

Police Impunity in Romania: Military Jurisdiction Over Misconduct Cases

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In a dictatorship, the police force is the most efficient and direct instrument of repression. A government making the transition from dictatorship to democracy must transform the police into an organization that respects human rights. This process, which requires both institutional and attitudinal changes, is long and arduous.

Romania's new democracy is attempting to build an effective and accountable police force. To that end, it has ratified international treaties that guarantee citizens the right to not be subjected to torture and cruel, inhuman, or degrading treatment.¹ Moreover, the Romanian Penal Code states that any act of police misconduct, from verbal insult to physical harm, is a crime.² Yet misconduct persists at alarming levels. In a 1997 report, Amnesty International says that it has repeatedly "called on the authorities to initiate investigations into reports of ill-treatment and police shootings in disputed circumstances."³

The transition itself explains some misconduct. The police—forced to contend with increasing violence and new types of crime, such as drug-related offenses—are more likely to use illegal force, and Romanians are more inclined to tolerate it. However, much police misconduct is attributable not to irrepressible social developments but to preventable deficiencies in the legal system. The government has failed to change the laws that foster misconduct or to demilitarize the police. Nor has it developed sufficient mechanisms of accountability. Perhaps most troublesome, military rather than civilian courts have jurisdiction over police misconduct cases.

In this paper, I discuss the institutional causes of police misconduct in Romania and the mechanisms of accountability, with an emphasis on the role of the courts. Where relevant, I make comparisons between Romania's system of policing and those of Hungary and Poland.

Institutional Causes of Misconduct

Legal Incentives

Various elements of Romanian law may lead police to use illegal or abusive tactics in investigating crimes. First, officers do not have to testify in criminal trials. Theoretically required to uncover the truth, officers are supposed to collect incriminating as well as

exonerating evidence. Their reports are considered true by the court unless proven false in a separate and subsequent trial. However, trials to determine the validity of police reports are rare. Police officers can ignore or fabricate evidence without fear of cross-examination or punishment.

Similarly, allegations of police misconduct are not given a hearing in trials. For example, if a defendant, claiming innocence, says that the police used force to extract a confession, the judge would record the statement and place it in a file for deliberation after the trial. The police officer is not required to face questions about the alleged misconduct. Very rarely do judges ask the military prosecutor's office, the only available and competent authority, to investigate allegations of police misconduct, and even that action would not suspend the trial.

Furthermore, evidence obtained through force or through other illegal means is admissible. Proof that the police violated laws to obtain evidence is not grounds for reversal. Romania lacks a law resembling the United States' exclusionary rule, widely regarded as an effective weapon against misconduct.

Many incidents of police misconduct occur while officers interrogate suspects. Officers often question people for hours without charging them.⁴ During the interrogation period, the rules governing pretrial detention do not apply because suspects, although deprived of liberty, are not technically detained. In addition, suspects are treated, if necessary, by government doctors and do not have access to medical files documenting injuries sustained while in custody.

Finally, the Romanian criminal justice system does not permit plea bargaining—the process by which defendants plead guilty in exchange for a lesser charge. The system places pressure on officers to secure—or coerce—confessions. Although the law specifies that a confession alone cannot warrant an indictment or conviction, usually it is integral to a case.

Militarization of the Police

A legacy of the communist order is that Romania and other countries in the region have, in varying degrees, militarized police forces. In Hungary, police officers have military status, meaning that they are subject to special provisions of the criminal code.⁵ In Poland, although military rules do not apply to police officers, they function within a strict, militaristic hierarchy based *inter alia* (on grades).⁶ In Romania, the Ministry of the Interior, which controls the police force, is a military entity (although the Minister of the Interior has been a civilian since 1990).

A militarized police force is a centralized police force. In Romania, practical control of the force is given to the Inspectorate General, whose chief has always been a military official.⁷ The force is broken down geographically. The chief of each region reports to the Inspectorate General. The Hungarian police, widely regarded as overcentralized, functions in basically the same manner.⁸ Poland's system is similar as well. The

Minister of Interior Affairs and Administration appoints a chief commander, who is responsible for all police.

A police force in a democracy should vest officers with a considerable amount of autonomy. However, the Romanian system of policing, heavily influenced by military doctrine, does not allow discretion. Not only does the failure to execute an order violate the force's disciplinary code, it is a crime under the Romanian penal code. However, it is not illegal to disobey an unlawful order. On the contrary, it might be a crime to obey one. Still, unconditional obedience of even unlawful orders is ingrained in Romanian police culture. The law also gives prosecutors the power to instruct police officers.⁹ However, police officers will almost always choose to follow the orders of their commanders should they conflict with those of prosecutors because there are no means to enforce prosecutors' authority. Even without the legal incentive, commanders' instructions would probably take precedence.

