
Between Inclusion and Re-inclusion: How to Deal with Roma Offenders (ROMA OFF-IN)

Analysis of National Standards- Romania

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Table of Contents

CONTEXTUALIZATION	1
ROMANIA PRISON SYSTEM	1
1. NATIONAL LEGAL NORMS CONCERNING RESOCIALIZATION AND THE NATIONAL SPECIFIC POLICIES FOR THE SOCIAL REINTEGRATION OF OFFENDERS	3
1.1. NATIONAL SYSTEM OF LEGAL NORMS CONCERNING RESOCIALIZATION	3
1.2. POLICIES FOR THE SOCIAL REINTEGRATION OF OFFENDERS	5
2. RELEVANT POLICIES CONTRASTING ROMA DISCRIMINATION	8
2.1 ROMA DISCRIMINATION POLICIES	8
2.2 ROMA IN PRISON	10
3. EUROPEAN FRAMEWORK OF STANDARDS BOTH ON ROMA SOCIAL REINTEGRATION AND OFFENDERS RESOCIALIZATION (EUROPEAN PRISON RULES, CPT REPORTS, ECTHR CASE LAW) AND HOW THEY IMPACT YOUR NATIONAL LEGAL SYSTEM	11
REFERENCES	14



Contextualization

Romania prison system

In Romania, there are 34 penitentiaries, out of which one is exclusively for women. There are two educative centres, two detention centres, and six hospital penitentiaries. Custodial sanctions are executed in different regimes: maximum security, closed, semi-open, and open (Law no. 254/2013; NAP, 2021).

The *maximum-security regime* is applied to sentences of 13 years or more, including life imprisonment. Typically, detainees are housed in their own rooms and are under constant supervision, escort, and protection. They can work or participate in cultural, educational, therapeutic, psychological, social assistance counselling, school, or professional training in small groups with constant supervision.

The detainees live in shared accommodation in a *closed regime* (sentences between 3 and 13 years). In small, supervised groups, the incarcerated persons can work or participate in cultural, educational, therapeutic, psychological, social assistance counselling, school, or professional training. Detainees may work or participate in cultural or educational activities outside of prison with the permission of the prison governor.

In a *semi-open regime* (sentences between 1 and 3 years), the detainees share accommodation and are left unaccompanied inside common spaces of the prison during the day. They can work or attend cultural, educative, therapeutic activities, psychological or social assistance counselling, school, or professional training under supervision (including electronic monitoring) in small groups inside or outside prison.

In the *open regime* (sentences lower than one year), detainees can be left unaccompanied inside the prison. They can work or attend cultural, educative, or therapeutic activities, psychological or social assistance counselling, school, or professional training outside prison, without supervision. Detainees are permitted to spend time alone in the facility and have the freedom to work, go to school or receive professional training outside of prison without constant monitoring.

According to official data, there were 22,900 incarcerated people in Romanian prisons at the end of November 2021 - 8530 (37.2%) were re-offenders, 6344 (27.7%) had legal criminal records, and 8026 (35%) with no criminal records (Council of Europe, 2022).

Since the introduction of the New Penal Code in 2014, the number of people incarcerated has been continually decreasing (except for the 2019-2021 period, when the number of prisoners increased). The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) conducted an ad hoc visit to Romania in May 2021 and found that the prison was operating at 127% of its capacity (Council of Europe, 2022). According to the Council of Europe (idem), the most significant problem of the Romanian prison system is overcrowding, although the imprisonment rate has significantly decreased. Most detainees in the four prisons visited by CPT lived in less than 4 square metres (CPT, 2022, p.40).

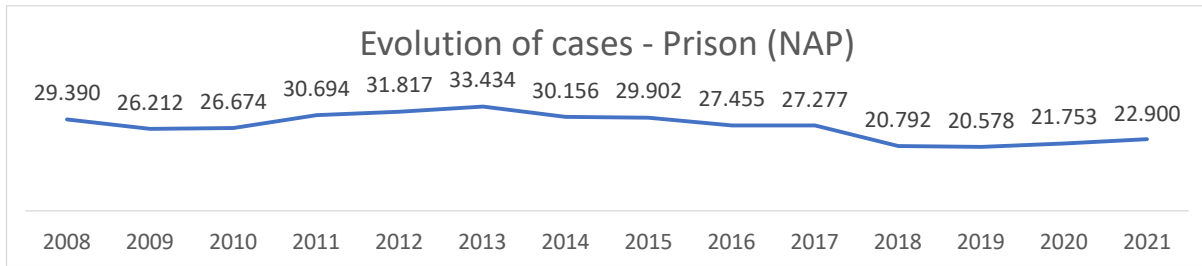
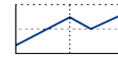


Figure 1. Evolution of prison cases

Source: National Administration of Penitentiaries. The number of people incarcerated is valid for the end of each year (December 31st), except for 2021, where numbers for November 30th are reported. NAP data include people in prisons, hospital penitentiaries, detention centres, and educative centres.

As mentioned above, the prison population at the end of November 2021 amounts to 22.900 people, out of which 20.165 (88%) have a final sentence. Women account for 4% of the prison population (n=1024), and minors and youth for 5% (see **Error! Reference source not found.**, NAP, 2021). The average **age** of prisoners is 37, slightly higher than the median, 36 (SPACE I, 2021). According to the SPACE I report, at the beginning of 2021, 16.7% of inmates in Romanian prisons were 50 or older, and 2.3% were 65 or older.

