive impact on persons deprived of liberty in the long term requires a thorough analysis of the entire body of legislation on the enforcement of criminal sentences in order to identify shortcomings, deficiencies and practical dysfunctions, but also the involvement of the main institutional actors, making it possible to draw on experience and knowledge in this field, while respecting the principle of loyal interinstitutional cooperation” (Ministry of Justice)*

□ *The future?*