The Hungarian police are required to obey orders even if they lead to unlawful acts. They may disobey an order only to avoid a criminal offense. (In Hungary, not all unlawful acts are criminal.)¹⁰ Officers may challenge the lawfulness of orders to superiors.¹¹ However, the law provides for disciplinary action for officers who issue unsubstantiated challenges.¹² The prospect of disciplinary hearings undoubtedly deters officers from questioning orders.

In Poland, police officers must refuse to execute an order that would result in a criminal offense, even it comes from a judge or prosecutor. However, if the refusal to commit an order by a judge or prosecutor is unjustified, police officers are subject to disciplinary proceedings.¹³

Like many military structures, the Romanian police force has a special unit supposedly responsible for internal security. However, it is not clear what this unit, UMO215, really does. Under the communist regime, the oligarchy used UMO215 to check political opponents. In 1990, the government issued an order to change the structure and function of UMO215, but the order was never published and is not accessible to the public. Even if it not used for invidious purposes, a secret police unit clearly does not belong in a democracy.

Largely because of their military status, Romanian police forces enjoy a number of privileges. They have free medical care and higher salaries than most civil servants. While the salaries of judges and prosecutors are public information, those of police officers have been raised several times by confidential government ordinances that have not been published in the *Official Gazette*.¹⁴ Moreover, draconian provisions in the Penal Code outlaw even truthful criticism of police officers. Article 239, under the title "outrage," punishes with imprisonment of up to seven years any insult of military officials, including police officers. By contrast, people convicted of insulting civilians may be fined or imprisoned for a maximum of two years. Similarly, Article 238 states that people who commit "an offense against authority" (publicly insult prominent

political figures) may be imprisoned for up to five years. Some journalists have been punished under the second provision for criticizing high-ranking police officers.

Certainly, officers should be well-compensated, and government should ensure that policing is an esteemed profession. However, excessively preferential treatment instills in officers the pernicious belief that they are superior to the people they serve. It also may create tensions between officers and civilians.¹⁵

The issue of police demilitarization has been debated publicly since 1990. Eager to maintain advantages that flow from their status, most police officers oppose demilitarization. Although the government has not explicitly rejected demilitarization, it has repeatedly postponed voting on measures that would change the laws or structure of the force. Moreover, in November 1997, Gavril Dejeu, Minister of the Interior, proposed to centralize the police even more. Dejeu argued that the various departments—such as public order, customs, railway, organized crime, and transportation—should be united under a single command. Voices calling for demilitarization and decentralization are being ignored. Hungarian politicians also are calling for increased centralization, claiming that it will help the police stem rising crime rates.¹⁶ Polish politicians have discussed decentralization as well, but have placed police reform on the backburner while they restructure the Secret Service.¹⁷

Accountability

Democracies need a variety of mechanisms to hold police accountable for their actions. In Romania, the social (nongovernmental) controls on police behavior are conspicuously weak. The country does not have any formal vehicles, such as review boards, for civilians to exert influence over the police. The media generally fail to report on policing or violations of individual rights. Instead, they breed tolerance for police misconduct by giving excessive and superficial coverage to violent crime. Some nongovernmental organizations document police violations but their impact on police behavior is limited. With impotent social controls, it is especially important for the state to put in place effective mechanisms to punish and deter improper police behavior. Unfortunately, the state's structures are also woefully insufficient. In this section, I will discuss the role of the courts and Parliament in holding the police accountable.

The Courts

Because of their military status, police officers who are charged with criminal wrongdoing are tried in military courts. The jurisdiction of the military justice system over the police is absolute: Civilian attorneys may not investigate or prosecute police officers, and civilian judges may not preside over the trials of police officers. Military judges and prosecutors must fulfill the same requirements as their civilian counterparts, and they are appointed in the same manner.¹⁸ However, they also must be active officers

in the military (in a trial, the prosecutor and judge must have at least as high a rank as the defendant).¹⁹ Although their responsibilities are the same as those of their civilian colleagues, military prosecutors and judges are subject to military rules of discipline.²⁰ In addition, their salaries, paid by the Ministry of Defense, are higher.²¹

The framework of the military system of justice is provided by Law no. 54/1993 on the Organization of Military Courts and Prosecutors Offices. Although the Romanian Constitution devotes a chapter to the judiciary, it makes no reference to military justice. However, other guidelines—the Criminal Procedure Code, the Law on the Judiciary, and the Law on the Supreme Court (a military section functions within the Supreme Court)—cover the military justice system. Military and civilian trials operate under the same rules of criminal procedure.