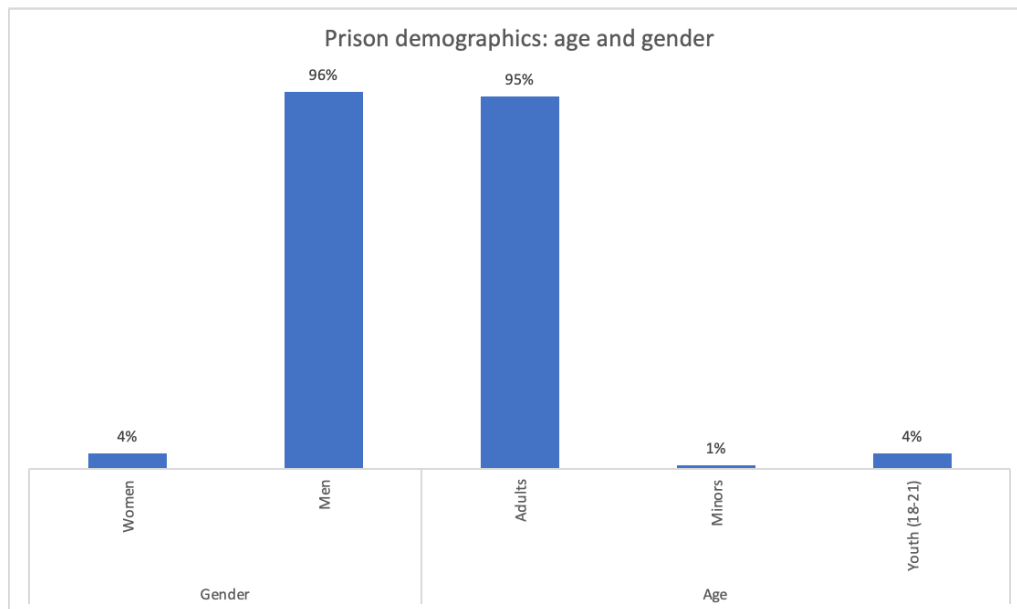


Figure 2. Prison demographics: gender and age (November 2021)

Source: National Administration of Penitentiaries, 2021 Report

In terms of offences, 42% of the prison population committed crimes against persons (including crimes such as homicide, assault, battery etc.). Second are crimes against property, where 34% of the incarcerated people committed crimes such as theft or robbery. Most sentences are from 1 to less than three years (22.7%), from 3 to 5 years (25.6%), and 5 to 10 years (26.2%), and there are no sentences lower than three months (SPACE I, 2021). The length of punishments is significantly higher than the European average, where most sentences (over 53%) are under three years.



At the end of 2021, Romania had a **prison population rate** of 113.5. By comparison, the European average is 116.1, with a median of 101.8. The rate is significantly lower than in 2011 (-23.1%). The **rate of exits** per 100,000 inhabitants is 49.2, lower than the 129,3% European average (SPACE I, 2021).

In January 2021, foreign inmates accounted for 1% of the prison population (SPACE I, 2021). Since 2016 (302), the number of foreign inmates has decreased and according to the National Administration of Penitentiaries, in 2019, in Romanian prisons were 236 foreign detainees (NAP, 2019). There is no data regarding the ethnicity of the incarcerated people in Romanian prisons.

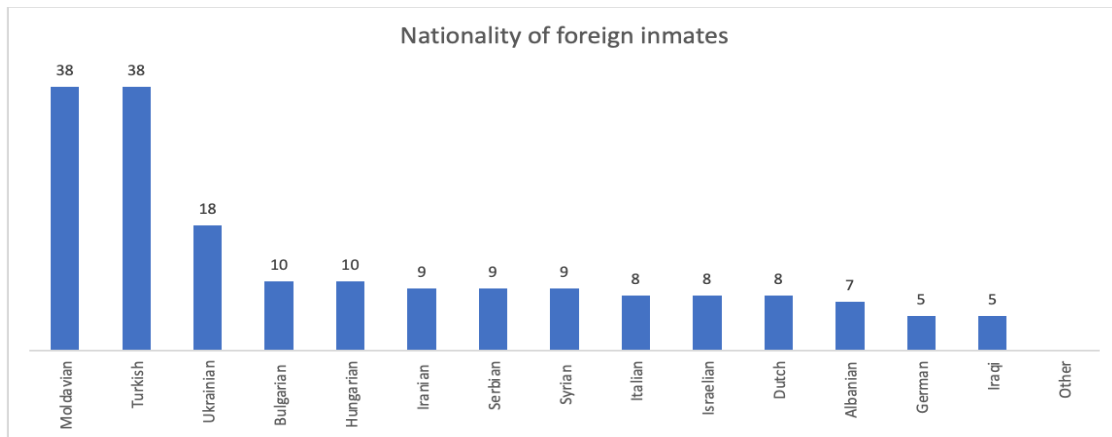


Figure 3. Nationality of foreign inmates

Source: National Administration of Penitentiaries, 2019 Report

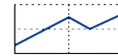
1. National Legal Norms Concerning Resocialization and the National Specific Policies for the Social Reintegration of Offenders

1.1. National system of legal norms concerning resocialization

The first provisions for detainees' reintegration into society were written into Romanian law regarding different regimes of custodial sanctions in 1874. At that time, a sentence had two functions: to teach by example and to correct wrongdoing (Sterian, 1992). The law mandated education, religious training, and employment in state workshops, private businesses, and salt mines (Durnescu, 2010). To be rehabilitated, a person had to complete their sentence, become productive members of society, and receive back any privileges they had lost due to their criminal behaviour (Durnescu, 2009).

The meaning of "sentence" was shifted in 1929 with the passage of a law establishing penitentiaries and prevention institutions. Detainees received an education through moral instruction, religious guidance, intellectual enrichment, professional development, skill-based specializations, courses, access to libraries, radio, music, conferences, and physical education (Durnescu, 2009: 44). Writing, reading, debating, and working, were all listed in a separate chapter of the Regulation on carrying out punishments issued on the 21st of April 1938. (Durnescu, 2009).

