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HUMAN DIGNITY IN THE CRIMINAL PROCESS

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ABSTRACT

In order to provide effective protection of human rights, it is necessary to have clear, human legal provisions regulating every aspect of the criminal process and to be respected by state bodies. Sometimes, having to defend a public interest, state bodies have to „sacrifice" or „limit" certain individual rights. One of the fundamental issues that need to be considered in this context is to determine the permissible limit of violation of individual rights in order to guarantee a public interest, but at the same time, not to prejudice human dignity. The paper proposes a theoretical and practical analysis of some issues that may arise in situations such as pre-trial detention, bench warrants, or even the enforcements and the search for solutions in the practice of the Strasbourg Court.

Keywords*: protection of human rights, criminal process, human dignity.*

The rule of law, in order to truly exist, must set its rules on the supreme respect of the individual. The mere proclamation, even in the fundamental act – in the Constitution – is not enough, but it has to force the state body, through its agents, to respect and apply regulations based on the recognition and guaranteeing of the citizen's fundamental rights and freedoms. The affirmation of the rule of law can never propose the destruction or humiliation of the person, even if he has committed illicit acts, that is to say, inconsistent with the rules assumed by the whole society for the general interest, but must create a technical-juridical, socio-educational formula allowing them social reintegration.

In order to provide effective protection for the observance of its rights, it is necessary to have clear, serious legal human provisions regulating every aspect of the criminal process in order to guarantee, above all, the observance by the law-enforcement bodies of the fundamental rights of each individual.

But the state's bodies, having to defend a public interest, sometimes have to „sacrifice" or „limit" certain individual rights (for example, ordering remand in custody that violates individual freedom, performing audio-video interceptions that harm private life, etc.). One of the fundamental issues that need to be considered in this context is to determine the permissible limit of violation of individual rights in

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order to guarantee a public interest. Although limitation or violation of some rights is permitted under certain circumstances, this can not go beyond a certain amount of human dignity.

The ECHR case law provides us with a wide range of rights enshrined in the European Convention on Human Rights and the analysis of a large number of cases enables us to identify „rules" for the quantification of permitted limits, without harming the existence of the right or freedom. By its case-law, the Court creates a genuine international customary law.

Without attempting a far-reaching analysis of the situations in which human dignity would be undermined in a criminal case, we will now focus on a number of situations, analyzing them from the perspective of the Strasbourg Court case-law.

Handcuffing the suspects

Being a form of humiliation, it is important to determine whether the detention by handcuffs of those detained or remanded in custody is necessary, is lawful, or vice versa, is excessive, representing abuse. And under what conditions it violates the provisions of the European Convention on Human Rights.

At the European level, there is consensus on the inhuman and degrading nature of these means of physical constraint. According to Recommendation no. R (87) 3 of 12 February 1987 of the Committee of Ministers of the Council of Europe, it is forbidden to use chains and handcuffs, shirts or other coercive objects can not be used for punishment. However, these may only be used during a transfer to avoid escape, or for medical reasons, but only under the guidance and supervision of the physician.

Even in the case of a transfer, the use of handcuffs will only be done if necessary and, as soon as the person detained reaches a judicial or administrative authority, they must be removed.

The European Court of Human Rights in *Rupa v. Romania (n.1)*[2] has shown that these measures, applied for a long period of time, accompanied by humiliating situations such as the impossibility of washing and meeting their physiological needs without the help of others and causing acute pain, must be qualified as inhuman treatment. The consequences of this treatment were amplified in the case, by the lack of adequate medical check, given the applicant's vulnerable psychological state, as well as public exposure to the court with legs in chains.

The Court reminded, when solving other cases, that if it is a legal arrest, if the force is not used and the handcuffed person is not presented in public, the measure does not automatically contravene the provisions of Art. 3 of the Convention. It will be considered in this situation if the person resists arrest or attempts to evade,

[2] ECHR, application no.. 58.478/00, Ruling of 16 December, 2008.

if he attempts to cause damage or destroy evidence[3]. What can be considered an aggravating and relevant element is the public character of the applied treatment[4].

