

## ROMANIA

# Human rights, corruption and impunity



During the Communist era, human rights were overtly disregarded to benefit party members and secret police informers. A large majority of them still hold privileged positions. Those who suffered the most in the authoritarian era are now enduring the hardships of economic transition. Although the State gives formal support to human rights, enforcement has been insufficient, to say the least, due to lack of political will and the State's failure to meet its obligations.

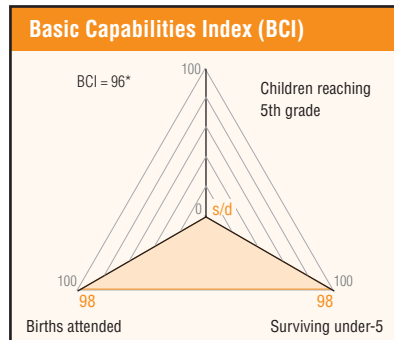
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Since the authoritarian regime fell in 1989, human rights have been perceived as a by-product of democracy. The first priority has been building and consolidating democracy, primarily by promoting civil and political rights, individual freedom and a market economy. Positive rights – social, economic and cultural – have received less attention, on the premise that they would develop naturally in a democratic market economy. At the same time, state institutions have been crumbling under the weight of corruption and extreme politization, causing a steady decline in the quality and quantity of essential Government services accompanied by an erosion of popular confidence in public institutions.

Since the transition to democracy was officially launched in the early 1990s, the emphasis of domestic civil society activists has always been on civil rights (freedom of speech, property, *habeas corpus*, freedom of worship, etc.). However, a number of NGOs have begun taking an active role in promoting the rights of marginalized sectors of society such as children (particularly those institutionalized), people with disabilities, Roma, and sexual minorities. Recently, the concept of a human rights “package” has been imported under the “European standards” label. For example, references to the importance of harmonizing domestic practices concerning minorities with “European standards” have become common in public discourse.

So far, however, international human rights standards have not been fully internalized in Romanian society, legislation or practices. Sound long-term policies remain notably absent, along with administrative and budgetary measures to implement them. The Government's approach has been to act only when required, usually by direct international pressure. For example, Romania's human rights policies were rigorously monitored during the EU pre-accession process to ensure that they met provisions of the Copenhagen political criteria. Sometimes, the stimulus to reform is a public scandal – which typically surfaces in the international press. Even when the Government has enacted human rights measures, it has depended on external aid to implement them, rather than mobilizing its own resources.

\* One of the BCI components was imputed based on data from countries of similar level.

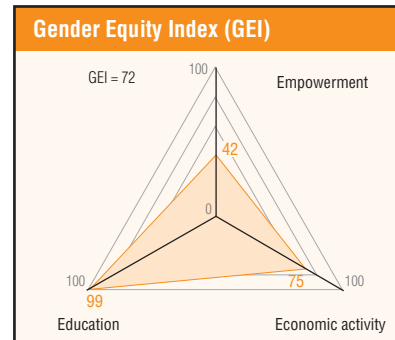


### The rights of people with disabilities

Civil society organizations have regularly denounced serious violations of the human rights of people with mental disabilities. *Monitoring the rights of mentally disabled children and young people in public institutions*,<sup>1</sup> a report issued by the Centre of Legal Resources (CRJ - a Romanian NGO), and Unicef in April 2007, cited a host of violations. Patients did not have access to basic needs (food, adequate clothing and footwear, sheets, pillows or beds, heating during the winter) or adequate services and living conditions, such as activity and stimulation, of medication and treatment, training and motivation. Restraining measures and isolation were being applied abusively. The State is directly responsible for many abuses, including dehumanizing conditions in psychiatric institutions; staff violence is common. Children have been arbitrarily admitted to psychiatric hospitals without specific treatment or diagnosis. In some instances, local authorities placed orphans in psychiatric institutions temporarily when other care was unavailable.

A new law codifying the rights of people with disabilities was adopted in December 2006, filling out previous antidiscrimination legislation. The need was readily apparent. For example, a survey by the public agency for persons with disabilities in 2006 found that only 25% of all the public institutions inspected provided adequate access. (In response, additional public and private institutions modified their facilities voluntarily.) However, as in many other cases, the Government has yet to introduce effective policies to implement and enforce the reform.

1 Centre for Legal Resources (CRJ) (2007). *Mechanisms for the Protection of Persons with Mental Disabilities from the Socio-medical Institutions: from Illusion to Reality*, Bucharest, available at: <www.crj.ro/files/ProtectionMechanismReport.pdf>.



Universal access is a case in point. Organizations representing people with disabilities complain that even though all buildings and public transportation are required to provide it, many of the facilities they have added cannot actually be used.