Following the establishment of the Communist regime in Romania in 1948, the idea of rehabilitation was revised in two prison regulations that took effect in 1952 and 1955. By turning detainees into useful members of society, work replaced moral education and reintegration as the primary goal of rehabilitation. This continued until 1969 when a new Penal Code and prison law was passed. These two documents bring the concept of rehabilitation back to its original meaning. Detainees were allowed more



opportunities to contact the outside world, including visits and leave. The law also required local governments to plan housing and employment for all formerly incarcerated people. The Standard Minimum Rules of the United Nations (1955) were cited in the accompanying explanatory memorandum as a significant influence.

The adoption of Decree no. 218/1977, which replaced almost all prison sentences up to five years for juveniles with a primitive form of community service, marked a pivotal point in the development of the rehabilitation notion in Romania.

Two separate amendments to the Penal Code established guidelines for suspended sentences under supervision (1992) and mandatory community service for juvenile offenders (1996). It was, however, clear that some sort of community-based monitoring system was necessary, so probation was instituted to fill that role. There has been a probation system in place in Romania since the year 2000. Prisons and probation departments were tasked with facilitating personal change and re-entry into society by providing opportunities for meaningful employment and other reintegration resources. A new Penal Code was passed in 2009 and went into effect in February 2014, when these amendments became law.

The new **Penal Code** allows for a wider variety of non-custodial sanctions to be used to change the proportionality of the punishment in terms of length, character, and mode of execution. By introducing two new institutions—waiver of the penalty¹ and postponement of the penalty²—and strengthening the implementation of the previous alternatives to detention, the new sanctioning system shows a gradual approach to punishment. The new sanctions system reflects the idea that some offenders can "recover" with more gentle interventions. When a penalty is waived, the offender receives a warning instead of a harsh punishment. When a judge declines to inflict a sentence, this can be interpreted as judicial rehabilitation (McNeill, 2014).

In contrast to situations when the court's involvement is a one-time occurrence (such as when a warning is issued), the postponement of penalty is typically viewed as part of a longer-term sanctioning procedure (Burnett, 2008). In the latter, the court grants the individual a period of time (often two years) within which to carry out particular actions and obligations. As a result, the new facility incorporates both social and moral rehabilitation and psychological therapy components.

Also, the current provisions for conditional release³ have a more rehabilitative approach, as they impose certain measures and obligations to be fulfilled by the released persons. Thus, the detainee's conduct while incarcerated is considered in terms of conditional release. The convict is aware from day one of their incarceration that their actions will have a bearing on whether or not they will be eligible for conditional release. So, if the detainees seek an early release from their prison term, they must convince the court that they are making "progress for social reintegration" to be granted conditional release. Participation in psychological and social programs is one such metric. The probation officer is responsible for suggesting individualized plans for rehabilitation and will monitor any early releases with a minimum remaining term of two years.

Probation's overall mission is defined as "social rehabilitation of offenders"⁴. This law is based on many European countries' best practices and the European standards adopted at the Council of Europe's level. Article 9 of the probation law⁵ reflects the first fundamental principle of the European Probation Rules (2010) in a way that lays the groundwork for the probation intervention as a continuum of supervision measures and assistance developed with the contribution of the probationers, where they will play an active role in their rehabilitation process under the guidance of the probation service.

The same article contains the idea of 'moral rehabilitation,' emphasizing the restoration of the damage done by the crime as one of the aims of supervision; both rehabilitation and supervision are defined as activities and interventions under the probation system. Article 103 of the probation law

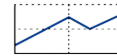
¹ Article 80 of the Penal Code.

² Article 83 of the Penal Code

³ Article 99 of the Penal Code.

⁴ Law no. 252/2013, Article 2

⁵ Law no. 254/2013.



describes assistance for the supervised person as the individual's involvement in training, qualifications, programs for social reintegration, or vocational programs, all of which contribute to the individual's psychological and social rehabilitation.

Attending intervention programs, such as school or vocational courses, social reintegration programmes or other forms of treatment or care, can assist in the rehabilitation process, but so can complying with the 'process' of control by reporting to the probation service, receiving visits from the probation officer assigned to their supervision, giving information about residence or income.

Probation officers in Romania are working with both adults and minors. The focus of rehabilitative intervention programs implemented by probation services with the families of juveniles or with the schools or community-based organizations has broadened with the introduction of new non-custodial educational measures for juveniles (civic education, supervision, weekend consignment, daily assistance).

Reintegration into society is also mentioned in the **legal framework for executing the custodial sanctions and measures** (Law 254/2013) that establish a framework for detainees' reintegration into society. The national statute defines the process of social reintegration as a sequence of steps to help formerly incarcerated people return to society (Annex to Resolution 389, 2015). Each prison will have its own Committee to handle the formulation, individualization, and modification of the execution regime for custodial sentences. This law aims to tailor each prisoner's regime for carrying out their sentence to their unique circumstances, taking into account factors such as length of sentence, behaviour, personality, risk level, age, health, special requirements, and prospects for social reintegration⁶. Detainees may participate in various educational, cultural, and psychological programs as they serve their sentences⁷. According to each detainee's specific sentencing guidelines, specialized prison unit staff, probation officers, volunteers, or other community representatives carry out the necessary processes and programs⁸. If the incarcerated persons' efforts are deemed sufficient for their social reintegration, they may be granted a reduction in security level (from maximum to close, semi-open, or open).

The length of a person's sentence that is carried out after they have been granted conditional release depends on their decisions, actions, programs, or rehabilitative treatments. The length of a person's sentence can be reduced based on the number of days they spend working, volunteering, receiving training, or engaging in research. For this reason, rehabilitative activities serve as both the end objective and the means to that end.

Both legal and judicial rehabilitation are acknowledged in the Penal Code, and both rehabilitation methods are intended to rehabilitate the convicted individual. A person's rights are entirely restored, and they are no longer subject to any prohibitions, restrictions, or repercussions as a result of a criminal conviction. The person's criminal history is erased, and society is required to treat them the same as it would any other person who has never been convicted of a crime.