The military system of justice presents five glaring problems. First, it undermines the principle of equality before the law. Police officers are investigated and tried by a legal structure different from the one that administers justice to civilians.

Second, it ensures that trials involving police officers are, for the most part, confidential. Because of guidelines that restrict public access to military activities, prosecutors and judges are shielded from public scrutiny.

Third, the military system of justice precludes the independence of judges, which is essential to a democracy. Unlike civilian judges, who are independent, military judges are part of the army, a hierarchical structure. Moreover, the army itself is under the authority of the legislature and the president. The subordination of the judiciary to both the army command and external forces invites corruption. For example, the Ministry of Defense has sole responsibility for promoting and demoting officers; thus, the careers of military judges (and prosecutors) are in the hands of the Minister of Defense. Members of the Military Section of the Supreme Court must be at least colonels, and the president of the Section must be a general. To reach the Supreme Court, judges presumably must make decisions that please the Minister of Defense. Once on the Court, they need to continue to satisfy the Minister in order to stay there. Because the Constitution articulates the need for independent courts, the military system of justice appears to be illegal. Nonetheless, the military courts continue to operate with their constitutionality unchallenged.²² In 1997, the Parliamentary Assembly of the Council of Europe urged Romania “to ensure that the independence of the judiciary is upheld.”

Fourth, the system threatens the impartiality of judges and prosecutors. Although police officers are under the Ministry of the Interior and prosecutors and judges are under the Ministry of Defense, they are all part of the same military family. Prosecutors and judges are often tempted to ensure that officers are acquitted either because they know them personally or because they want to protect the reputation of the military. Furthermore, many high-positioned police officers have close ties to judges and prosecutors. The outcome of a police misconduct trial could be determined by a phone call.

Fifth, the system inhibits fair and thorough investigations into allegations of police misconduct. Typically, a military prosecutor convenes the officer accused of misconduct and the alleged victim. After listening to each, the prosecutor writes statements that the officer and complainant sign. Usually, the prosecutor performs no further investigation. Based on the officer's denial, the prosecutor closes the case, even if the victim has medical records documenting injury. Unless witnesses come forward, victims have little chance of getting a hearing in court. Prosecutors may also frustrate victims by dragging out their inquiry. They are not required to complete investigations within a specific amount of time. Most cases last more than a year. The delay leads some victims to give up and allows officers plenty of time to intimidate them.

Prosecutors' decisions are final; alleged victims may not petition the courts to review them. They may only lodge a complaint with the Military Department in the General Prosecutor's Office, which rarely revisits decisions. For all intents and purposes, when a prosecutor decides to not indict a police officer, the case is over.

Police officers themselves also play a role in investigations. The Criminal Procedure Code provides for "special investigative bodies," including one comprised of officers designated by their commanders to investigate wrongdoing by other officers *in the same unit*.²³ Prior to November 1996, officers were usually the primary investigators. They sent their reports to the prosecutors, who based decisions largely on the findings of the officers.²⁴ The procedural rule was changed to give prosecutors complete control over investigations, but the police have not abandoned the practice of looking into allegations. Even though their findings, almost always favorable to their colleagues, have no legal standing, they are still used by prosecutors in a large majority of cases. People are not required to answer the questions of police officers investigating allegations of misconduct. But either out of fear or ignorance, people usually comply.

In Hungary, police officers often investigate allegations of misconduct by their colleagues. Most acts of misconduct are considered misdemeanors and are investigated by the police under the rules of disciplinary proceedings. If the police have allegedly violated military statutes, military prosecutors are called in to investigate. Only three offenses fall under the jurisdiction of civilian prosecutors, who belong to special units within the military prosecutors' office: ill treatment during official procedure, forced interrogation, and unlawful detention. The Hungarian Helsinki Committee reported that 80 percent of complaints do not result in indictments.²⁵

In Poland, civilian prosecutors and courts deal with all allegations of police misconduct. Oversight is exercised through disciplinary proceedings by the local Inspectorate and the Inspectorate from the Ministry of Internal Affairs and Administration.²⁶

Civil Remedies. Police officers might be less inclined to engage in abusive behavior if victims could readily sue for civil damages. However, victims of police misconduct may

not sue police officers or the police force. The Romanian Civil Code dictates the rules of civil liability. Article 998 provides for the right to sue individuals for their actions. However, victims may not sue individual officers under this provision because the Criminal Procedure Code mandates that the criminal courts handle all cases of police misconduct. Only after a police officer is convicted can the court decide to award a plaintiff civil damages. Because most cases end without an indictment, much less a conviction, most victims of misconduct have no chance of receiving civil damages.