### The rights of people with HIV/AIDS

Romania has the largest number of children and youth living with HIV in Europe – more than 7,200. Frequently called “Romania's miracle children”, they are the survivors among more than 10,000 children infected with HIV between 1986 and 1991 in hospitals and orphanages by contaminated needles and “micro-transfusions” of unscreened blood.<sup>2</sup> The underlying cause was State neglect.

Although Romania is cited as the first country in Eastern Europe to provide universal access to antiretroviral therapy, it has done little to fight the stigma attached to people living with HIV and discrimination against them. They are frequently denied access to education, medical care, public services, and employment.

A report released in September 2007 by UNOPA, a Romanian non-governmental federation founded by several organizations representing people affected by HIV/AIDS, noted that the Government has not established a single program to ensure that when the thousands of children with HIV age out of the childhood social protection system they will have the skills and support they need to become fully integrated into society and the labour market.<sup>3</sup>

2 Human Rights Watch (August 2006). *Life Doesn't Wait. Romania's Failure to Protect and Support Children and Youth Living with HIV*, Vol. 18, No. 6(D).

3 UNOPA (September 2007). *Drepturile omului in context HIV/SIDA. Raport de monitorizare, iulie 2006–martie 2007*, <www.unopa.ro/download/Raport\_de\_monitorizare\_UNOPA\_iulie\_2006-martie\_2007.pdf>.

This conclusion reinforced a Human Rights Watch Report published in August 2006, which stated that fewer than 60% of Romanian children living with HIV are getting any form of schooling, despite legislation providing free and compulsory education through tenth grade or until age 18.<sup>4</sup>

Despite progress in some areas, doctors often refuse outright to treat children and youth living with HIV or use a variety of ploys and excuses to avoid them, such as repeatedly rescheduling their appointments to discourage them from coming to the clinic. Other types of discriminatory behaviour include asking them to come back after all other patients have left and referring to them as “AIDS people” in front of other patients.<sup>5</sup>

The antiretroviral (ARV) treatment system has also been less than satisfactory. Although provided without charge during the period 2001-2006, treatment was interrupted in each of those years for several months when funding ran out. In addition, representatives of Romanian NGOs working in the field say that better treatments have been developed since the current ARV was acquired in 2003. The Government has delayed calling for new bids since 2005, even though USD 60 million has been allocated for that purpose. NGO representatives suspect that interested parties have a financial stake in retaining the current treatment.

### Rights of the Roma community

Enactment of progressive legislation has not ended discrimination against the Roma in many areas, including employment, housing, health and education. Approximately 70% of Roma households lack running water, according to *Breaking the cycle of exclusion: Roma children in South-East Europe*, a Unicef report issued in March 2007. This far exceeds 50% proportion among poor Romanian household as a whole. The primary formal obstacle to Roma access to services is a lack of the necessary documents. This denies them the right to free healthcare, for example. Only one-third of the Roma are estimated to have health insurance, largely due to its relatively high cost and their low rate of employment in the formal labour market.

In the education system, Roma children continue to be segregated more frequently than other groups. Their schools typically have poorer facilities and unqualified teachers. Of the young Romanians with no education, more than 80% are Roma; 38% are illiterate. Only 64% are enrolled in primary school, while the national average is 98.9%.<sup>6</sup>

### Human rights, corruption and impunity

Over the last two decades, the most serious threat to human rights has been corruption and impunity. This represents a direct assault on one of the fundamental principles of human rights: equal treatment for all members of society. The only beneficiaries are the minority with access to power and decision-making positions. The rest of the population pays the

price. The poor, particularly those living in rural or de-industrialized areas, now stagnating throughout the country, have been neglected by each successive government. For most of them, the only escape from economic hardship has been emigration. While Romania's accession to the EU has encouraged a healthier political and judicial system, so far corruption and impunity have seemed more pervasive and powerful than ever.

One of the primary roles and responsibilities of the State is to create an environment conducive to the protection of human rights; tolerance of corruption is increasingly considered as a *per se* human rights violation.<sup>7</sup>

We share Pearson's insight that “the discourse of human rights enables us to recognize the effects that corruption has on the ordinary person, especially in his/her contact with the State. Too often, the sufferings of people as a result of corrupt practices are hidden behind vague euphemistic statements of development and poverty levels that fail to draw national or international attention and stimulate the necessary action.”<sup>8</sup>

Romania is a case study for how “in most corruption-ridden countries, the possibility of enriching oneself is often the *raison d'être* for engaging in politics, whether it is for selfish and personal reasons or for patronage purposes to entrench oneself in power.”<sup>9</sup> In this sense, it seems reasonable to term Romania a “multiparty kleptocracy”. This characterization is supported by the opposition of all parties to current attempts to reform the justice system<sup>10</sup>.