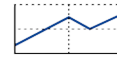
1.2. Policies for the social reintegration of offenders

Government Decision No. 389, on May 27, 2015, approved the National Strategy for the Social Reintegration of Inmates, 2015–2019, which established a national, interinstitutional, articulated framework to aid in the social reintegration of formerly incarcerated individuals. As a result of Government Decision No. 389/2015's implementation during the strategic cycle 2015-2019, seven interinstitutional procedures were developed, five of which were approved and put into effect, and a system was created to diagnose the training and professional development needs of specialists at the level of institutions responsible for carrying out social reintegration activities (both during detention and

⁶ Law 254/2013, Article 42, Paragraph 1

⁷ Law 254/2013 Article 42, Paragraph 4

⁸ Law 254/2013, Article 42, Paragraph 3



after release). To validate the proposal for the continuation of activities for the strategic cycle 2020-2024, a new draft Government Decision was approved at the Government meeting on 24 April 2019, based on the Monitoring Report of the National Strategy for the Social Reintegration of Inmates 2015-2019, written in the form of a memorandum. The proposed coordinates are part of the new national strategy for the social reintegration of disadvantaged people in the years 2020-2024, as approved by Government Decision No. 430/2020 (Council of Europe 2020). The new document foresees new measures to be carried out during the reference period and the continuation of those implemented in 2015-2019.

This includes developing and customising social support services available locally for people returning to the community who are at risk of social marginalization. This objective aims to: enhance the professional development of staff responsible for the social reintegration of incarcerated persons; to develop the infrastructure of institutions dealing with social reintegration. Also, aim is to implement and revise the inter-institutional procedures manual relating to the involvement and collaboration of institutions and authorities of central and local public administration in the process of social reintegration. The expected result is to provide the regulatory and organizational framework necessary for an inter-institutional approach to the process of social reintegration of incarcerated persons.

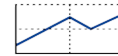
Parallel to this, it is reinforcing, optimizing, and establishing the essential legislative and administrative processes for the functional reintegration of detainees into family life, society, and the workforce. The aim is to optimize the rehabilitative interventions by stimulating the access of persons deprived of their liberty to educational and vocational training activities in line with labour market requirements. Another aim is to raise community awareness about the issues of social reintegration. The expected result is to provide the necessary tools to take on an independent way of life and facilitate access to community support services.

Because there is a serious risk of recidivism in the period following release from detention, another objective is to mitigate this risk by providing specialized assistance to the individuals who will be released and keeping close tabs on them. The expected result is to provide the organizational and functional framework to support persons deprived of their liberty in the post-detention period to prevent re-offending. Vocational qualification is one of the essential conditions contributing to post-detention reintegration, ensuring that former detainees have the opportunity to identify a job, and thus a source of income, able to support individual independence. This is in accordance with the findings of national analyses, studies, and European policies in the field.

The activities and programmes available in prison are coordinated by the National Administration of Penitentiaries (NAP, 2018). Each prison offers individual or group programs and activities considering available resources. All the activities should be accessible and transparent to all incarcerated individuals. These strategies help people grow as individuals while improving their social networks. They are implemented at the beginning of the sentence, during the execution of the punishment and close to the end of the incarceration period to aid the transfer into the community.

According to the National Prison Administration's annual report (NAP, 2022), there were 89 programs available by the end of 2021. These included 55 educational programs (10 for minors, 2 for youth, 4 for women), 13 psychological assistance programs (5 for special assistance, 4 for general assistance, and 4 therapeutic communities), and 58 social assistance programs (7 programmes and five types of social treatment groups). According to the same source, in 2021, 340.970 attendances to reintegration programmes and activities were registered.

Some treatments and activities are organized as induction activities into prison life, attempting to support detainees in adapting to the new surroundings and daily routines. These can be considered information and assessment activities to build a working alliance between the prison staff and convicted prisoners. These activities establish the foundations for more structured activities to enhance social skills or other competencies. In the first part of the sentence, the detainees are included in the observation and quarantine for 21 days. This task aims to create a personalized assessment, education, and therapy plan for each person. Prisoners must participate in the programs and treatments outlined in this plan.



Group-based educational, psychiatric, and social work programming is also available for incarcerated persons. In addition to learning concrete strategies for challenging situations, participants in these intervention programs receive incentives to participate. The incentives can be either having days reduced from the prison sentence, gaining credits, which can be utilized as prizes for prison leave or being lost if specific disciplinary procedures are implemented.

The educational courses focus on increasing detainees' reading and writing abilities, obtaining employment skills, gathering legal and health-related knowledge, and supporting family life. The instructional courses have registered a more significant participation rate in the last 3-year period (NAP, 2021) than psychological and social aid programmes. Programs like this aim to increase a community's social capital through strengthening ties within the social structure. The strategy for involving employers in the prison settings, for instance, allows detainees the chance to meet potential employers during job fairs or visit work locations. Think for the Future is a more rigorous employment-focused program for offenders with at least one year left to serve in prison. The training seeks to enhance entrepreneurial skills for participants, learn to prepare a company strategy, and meet successful entrepreneurs.

Mental health programming in correctional facilities can be either broad in scope, aiming to help all inmates build prosocial skills and problem-solving techniques, or narrowly targeted to address specific risks and needs, such as those associated with rage and violence, suicidal ideation, substance abuse, or sex disorders. These are more intensive programs lasting at least 3 months with two weekly sessions. Problem-solving, role-modelling, moral reasoning, CBT, SEL, and resistance were all discernible in the details provided on the NAP website (NAP, 2018). Participation in this subset of the programme is lower than in others.

The programs designed to help detainees keep in touch with loved ones and avoid potentially dangerous circumstances all work to improve participants' personal and social development. Adjustments are made to interventions based on the participants' abilities, age, and gender. In light of this, there are specialized programs for youth, women, and juveniles.

