



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF AUREL RĂDULESCU v. ROMANIA

(Application no. 32800/12)

JUDGMENT

*This version was rectified on 12 May 2014
under Rule 81 of the Rules of Court.*

STRASBOURG

1 April 2014

FINAL

01/07/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Aurel Rădulescu v. Romania,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President*,

Alvina Gyulumyan,

Dragoljub Popović,

Luis López Guerra,

Johannes Silvis,

Valeriu Grițco,

Iulia Antoanella Motoc, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 11 March 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 32800/12) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian national, Mr Aurel Rădulescu (“the applicant”), on 25 April 2012.

2. The applicant was represented by Ms N. Popescu, a lawyer practising in Bucharest. The Romanian Government (“the Government”) were represented by their Agent, Mrs C. Brumar, from the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the material conditions of his detention and the lack of segregation of smokers from non-smokers in the cells he occupied had breached his rights guaranteed by Article 3 of the Convention.

4. On 17 January 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1954. At present he is serving his prison sentence in Jilava Prison.

6. On 11 October 2011 the High Court of Cassation and Justice sentenced the applicant to ten years’ imprisonment.

7. Since 23 September 2009 the applicant has been held in a number of different detention centres. Initially he was detained in Bucharest police station and then transferred to Rahova and Jilava Prisons. In respect of the establishments in which he was detained, the applicant alleged that he had been kept in overcrowded cells in poor conditions of hygiene. He also alleged that, despite the fact that he was a non-smoker, he had been detained with inmates who smoked inside the cell in all three prisons. He claimed that his health had worsened because of the conditions in which he had been kept and that he had been diagnosed with tuberculosis.

8. The Government supplied the following details concerning the conditions of the applicant's detention in each establishment:

A. Bucharest police station no. 15

9. The applicant was detained in Bucharest police station no. 15 between 23 and 30 September 2009 and again from 9 October to 24 November 2009, in cell no. 3.

10. Cell no. 3 had a surface area of 16.25 square metres and was occupied by six detainees.

B. Rahova Prison

11. The applicant was detained in Rahova Prison for the following periods: from 24 November 2009 to 7 June 2011; from 16 June 2011 to 20 January 2012; from 26 January to 2 April 2012 and from 4 April to 8 June 2012.

12. The Government submitted that each cell occupied by the applicant during the above-mentioned periods had a surface area of 19.58 square metres and was occupied by between nine and eleven detainees.

C. Jilava Prison

13. The applicant has been detained in Jilava Prison from 8 June 2012 to date.

The cells in which the applicant has been detained are as follows:

- cell E1.16 and E1.20 with a surface area of 12.69 square metres and occupied by up to six detainees;
- cell E3.5 with a surface area of 34.78 square metres and occupied by up to twenty-seven detainees;
- cell E3.8 with a surface area of 51.08 square metres and occupied by up to thirty-five detainees;
- cell E3. 13 with a surface area of 33.08 square metres and occupied by between nineteen and twenty-four detainees;

- cell E6.26 with a surface area of 44.97 square metres and occupied by up to twenty-six detainees;
- cell E4. 35 with a surface area of 44.97 square metres and occupied by up to twenty-three detainees;
- and cell E6.16 with a surface area of 14.71 square metres and occupied by up to twelve detainees.

II. RELEVANT DOMESTIC LAW

14. Excerpts from the relevant legal provisions concerning the rights of detainees, namely Law no. 275/2006, and from the relevant parts of the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“the CPT”) on prison conditions are given in the case of *Iacov Stanciu v. Romania*, (no. 35972/05, 24 July 2012).

15. The relevant parts of the report of the Romanian Helsinki Committee of 12 June 2008 in respect of the conditions of detention in Jilava Prison read as follows:

“... the basement of the old part of the prison building was completely flooded with waste water ... Consequently, rats and cockroaches (and bed bugs according to some detainees) have infested the cells in that part of the building. Moreover, most cells were also infested with lice, mainly due to worn out bed mattresses. No delousing operation could be effective as long as the mattresses were not replaced ... The prison management claimed it had engaged several pest control companies, which all gave up after taking note of the situation in the prison. Another notorious problem was the extremely poor water quality (muddy and filled with impurities) - unfit for drinking and risky even for washing ... In terms of detention space, the total area of detention space was 3034.81 sq. m, while the population was 1460, meaning 2.08 sq. m of available detention space per detainee, half of the minimum norm recommended by the CPT ... The kitchen area was totally unhygienic and the food quality was poor ...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

16. The applicant complained of overcrowding in Rahova and Jilava Prisons and claimed that the authorities had failed to segregate smokers from non-smokers in all the cells he occupied. He relied on Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. Admissibility

1. *The objection of non-exhaustion of domestic remedies*

17. The Government raised a preliminary objection of non-exhaustion of domestic remedies, in so far as the applicant had not complained to the domestic authorities under Law no. 275/2006 about the conditions of his detention or the fact that he had to share cells with smokers. They argued that the remedy under Law no. 275/2006 was effective. They also contended that the applicant had not tried to obtain compensation under Articles 998-999 of the previous Civil Code or under Article 1349 of the new Civil Code.