Thus, in the case of *Pop Blaga v. Romania*[5], the ECHR established that during criminal investigations, judge Elena Pop Blaga had been subjected to ill-treatment while she was detained after she was walked by prosecutors with handcuffs in front of the press, being exposed to humiliation. In the *Costiniu v. Romania*[6], case, although the application was dismissed as inadmissible on the ground that the internal proceedings had not been followed, the Court notes that „national law requires that the use of handcuffs be limited to exceptional circumstances and should not go beyond what is absolutely necessary, thus placing the principle of proportionality at the heart of that problem" and it further states that it is necessary to „verify the lawfulness of implementing rules and regulations adopted by the executive and the police, which indeed seem to have transformed the use of handcuffs during the transport of persons deprived of their liberty in a pre-established practice".

What we can infer from the ECHR jurisprudence analysis is that the measure of handcuffing must be an exceptional measure and only used when it is mandatory to prevent incidents, to restore order and to avoid injuries that could be produced and only for so long as is absolutely necessary. Public display of handcuffed persons should also be avoided.

Length of hearings

Another aspect of respecting human dignity in a criminal trial is related to the hearing of the persons, and the length of time these hearings take. Article 110 of the Criminal Procedural Code stipulates that the statement shall mention each time the start and end time of the hearing, thus avoiding holding the hearing for too long. However, in practice there have been (and still are) situations where hearings take place over a lengthy period, which has led the Court to conclude that this may also be a violation of Article 3 of the Convention.

However, in order to fall within the scope of Article 3 of the Convention, the Court has, in its case-law, enshrined some principles establishing that the degrading treatment must reach a minimum degree of severity[7]. The Court also analyzes the purpose of the treatment (whether it was the humiliation or denigration of the person) and the effects that this treatment have on the personality of the person. However, the absence of such a purpose will not automatically exclude the finding of an infringement of Article 3 of the Convention[8].

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[3] See case *Raninen v. Finland,* Application no. 20972/92, 16 December 1997, par. 55, and case *Saban Hadziu v. Czech Republic*, Application no. 52110/99, Ruling of 4November, 2003.

[4] See case *Gorodnitchev v. Russia,* Application no. 52058/99, 24 May, 2007.

[5] ECHR, Application no. 37379/02, Ruling of 10 April 2012.

[6] ECHR, Application no. 22016/10, Ruling of 19 February 2013.

[7] Case *Jalloh v. Germany* [MC], application no. 54810/00, Ruling of 11 July 2006, par. 67.

[8] See case *Peers v. Greece*, application no. 28524/95, Ruling of 19 April 2001, par. 74.

The Court has established in its case-law that the cumulative use of certain interrogation techniques in a longer time may cause physical and psychological suffering to the interrogated person, a fact that is covered by Article 3 of the Convention[9].

For example, the wait for 10 hours to be heard as witnesses without food, water and rest was considered by the Strasbourg judges to be a treatment contrary to Article 3 in the case of *Soare et al. V. Romania* [10].

In this case the Court found the violation of Article 3 of the Convention, since the applicants were victims of degrading treatment, given the particular circumstances of the case – the duration of the interrogation until its end with the applicants at the disposal of the police, the feelings of tension and inferiority that the applicants experienced because of the treatment they were subjected to.

Bench warrant

Bringing persons with a bench warrant is a restriction of the right to liberty but at the same time a state of psychological discomfort, harming human dignity even if it may be at a lower level. As this procedure is stipulated not only for persons suspected of committing criminal offenses but also for example for witnesses, it is even more necessary to consider whether the conditions in which the bringing is done is contrary or not to the provisions of the Convention.