Different interventions are conducted near the end of the prison sentence and in preparation for release at least three months prior. These initiatives are meant to pave the way for successful re-entry into family life, professional or educational assistance, and the restoration of social connections. One program is done only by prison social workers, and the other - called Reducing the Risk of Reoffending - is implemented by both the social worker and probation officer. The novelty of this programme is that it was developed and piloted especially for the Romanian prison and probation services 'to create the premises that the inmates can receive from the competent authorities a coherent and timely response to their needs' (Durnescu et al. 2009). The probation service can arrange seven optional sessions once a person is released, including topics like family, work, money, substance use, housing, mental health, identification documents, and legal issues.

Only a limited number of interventions have been developed thus far because probation is still a relatively new concept. Western ideas, policies, and practices, including evidence-based interventions, have been imported into this setting. At the level of the probation system, thirteen programs and interventions are now available. Twelve of them have been created with the help of different sources of finance, while another program dealing with traffic violations was created using probation service resources and in collaboration with the police.

The programs are founded on cognitive behaviourism, the notion of social learning, and the concept of desistance. These interventions are designed primarily for use in groups, cover a wide range of risks and requirements, and are grounded in the internationally recognized Risk-Needs-Responsivity paradigm (Bonta, Andrews, 2007). In terms of implementation, it is planned that a reintegration programs office will be established at the level of each probation agency. This new infrastructure has not been implemented as of yet. The programs can be implemented by probation officers that has prior training in psychology, pedagogy, or social work until these specialized units become available (GD 1079/2013). Probation departments now can send offenders to community organizations recognized by the court to participate in rehabilitation programmes. According to the most recent activity report of the probation system (NPD, 2018), 29.238 cases out of 69.702 probationers were ordered to participate in



a rehabilitation program. This means that the strong demand from the courts should be reflected in the range of programs offered by probation and community-based organizations.

2. RELEVANT POLICIES CONTRASTING ROMA DISCRIMINATION

At the moment, there are no discrimination policies that explicitly mention intersectionality. Roma women *per se* do not make a category neither in Roma anti-discrimination laws and policies, nor are they specifically mentioned in legislation that pertains to gender equality. At the same time, the review shows that national policies do not specifically mention the criminal justice system as an area of intervention. Important contributions are made, though, by providing continuous education measures for magistrates regarding the combating of racism against Roma.

Starting with the Constitution, the Romanian legislative system includes several mentions of anti-discrimination measures. The Romanian state defines itself as the common nation to all its citizens, regardless of “race, nationality, ethnic origin, language, religion, sex, opinion, political belonging, wealth or social origin,”⁹ and it recognizes and guarantees the right of people of belonging to national minorities to “preserve, develop, and express their ethnic, cultural, linguistic, and religious identity.”¹⁰ The provisions are reiterated in various other pieces of legislation such as the Anti-Discrimination Law,¹¹ the Emergency Ordinance regarding the ban of organizations and symbols with fascist, racist or xenophobe character¹² or the Law on the prevention and combat of antigipsyism.¹³ Except for the last, all legislation discusses discrimination generally, including gender and ethnicity in a larger list of grounds for discrimination.

2.1 Roma discrimination policies

There are several public policies focused on preventing discrimination. Probably the most important policy is the 2022-2027 inclusion strategy.¹⁴ The current inclusion strategy for the 2022-2027 period acknowledges that the former strategy (2015-2020) was deficient as it lacked an efficient monitoring and evaluation mechanism. Furthermore, the responses to the strategy (mainly the local action plans) only reproduced national policies, with no regard to local specificities and available resources. In many ways, the 2015-2020 strategy for the inclusion of the Roma minority was a failed exercise which the current strategy aims to redress.

The contextual analysis and problem definition that fundamentals the current inclusion strategy takes into consideration several areas of intervention. These are: living conditions, infrastructure (access to electricity, water, and the public sewage network); education, employment, health, identity and heritage. There are no provisions for the justice system, as the interaction of Roma people with the criminal justice system is not included. Roma discrimination, however, is included in the measure plan of the specific objective to „Fight against discrimination, anti-Roma discourse and attitudes and hateful offences” (Annexe 6). The following directions are set:

⁹ Constitution of Romania, article 4, paragraph 2.

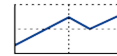
¹⁰ Idem, article 6, paragraph 1.

¹¹ Government Ordinance 137/2000, followed by additions in the Government Ordinance 45/2020, and Law no.167/2020.

¹² Emergency Ordinance no.31/2002

¹³ Law no.2/2021 [In Romanian “LEGE nr. 2 din 4 ianuarie 2021 privind unele măsuri pentru prevenirea și combaterea antițigănistului”]. Antigipsyism defines hateful attitudes against Roma people, be them from people, organizations, symbols (flags, uniforms, slogans etc.) and representations (images, text, etc.). The law condemns all conceptions and doctrines against Roma people, defining it as a criminal offense, punishable with incarceration (from 3 months to 3 years) and the interdiction of rights.

¹⁴ The April, 28, 2022 Romanian Government strategy for the inclusion of Romanian citizen belonging to the Roma minority [in Romanian “STRATEGIA din 28 aprilie 2022 a Guvernului României de incluziune a cetățenilor români aparținând minorității rome pentru perioada 2022-2027”].



- fight against hateful discourse and anti-Roma attitudes
- public awareness regarding anti-Roma attitudes
- continuous education for magistrates regarding the combating of racism against Roma
- raising public awareness among public and private employees

training for employees in the public administration regarding the prevention and combating of Roma discrimination.

Furthermore, the 2018-2022 national strategy for preventing and combating discrimination "Equality, inclusion, diversity" aims at "reducing the number of cases of discrimination in Romanian society, to promote equality of rights and opportunities for all by coherent, integrated, and inter-institutional measures in order to contribute to the development of an inclusive society, where diversity is cherished."¹⁵ Similarly to the inclusion strategy mentioned above, there are no provisions for the field of justice, although the document proposes several areas of intervention: education, employment, housing and accommodation, health, public administration, and the right to dignity.