Article 1000, paragraph 3, of the Civil Code provides for the right to sue employers for the actions of employees. In theory, people could use this provision to sue the Ministry of Interior for damages after police officers are not indicted or acquitted because of a lack of evidence. (More proof—beyond a reasonable doubt—is needed in criminal trials than in civil trials—a preponderance of evidence.) However, the Criminal Procedure Code does not explicitly allow prosecutors and judges to terminate an investigation or issue an acquittal because of a lack of evidence. Because they are supposed to determine the truth, they may only base such decisions on substantial grounds (i.e., the alleged facts do not exist; they exist but they do not constitute a crime; the crime was perpetrated by someone other than the accused). Once again, alleged victims are left without a remedy.

Nevertheless, applying both national and international law, which guarantee effective civil remedies, victims could sue for civil damages before the criminal case is settled. However, according to the civilian procedure rules of taxation, people would have to pay 8 to 10 percent of the requested amount—a prohibitive fee for most victims, who are usually poor.

In Hungary, the law allows for civil action against police officers. However, the plaintiff needs to prove that the officer's actions were unlawful—a difficult standard to meet because the Hungarian police has a great deal of discretion, and pertinent information, such as the superior officer's orders, is not easily accessible.²⁷

In Poland, civilians may sue the state for the unlawful actions of police officers. Police officers themselves may be liable for damages caused while exceeding their official powers. However, many police officers defend themselves from civil suits by initiating criminal proceedings against the alleged victims.²⁸

Legislative and Executive Oversight

The police are accountable to the Minister of the Interior, who is politically responsible for his own acts and for the acts of government. However, the Minister and other members of government may not be held criminally accountable for their actions. The Constitution states that criminal liability of government officials shall be regulated by the "Law on Ministerial Liability."²⁹ Because members of government have not adopted the Law on Ministerial Liability, they enjoy criminal impunity for actions taken in their official capacity.

The Minister of the Interior is accountable to the Parliament. Two Parliamentary committees, one in each chamber, oversee the agencies that deal with public order and defense. The oversight, exercised on a reporting basis, is inefficient and superficial. Committees seldom, if ever, exercise their responsibility to inquire about specific cases of police misconduct or the allocation of funds. Parliament only discusses the budget of the Ministry of the Interior while approving the budget of the entire government and does not make specific mention of funding for the police. The government recently established the Office of the Ombudsperson, which may become involved in cases of police misconduct.

In Hungary, Parliamentary commissioners, or ombudsmen, make recommendations and use the media to advocate policing reform. However, they may not enforce their recommendations and face serious obstacles in attaining information from the police. Hungarian officials are considering whether to establish a police ombudsman.³⁰ Attempts at governmental oversight have not been very successful in Hungary. The tone was set by the Minister of the Interior, who stated in Parliamentary debate that freedom is guaranteed only to those who obey the law. External control is generally perceived as helpful to criminals and as an intrusion into the affairs of the police.³¹

In Poland, three Parliamentary commissioners—from the Commission of Administration and Internal Affairs, the Commission of Administration and Human Rights, and the Commission of Human Rights and the Rule of Law—deal with police activity. However, it is difficult to determine their efficacy in curbing misconduct.

Because of the centralized structure of the police, local governments in Romania do not have the authority to control police activities. The law provides only for cooperation between the police and local administrative authorities. Periodically, or at the request of the government, the police report on the status of crime and their crime-fighting strategies.

Neither the Hungarian nor Polish local administrative bodies have oversight authority. In Hungary, police are not required to enforce the regulations passed by local government because they are not regarded as legal norms.³² Local authorities, however, give their opinion on the appointment of police chiefs.³³ In Poland, local councils and the police work closely together. The police submit annual reports on public order and safety standards. A recently passed regulation provides for civilian guards, who are supervised by the police.³⁴

Conclusions and Recommendations

Romania has yet to establish effective mechanisms of police accountability. At the root of police impunity is the military courts' jurisdiction over police misconduct cases. The system of military justice precludes the independence of the courts, threatens the

impartiality of prosecutors and judges, shields prosecutors and judges from scrutiny, provides for shoddy and corrupt investigations, and undermines the principle of equality before the law.