In the case of *Ghiurau v. Romania*[11], such a violation of the Convention was found in view of the fact that the bench warrant was not carried out in accordance with the legal provisions. Thus, the applicant was taken by the police on the basis of a bench warrant and transported 200 km, being released only at night. The plaintiff was continuously guarded by the police and he was not able to leave on his way, he was also guarded in the ambulance. Although there was a legal basis on which it was based, the applicant had not previously been summoned by the Prosecutor's Office and no reasons were given which would have allowed the issue of the warrant without a prior summons. It has thus been found that the provisions of Article 5 para. 1 of the Convention were infringed.

The new Code of Criminal Procedure provides rules for guaranteeing the freedom of the person in the event of the execution of a bench warrant. Thus, it is only then possible to resort to this method if, as previously summoned, the person has not shown without having serious reasons and his hearing or presence is necessary, or if proper communication of the summons was not possible and the circumstances unequivocally indicate that the person is evades from receiving the summons. The suspect or defendant may be brought with a bench warrant, before being summoned by summons, only if that measure is in the interest of the cause.

[9] See case *Irland v. Great Britain* [MC], Application no. 5310/71, Ruling of 18 January 1978, par. 167.
[10] ECHR, Application no. 24329/02, Ruling of 22 February 2011.
[11] ECHR no. 55421/10, Ruling of 20 November 2012.

The judicial body shall immediately hear the person brought by bench warrant or, as the case may be, immediately carry out the act that has required his presence. The persons brought on the basis of a bench warrant shall remain at the disposal of the judicial body only for the period strictly necessary for the hearing or the fulfilment of the procedural act, but not more than 8 hours.

Conditions in prisons

Overcrowding in prisons is one of the prisoners' most common problems raised in front of the Court in Strasbourg. The Court ruled that where more detainees in a room have less than 3 square meters per person, overcrowding is so severe that such a situation constitutes, by itself, a violation of the provisions of Art. 3 of the Convention[12].

In the case of *Gagiu v. Romania*[13], the applicant claimed violation of Article 3 of the Convention, given the conditions of detention in the penitentiary, the applicant having an insufficient space of 1,25 sqm. In resolving the application, the Court reiterated that Article 3 of the Convention requires the State to ensure that any person in detention benefits from conditions that should not harm human dignity, that the person concerned is not subjected to suffering of an intensity exceeding the level inevitably inherent to detention, and that the detainee's health and comfort are adequately ensured. In the present case, the Court found from the information obtained from the National Penitentiary Administration, that for three years, the period covering the detention time until the time the applicant filed the application with the Court, he shared a cell of 7.60 square meters with five other detainees, thus the space allotted to him was only 1.25 square meters, insufficient in relation to the criteria set by the case law of the Court.

Romania has been convicted in numerous other causes for lack of space in cells[14]. We recall the cases of *Mariana Marinescu against Romania*[15] (in which the applicant showed that she had stayed in Târgşor Penitentiary in cells of 50 square meters, occupied by 36 people, then in a 14-square-meter cell with 18 persons, and a cell of 20 square meters with 12 persons), *Răcăreanu against Romania*[16] (he was held in rooms with 10 beds together with 13 detainees), *Ali against Romania*[17] (cell of 30 sq.m. with 10 detainees), *Porumb against Romania*[18] (about 2 sq. m.), *Măciucă*

[12] *Kantyrev v.Russia*, no. 37213/02, pct. 50-51, 21 June 2007, *Andreï Frolov v.Russia, no*. 205/02, points 47-49, 29 March 2007, *Kadikis v. Latvia, no*. 62393/00, pct. 55, 4 May2006.

[13] ECHR, Application no.63258/00, Ruling of 24 February 2009, final on 24 May 2009.

[14] Radu Chiriță, Lucian Criste, Mirel Toader, Alina Ivan, Anca Stoian, *Arestarea şi detenția în jurisprudența CEDO,* Hamangiu, Printing Press Bucharest 2012, pg. 156-185.

[15] ECHR, Application no. 36110/03, Ruling of 2February 2010.

[16] ECHR, Application no. 14262/03, Ruling of 1 June 2010.