The strategy is based on several studies conducted for the National Council for Combating Discrimination, which is a quasi-judicial institution responsible for implementing anti-discrimination laws. A survey conducted in 2015,¹⁶ reports that two out of three Romanians view discrimination as a serious issue, which affects people with HIV/AIDS, drug addicts, and people with disabilities the most. Roma people are also perceived to be discriminated, but to a lesser extent, while women are discriminated very little. This finding is particularly surprising especially when compared to other accounts that state that across Europe, "Roma women are among those facing multiple, compound, and intersectional discrimination."¹⁷ Furthermore, a report by European Commission against Racism and Intolerance (ECRI) in 2019 reveals a divide between how Romanians perceive discrimination and the way minorities, especially Roma experience it on a daily basis. The report issues a warning that Roma people continue to be victims of racial violence, especially by the police.¹⁸

Women discrimination policies

The Romanian national strategy to promote equality of chances and of treatment between women and to fight against domestic violence, 2018-2021¹⁹ is a significant piece of legislation that addresses gender equality. Romanian women are more likely to be exposed to the risk of poverty and social exclusion than men,²⁰ especially women over 65 and those between 18 and 24. At the same time though, women's representation in elections had significantly increased in the 2012-2016 period. The strategy makes an important contribution towards the decrease of domestic violence, although the document states that compared to EU data, Romanian population is significantly more lenient towards domestic violence.²¹

The strategy sets the following general objectives:

- introduce the notion of gender equality in school curriculum
- organize campaigns to eliminate professional segregation
- increase access to infertility treatments for married couples, where women are between 30 and 42 years old and has a work experience of at least 5 years
- promote measures for work and family life balance
- organize campaigns to encourage women to participate in decisional processes.

¹⁵ Preamble to the Strategy (our translation).

¹⁶ TNS Qualitative (2015) "Percepții și atitudini privind fenomenul de discriminare" – survey conducted for the National Council for Combating Discrimination [In English "Perceptions and attitudes regarding discrimination"], based on a sample of 1406 respondents, aged 18 years old and above.

¹⁷ Ignățoiu-Sora, E., Bello, B. G., Lempiö, H., & Enache, A. Comparative analysis in Romania, Finland and Italy of discrimination legislation, policies and legal decisions on multiple discrimination.

¹⁸ European Commission against Racism and Intolerance. (2019). *ECRI report on Romania*, pp.21-22.

¹⁹ In Romanian: "Strategia națională privind promovarea egalității de șanse și de tratament între femei și bărbați și prevenirea și combaterea violenței domestice pentru perioada 2018-2021"

²⁰ This strategy uses data from the National Institute of Statistics and Eurostat for 2015.

²¹ Between 2009 and 2016, 7780 people were sentenced on offences related to domestic violence.



In relation to domestic violence, the strategy aims to (1) consolidate the legislative framework for the prevention and fight against domestic violence; (2) develop support and protection measures for victims; (3) prevent domestic violence, sexual violence, and re-offending; and (4) monitor and evaluate activities aimed at preventing and fighting against domestic violence.

The strategy does address gender and ethnicity thus allowing no specific provisions on Roma women. A report by the Association for the Defence of Human Rights in Romania (APADOR-CH), an NGO involved in the monitoring of abuses and infringements on human rights quotes the Commissioner for Human Rights of the Council of Europe, in the Report following the visit to Romania in November 2018 who mention that Roma women, on account of their ethnicity, face “acts of violence committed against Roma women are routinely ascribed to ‘cultural practices’ specific to their communities and ignored on that ground.”²² Neither does the strategy address issues related to domestic violence in Roma or mixed families, although there is evidence that suggests that domestic violence is prevalent in Romanian Roma households.²³

2.2 Roma in prison

APADOR-CH published a report in 2020 on bias and discrimination of Roma people in the criminal justice system.²⁴ The report is a welcome and timely intervention in the field, as there is limited data on Romanians of Roma origin in prison. Part of a pan European research in Bulgaria, Hungary, Romania, and Spain, the study is aimed at discovering the stereotypes, prejudices, and negative attitudes towards Roma people. The report confronts attitudes and perceptions of criminal justice professionals, juxtaposing them with testimonies and interviews with Roma people. The red thread of the study shows that negative stereotypes and prejudice are present in the criminal justice system, but that police are the most prone to discriminate, a finding supported by the ECRI report on Romania.²⁵ The risk of discrimination against Roma people decreases at the prosecutorial and judge levels where decisions “must be motivated on the basis of the provisions of the criminal codes.”²⁶ Lawyers, however, were more oblivious to discrimination, as they had no training in the area. One of the conclusions of the report state that lawyers tend to refuse to represent Roma people in court, hindering their access to justice.²⁷

There is little research on Romanian Roma people in prison, and insufficient data to estimate the number of Roma in prison in order to account for the amplitude of the problem. In Romania, data collection practices on ethnicity are subject to self-identification. The Romanian prison system, as does the Romanian state, does not collect and process personal data regarding racial or ethnic origin, making it impossible to elaborate policies for vulnerable groups.²⁸

A 2002 study conducted in a Romanian prison for men²⁹ shows that Roma inmates make up for approximately 17% of the prison population, while that of Roma minors for almost 40%. When compared to national census data, which estimates the proportion of Roma people at around 10%, the evidence clearly shows an over-representation of Roma in prison. However, in the absence of this type of data, some studies resort to speculation and personal observation, as does one study regarding the

²² APADOR-CH. (2020). *Unconscious Bias and Discrimination of Roma People in the Criminal Justice System*, p. 10.