Since 1989, the national judiciary system has been notoriously corrupt and politically dependent. This is illustrated by its failure to bring indictments for crimes perpetrated under the Communist regime or during the revolutionary period that followed. Doing so would have threatened the new establishment and its network of supporters – former *nomenklatura* (government officials) and *Securitate* (secret police) officers who had transformed themselves into business entrepreneurs. They and their allies span the entire national political spectrum.

Even though the corruption was growing more and more blatant, justice only became a major public issue during the final years of negotiation with the EU. At that point it emerged as the most serious obstacle to EU membership and the struggle to overhaul the sys-

tem made some headway. The State developed a new institutional capacity to deal with “high-level corruption”; when Romania finally achieved full membership in 2007, the EU invoked a clause allowing it to continue monitoring the country's justice reform efforts.

However, now that the country has entered the EU, the Romanian political class has become less responsive to pressure from Brussels to keep the reforms on track.<sup>11</sup> Alarmed by corruption investigations that are entangling more and more leading politicians (former and present ministers and MPs), representatives from every political party have created a new “coalition of the willing” with the undeclared aim of stopping the reforms, rolling them back and restoring impunity. After an initial phase when the first high-level politicians were indicted and the judiciary's political ties became more blatant than ever, the system seems to have mustered the courage to go after “high-level corruption” prosecute former and current ministers and MPs. Recently however, opponents of the process have begun levelling charges that the new-found zeal of the magistrates is fuelled by political interests that wish to damage rival parties.

In January 2008, the Constitutional Court removed the executive of the National Council for Research on the Communist Secret Service Archive (CNSAS), the only institution committed to bringing justice to those who suffered under the Communist regime, and suspended its major activities. This decision came just before an election year, as researchers were about to review the files of magistrates and Constitutional Court members. Before it was silenced, CNSAS unmasked a number of public figures – former ministers, MPs, journalists, top clerics – as informers of the *Securitate*. Many others, however, have been protected by the current secret service agency, which continues to block access to some of its most controversial archives.

Corruption has also permeated the economy. Property rights, strongly promoted after 1989 as a cornerstone of the new “liberal democracy” have been flagrantly violated by manipulators who gamed the privatization process. Some of them grew rich through their former affiliation to the *nomenklatura* or *Securitate*. Others pulled strings in the judicial system and used blackmail and fraud to seize most of the properties nationalized by the Communist regime from their rightful owners.<sup>12</sup> Still others have made fortunes with the help of former comrades now in key public offices, gaining preferential access to State assets being privatized or to Government contracts.

“Impunity for the powerful and connected is the single most important factor in the perpetuation of corruption, and indeed in all human rights violations.”<sup>13</sup> Romania's plight illustrates this perfectly. ■

4 Human Rights Watch, *op. cit.*

5 *Ibid.*

6 *Romania educatiei, Romania cercetarii* (July 2007). Available at: <edu.presidency.ro/edu/cv/raport.pdf>.

7 UNDP, Oslo Governance Centre, Democratic Governance Fellowship Programme (September 2004). *The impact of corruption on the human rights based approach to development*, available at: <www.undp.org/oslocentre/docs05/Thusitha\_final.pdf>.

8 Pearson, Z. (n.d.) “Human Rights and Corruption”. A research paper produced by the Centre for Democratic Institutions, Australian National University 3, available at: <www.cdi.anu.edu.au/research\_publications/research\_HumanRightsandCorruption.htm>.

9 Kiai, M. (2007). *The Role of National Human Rights Institutions in Combating Corruption*, The International Council on Human Rights Policy, Review Meeting, Corruption and Human Rights, Geneva, 28-29 July, available at: <www.ichrp.org/files/papers/133/131\_-\_Maina\_Kiai\_-\_2007.pdf>.

10 Romania is just one out of the many examples proving that a corrupt or politically dependent judiciary can facilitate high-level corruption, undermining reforms and overriding legal norms.

11 See, for instance, “Blacksiding on reform is seen in new EU states”, in *International Herald Tribune*, 1 April 2008, available at: <www.ihrt.com/articles/2008/04/01/europe/union.php>.

12 See, for instance, “Vanatorii de terenuri fac afaceri cu functionarii din primarii: retrocedare cu santaj”, *Hotnews*, 9 March 2008, available at: <www.hotnews.ro/stiri-esential-2539539-vanatorii-terenuri-fac-afaceri-functionarii-din-primarii-retrocedare-santaj.htm>.

13 Kiai, *op. cit.*