Making the police accountable to the civilian system of justice would go a long way toward curbing misconduct. Yet it is hardly enough. Not only should the government remove the police from the jurisdiction of military court, it should demilitarize the police force by decentralizing it and taking away police officers' military status. It should change the laws of criminal procedure that engender misconduct during investigations. It should assume control of the police budget to give teeth to Parliamentary oversight. Finally, it should establish civilian bodies that have, at least, the power to make recommendations. Such entities would help to create a critical link between the police and the communities they serve.

There is one important reason why these measures have not been enacted: opposition in high places. Politicians and police leaders resist them either because they fear change or because they do not want to surrender the power that the existing system affords them. Whatever the reason, opposition to police reform stands in the way of the transition to democracy.

¹ International Covenant on Civil and Political Rights; European Convention on Human Rights; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Universal Declaration of Human Rights; and all the Documents adopted by the OSCE in the human rights area.

² Articles 250, 266, 267, 267/1, and 268 of the Penal Code punish the crimes of "abusive behavior," "abusive investigation and unlawful detention," "bad treatments," "torture," and "unjust repression." Death cases are punishable under Articles 174-176 and 178-179 of the Penal Code, which criminalize different types of murder.

³ *Amnesty International, Concerns in Europe* (chapter on Romania), January-June 1997, OSCE Human Dimension, Special Edition, September 1997.

⁴ Police may issue an arrest warrant for 24 hours if a criminal charge is brought. Before this, the suspect and witnesses are questioned in the police station.

⁵ The Polish police activity is regulated by Law of April 6, 1990, published in *Law Journal* no. 30.

⁶ István Szikinger, *Police in Transition—Hungary*, Project of the Hungarian Helsinki Committee, 1997, 3.

⁷ Article 209, paragraph 1 of the Criminal Procedure Code.

⁸ Act XXXIV/1994 on Police, Section 12(1).

⁹ Section 12(2), 12(3).

¹⁰ Section 12(4).

¹¹ Chapter 7, Articles 58-59 of the 1990 Law on the Polish Police.

¹² Ordinance no. 0282/1993, amended in 1994 by Ordinance no. 0697, both issued by the Prime Minister; Instruction no. 441/1995 issued by the Minister of Interior. As mentioned in the text, this data is not publicly available. Ordinances have been identified through personal contacts.

¹³ Szikinger, 13.

¹⁴ Szikinger, 3, 37.

¹⁵ Teodor Bulenda, Andrzej Kremplewski, Andrzej Rzeplinski, "Between Militia and Reform. The Police in Poland 1989-1997," *Police in Transition*, Project of the Helsinki Foundation in Poland, 3-4.

¹⁶ Bulenda et al., 3-4.

¹⁷ Article 24 of the Law no. 154/1993 on the Organization of Military Courts and Prosecutors Offices.

¹⁸ Article 31.

¹⁹ Article 30, paragraph 2.

²⁰ Once in force, a law can be found unconstitutional by the Constitutional Court only, in specific cases, at the request of one of the parties. If unconstitutionality of a statute or of certain provisions is claimed, the ordinary courts suspend the judicial proceedings and send the case to the Constitutional Court to rule on constitutionality. Proceedings are resumed consequent to the judgment of the Constitutional Court, which is mandatory in the case (Articles 144 and 145 of the Romanian Constitution).

²¹ Articles 201 and 208 of the Criminal Procedure Code.

²² By Law no. 141/1996 on amending the Criminal Procedure Code.

²³ For the entire paragraph on jurisdiction of police misconduct, see Szikinger, 24-26.

²⁴ Bulenda et al., 16-17.

²⁵ Bulenda et al., 24-25

²⁶ Bulenda et al., 18.

²⁷ Bulenda et al., 18.

²⁸ Phare Report 1997:128, cited by Szikinger, 23.

²⁹ Szikinger, 20.

³⁰ Law no. 26/1994 on Police, Article 46.

³¹ Law no. 26/1994 on Police, Article 47.

³² Szikinger, 22.

³³ Szikinger.

³⁴ Bulenda et al., 15-16.