²³ Dan, A., & Banu, O. (2018). Aspecte privind violența împotriva femeilor în familiile de romi. *Revista de Asistență Socială*, (3), 91-106.

²⁴ *Ibid.*

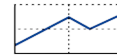
²⁵ European Commission against Racism and Intolerance. (2019). *ECRI report on Romania*.

²⁶ APADOR-CH. (2020). *Ibid.*, p. 38.

²⁷ *Ibid.* p.39.

²⁸ A similar point is raised by APADOR-CH, (*ibid.*, pp. 40-41), although the organization declares its uneasiness towards the matter and advocates for not collecting data regarding ethnicity on account of discriminatory practices. The report, however, cites, ECRI and UN Special Rapporteur on Extreme Poverty and Human Rights who state that in the absence of reliable data on ethnicity, “no measures can be taken in order to assist the Roma community” (p.41).

²⁹ Durnescu, I., Lazar, C., & Shaw, R. (2002). Incidence and characteristics of Roma men in Romanian prisons. *The Howard Journal of Criminal Justice*, 41(3), 237-244.



overrepresentation of Romani women in prisons.³⁰ Nevertheless, over-representation of Roma in prisons makes the group a target for discriminatory practices.³¹

Other research on Romanian and Roma trajectories after prison release show resettlement is an eminently ethnic process. For men of Roma origin, social reentry is a process that involved their extended families as well as the community. At the same time, people of Roma origin benefit from more social support than do men of Romanian origins, but they have limited legitimate resources at their disposal, and the main means of achievement and source of existence remains to become self-employed or entrepreneurs³². Generally, Roma men experience more difficulties in finding and securing employment than do men of Romanian origin, but the author does not discuss discrimination as an underlying cause.³³

3. European framework of standards both on Roma social reintegration and offenders resocialization (European Prison Rules, CPT Reports, ECtHR case law) and how they impact your national legal system

Apart from the European Prison Rules, two other major sources of European standards can be identified for Romania on rehabilitation and reintegration of inmates: CPT reports and the ECtHR jurisprudence. They both stress in particular the negative impact of the overcrowding on prison regime and other prison processes.

For example, the **last CPT report** published after the visit that took place from 10 to 21 of May 2022³⁴ emphasises that: 'continued overcrowding in the prisons remains a serious problem, impacting not only on living conditions but also on the provision of activities, health care and violence.' As a consequence, the report suggests a range of recommendations such as: improve living conditions, offer a wide range of purposeful activities for prisoners to assist them in preparing for reintegration into the community, increase prison staff numbers, ensure better health care services and so on.

The same issues were mentioned in many ECtHR cases against Romania (Brăgădăreanu, Petrea v. Romania/2008; Gagiu v. Romania/2009; Brândușe v. Romania/2009 etc.).

One of the first declarations of the general overcrowding condition in Romania was **Iacov Stanciu v. Romania**³⁵ where the Court has concluded that the cumulative effect of overcrowding in large dormitories, poor regime of activities, bad food and poor hygiene conditions led to the violation of art. 3 of the Convention.

As the measures undertaken by the Romanian authorities were insufficient, the Court has decided to apply the pilot judgment procedure against Romania in the case **Rezmiveș and Others v. Romania**³⁶. On this occasion, the Court held that the State should introduce:

1. Measures to reduce overcrowding and improve the material conditions of detention
2. Remedies (a preventive remedy and a specific compensatory remedy).

The Court decided also to adjourn the examination of similar cases that not yet been communicated to the Romanian Government and allowed six months to the Government to provide a precise timetable for the implementation of the general measures.

³⁰ Oprea, A. (2012). Romani feminism in reactionary times. *Signs: Journal of Women in Culture and Society*, 38(1), 11-21.

³¹ Durnescu, I. (2019). Pains of reentry revisited. *International journal of offender therapy and comparative criminology*, 63(8), 1482-1498.

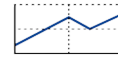
³² Durnescu, I., Istrate, A., Teoroc, C., Pitiu, E., & Rotariu, L. (2016). Routes to freedom: Romanian and Roma prisoners finding their way back into the Romanian society. In *Parole and Beyond* (pp. 271-301). Palgrave Macmillan, London.

³³ Durnescu, I. (2019). Work as a drama: The experience of former prisoners in the labour market. *European Journal of Criminology*, 18(2): 170-191.

³⁴ CPT Report on Romania available at: <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-publishes-report-on-romania-highlighting-that-the-challenges-facing-the-prison-system-remain-extensi-1>

³⁵ ECtHR, *Iacov Stanciu v. Romania*, 35972/05, 24 July 2012.

³⁶ ...



As a follow-up to this pilot decision, the Romanian Government has adopted in January 2017 a document called „Timetable for the Implementation of measures 2018 – 2024 to resolve the issue of prison overcrowding and conditions of detention with a view to executing the pilot-judgment Rezmiveş and others against Romania delivered by the ECHR on 25 April 2017”. The response plan was structured in three main parts: measures concerning investments in infrastructure of the national Prison Administration; investment plan for the Ministry of Internal Affairs and the assessment of the financial impact and a timetable for actions for the National Administration of Probation.

To respond to the overcrowding problem, the Government has promised the setting up of new detention places in different prisons and also the building of two new prisons. At the same time, the Government committed itself to strengthen the probation service in order to further promote alternatives to prison.

The new Penal Code and the compensatory remedies were also expected to reduce the number of prisoners. In particular, the compensatory remedy that provided that for every 30 days spent in understandard conditions the prisoners are entitled to six days compensation had quite an important impact on the prison population. Although it was in force for less than two years (2017-2019), the compensatory remedy law facilitated the release for a significant number of inmates. That led to a 113 prison rate of Romania in 2022 but raising. It may be that some of the structural causes of the overcrowding are not yet tackled effectively (e.g. long prison sentences).