[17] ECHR, Application no. 20307/02, Ruling of 9 November 2010.

[18] ECHR, Application no. 19832/04, Ruling of 7 December 2010.

against Romania[19] (the applicant was detained in the Jilava Penitentiary in a 47-square-meter cell with 42 beds, along with 50-58 detainees, hence having an own space of 0.80-0.92 square meters), *Todireasa v. Romania*[20] the applicant was held in five different cells, ranging in size from 32 to 51 square meters, with 18 to 64 detainees).

In all these cases, the Court has shown that the detaining of a person inevitably causes psychological suffering, but the state authorities have an obligation to ensure conditions that respect human dignity and which do not exceed a certain level of suffering, the focus of the analysis of the detention conditions being the personal space.

Apart from the problem of the insufficient space of the imprisoned, regarding the observance of human dignity, it is necessary to analyze the proper conditions in which detainees are held. This is because in all cases concerning Romania, which alleged violation of Article 3 due to inhuman conditions, besides the problem of overcrowding, other problems were indicated as: dirty space, insanitary, lack of hygiene, cleanliness, lack of hot water, lack of windows ventilation and natural light, poor quality food, inadequate thermal conditions (too hot or cold), lack of body hygiene supplies, lack of medical treatments.

Unlike the O.N.U. covenant on Civil and Political Rights[21] and the Inter-American Convention on Human Rights[22], which expressly provide for the detention of a prisoner in a humane manner and with due regard for the dignity of the human person, the European Convention on Human Rights does not provide for such a provision. However, the European Court of Human Rights has received numerous applications denouncing the conditions of detention, which are examined under Article 3 of the Convention. What was thus analyzed was whether the imposition of humiliating or suffering degrading detention conditions constitutes inhuman or degrading treatment[23].

The analysis of ECHR case law in this matter concludes that states have a dual obligation: on the one hand, not to impose on detainees detention conditions that generate ill-treatment and, on the other hand, to ensure detention conditions in accordance with human dignity[24].

The Court underlined, in the resolution of the cases before it, that custodial measures usually imply some inconvenience to the detainee, but that does not mean that the prisoner has lost the rights guaranteed by the Convention. Moreover, there are situations where the detainee, due to the vulnerability of his situation and because he is in the care of the state, may need more protection from the

[19] ECHR, Application no. 25763/03, Ruling of 26 May 2009.

[20] ECHR, Application no. 35372/04, Ruling of 3 May 2011.

[21] Article 10 par. 2.

[22] Article 5 par. 2.

[23] Corneliu Bîrsan, *Convenția europeană a drepturilor*, 2nd edition, Ed. C.H. Beck, Bucharest, 2010, pg. 157.

[24] Jean Francois Rennuci, *Tratat de drept european al drepturilor omului,* translated in Romanian, Hamangiu Printing Press, Bucharest 2009, pg. 131.

authorities. Thus, under art. Article 3 of the Convention the authorities have the positive obligation to ensure that any detainee is held in conditions consistent with respect for human dignity and also that the means of enforcing the punishment do not subject him to suffering or to a situation at an intensity exceeding the inevitable level of suffering inherent in detention[25].

In the present context of heated political discussions and in the media on the amendment of legal regulations in the field of criminal proceeding and execution of sentences, human dignity should be the starting point for establishing the necessity or the futility of these changes. The question we should raise is whether the current regulations guarantee respect for human dignity and clearly prevent it from being violated by state bodies. Or, by protecting to a large extent the society and the public interest, don't we actually forget to protect the man who is the supreme value of society?

[25] See cases Florea v. Romania, ECHR, Application no. 37186/03, Ruling of 14 September 2010 , Pavalache v.Romania, ECHR, Application no. 38746/03, Ruling of 18 October 2011., Marian Stoicescu v. Romania, ECHR, Application no. 12934/02, Ruling of 16 July 2009,Brânduşe v. Romania, ECHR, Application no. 6.586/03, Ruling of 7 April 2009, final on 7 July 2009.