In the latest evaluation of the measures performed by the Council of Europe Department of Execution of Court’s judgment, the deputies have noted:

Decisions

The Deputies

1. recalled the longstanding structural problems of overcrowding and inhuman and degrading conditions of detention in prisons and police arrest and detention centres in Romania as well as of the continued absence of a Convention-compliant system of domestic remedies in this regard;

As regards individual measures

2. requested the authorities to ensure that all the applicants who are still serving the prison sentences at the origin of the judgments are detained in conditions which are compliant with the requirements of Article 3 of the Convention and to provide rapidly information about their current situation;

3. noting that questions remain outstanding as regards the retention, by the authorities, of personal data collected in breach of Article 8 of the Convention in respect of the applicants Viorel Burzo and Elena Pop Blaga, called upon the authorities to intensify their cooperation with the Secretariat to resolve them and to inform the Committee accordingly;

As regards general measures

4. welcoming the strong commitment demonstrated by the government in search of a comprehensive and sustainable solution to the structural problems revealed by these judgments, expressed their satisfaction at the measures included in the revised action plan submitted in November 2020 and strong expectation that the government will continue to ensure all the support required for their effective and timely implementation;

5. noting, however, with concern, the persisting overcrowding in the prison system and the recent data attesting to an aggravation of the situation over the past six months, stressed



the importance of a swift and decisive action to address this problem, in particular in view of its humanitarian implications; requested therefore the authorities to provide details about the additional legislative measures announced in the revised action plan and their expected impact, and called upon them to draw on the European Court's indications in the Rezmiveş and Others pilot judgment and the Council of Europe's relevant work to ensure that these measures will allow meeting the objectives pursued;

6.as regards the measures put forward to address the deficiencies in the material conditions and the provision of health care in the prison system, called upon the authorities to pursue their action to ensure that, pending more substantial improvements in the prison infrastructure, the existing premises are kept in an adequate state of repair and to step up their efforts to rapidly identify and implement adequate and sufficient solutions to the persistent shortage of qualified medical personnel;

7.underlined, as regards the plans to modernise and renew the existing network of police arrest and detention centres, the importance of ensuring that the new and the renovated facilities offer conditions adapted to the length of the prisoners' stay, including an appropriate regime of out-of-cell activities and suitably equipped premises for such activities; invited the authorities to provide additional information confirming that their plans fully meet these requirements;

8.recalled, as regards the domestic remedies, that the European Court has decided to re-examine whether an action before the domestic courts to establish the State's non-contractual liability may constitute an effective compensatory remedy for arguable complaints related to inadequate conditions of detention and has also requested information about the functioning of the preventive remedy established in 2014; decided to resume their consideration in the light of the Court's conclusions as regards these matters;

9.encouraged the authorities to pursue their close cooperation with the Secretariat and invited them to provide information on the different matters referred to above by 30 June 2021 at the latest.'

Apart from these cases where Romania was found guilty of violating art. 3 of the Convention, the Court has found that Romania is in violation of certain rights of the Roma population. One of the first cases involving Roma were *Cobzaru v. Romania*³⁷ and *Carabulea v. Romania*³⁸ where the applicants' rights were violated in particular in the police stations.

In the case of *Ciocan and Others v. Romania* and *Boaca and Others v. Romania* the Court has found that there were violations of art. 2, art. 3 but also art. 14 (prohibition of discrimination) of the Convention. In brief, the police actions were disproportionate and targeting Roma communities and the authorities did not sufficiently investigate allegations of discrimination.

In the most recent case involving Roma citizens – *Lingurar v. Romania*³⁹ - in 2019 the Court established the a national authority targeted Roma because of their ethnicity. In this case, the police carried out a raid in 2011 on the Roma community in Vâlcele where they forcibly entered their the Roma people homes in early hours, dragged them out of bed and beat them. In 2012, the family of Lingurar lodged a criminal complaint accusing law enforcement authorities of violence. Investigations conducted

³⁷ *Cobzaru v. Romania*, 48254/99, 26 July 2007, <https://hudoc.echr.coe.int/eng/#%22itemid%22:%22001-81904%22>

³⁸ *Carabulea v. Romania*, 45661/99, 13 October 2010, para. 126, 138, 148, 167, <https://hudoc.echr.coe.int/eng/#%22itemid%22:%22001-99911%22>

³⁹ *Lingurar v. Romania*, 48474/14, 16 April 2019, can be accessed at: <https://hudoc.echr.coe.int/eng/#%22itemid%22:%22001-192466%22>



by the prosecution and the court in Romania has concluded that there was insufficient evidence to prosecute the police officers involved. The prosecutor himself noted the most inhabitants of Vâlcele were known for breaking the law and for being aggressive towards the police.

The ECtHR held that there was a violation of art. 3 and art. 14 and considered that the applicants had been targeted because they were Roma and because the authorities perceive that Roma community in general is prone to committing crimes. The Romanian authorities were found guilty of dismissing the applicant's allegations of discrimination without any in-depth analysis.

In this case, the Court formulated the hypothesis that the Romanian authorities are using ethnic profiling. According to ECRI, by ethnic profiling we mean the use by the police without justifiable reasons of reasons such as race, color, language, religion, nationality or ethnic origin in control, surveillance or investigating activities⁴⁰.

These judgments, the European reports but also domestic reports concluded by the domestic agencies or authorities (such as APADOR – CH and the Ombudsman) together with the observations provided by the CoE Department of the Execution of Court's Judgements, lead us to the conclusion that the Roma people are likely to be discriminated against in their interactions with the law enforcement agencies. It remains to be seen whether this discrimination is manifested also in relation to social inclusion, education or other state authorities after release.

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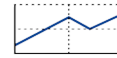
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⁴⁰ Recommendation no. 11, available at: <https://rm.coe.int/ecri-general-policy-recommendation-no-11-on-combating-racism-and-racia/16808b5adf>



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