18. The applicant disagreed.

19. The Court notes that the applicant's complaint concerns the material conditions of his detention, namely overcrowding, poor hygiene conditions and the authorities' failure to segregate smokers from non-smokers. In this regard, it notes that in other applications lodged against Romania concerning similar complaints the Court has already found that, given the specific nature of this type of complaint, the legal actions suggested by the Government do not constitute an effective remedy (see *Lăutaru v. Romania*, no. 13099/04, § 85, 18 October 2011).

20. The Court therefore concludes that the domestic case-law cited by the Government does not indicate how the legal actions proposed by them could have afforded the applicant immediate and effective redress for the purposes of his complaint (see, *mutatis mutandis*, *Marian Stoicescu v. Romania*, no. 12934/02, § 19, 16 July 2009).

21. It therefore rejects the Government's plea of non-exhaustion of domestic remedies in respect of the applicant's complaint concerning the material conditions of detention and the authorities' failure to segregate smokers from non-smokers.

2. *The objection of non-compliance with the six-month rule*

22. The Government submitted that the complaint concerning the non-segregation of smokers from non-smokers in Bucharest police station should be rejected as out of time.

23. The applicant contended that his application had not been lodged out of time, since it concerned an ongoing situation.

24. In the present case the Court notes that the applicant complained about the non-segregation of smokers from non-smokers in all three detention centres. His pre-trial detention had started in the arrest facility of Bucharest police station no. 15 from which he had been transferred to Rahova Prison and then to Jilava Prison. It appears that throughout the whole period of his detention he was not released at any time and the detention conditions remained substantially identical; the applicant's

transfer from one facility to another did not in any way change his situation. His complaint does not relate to any specific event but concerns the failure of the prison authorities to segregate smokers from non-smokers during the entire period of his detention. It follows that the applicant's detention in the Bucharest police station no. 15 and Rahova Prison can be regarded as an ongoing situation. Accordingly, the Court dismisses the Government's objection.

25. Noting further that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and that it is not inadmissible on any other grounds, the Court concludes that it must be declared admissible.

B. Merits

1. The parties' submissions

26. The applicant submitted that the conditions of his detention in Rahova and Jilava Prisons were inadequate. He alleged that he was put in overcrowded cells and the prison authorities had failed to segregate smokers from non-smokers.

27. The Government, referring to their description of the detention conditions submitted before the Court, contended that the domestic authorities had taken all necessary measures to ensure adequate conditions of detention, and that the applicant's complaint was groundless.

2. The Court's assessment

(a) General Principles

28. The Court refers to the principles established in its case-law regarding conditions of detention (see, for instance, *Kudła v. Poland* [GC], no. 30210/96, §§ 90-94, ECHR 2000-XI; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; and *Artimenco v. Romania*, no. 12535/04, §§ 31-33, 30 June 2009). It reiterates, in particular, that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3; the assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see *Kudła*, cited above, § 91).

29. The Court has considered extreme lack of space as a central factor in its analysis of whether an applicant's detention conditions complied with Article 3 (see *Karalevičius v. Lithuania*, no. 53254/99, § 39, 7 April 2005). In a series of cases the Court considered that a clear case of overcrowding was a sufficient element for concluding that Article 3 of the Convention had

been violated (see *Colesnicov v. Romania*, no. 36479/03, §§ 78-82, 21 December 2010, and *Budaca v. Romania*, no. 57260/10, §§ 40-45, 17 July 2012).

(b) Application of those principles to the case at hand

30. The Court observes, based on all the material at its disposal, that the personal space allocated to the applicant in Rahova and Jilava Prisons was less than 4 sq. m (see paragraphs 12 and 13 above). The Government have not adduced any evidence capable of refuting the applicant's allegations of overcrowding in the cells where he was detained, which are corroborated by the above-mentioned information from many sources, including the Government.

31. The Court has already found violations of Article 3 of the Convention on account of the material conditions of detention in Rahova Prison (see, among others, *Vartic v. Romania*, no. 12152/05, § 53, 10 July 2012, and *Iacov Stanciu*, cited above, § 179) and in Jilava Prison (see *Jiga v. Romania*, no. 14352/04, §§ 65-66, 16 March 2010, and *Grozavu v. Romania*, no. 24419/04, § 44, 2 November 2010).

32. Moreover, the applicant's submissions about the overcrowded and unhygienic conditions correspond to the general findings by the CPT in respect of Romanian prisons and to the findings of the report of the Romanian Helsinki Committee in respect of Jilava.

33. The Court concludes that the conditions of his detention caused him suffering that exceeded the unavoidable level of suffering inherent in detention and attained the threshold of degrading treatment proscribed by Article 3.

34. There has accordingly been a violation of Article 3 of the Convention in respect of the material conditions of the applicant's detention in Rahova and Jilava Prisons.

35. Taking this finding into account, the Court does not consider it necessary to examine the remaining issues of the applicant's complaint concerning the segregation of smokers from non-smokers (see *Toma Barbu v. Romania*, no. 19730/10, § 71, 30 July 2013).

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

36. Lastly, the applicant raised a complaint under Article 3 of the Convention concerning a traffic accident which had occurred while he was being transported in a police vehicle. He also raised several complaints under Article 5 of the Convention. Relying on Article 6 § 3 of the Convention the applicant complained about his alleged assistance by the same lawyer who had assisted the victim of the fraud.

37. The Court has examined these complaints as submitted by the applicant. However, having regard to all the material in its possession, and

in so far as they fall within its jurisdiction, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

39. The applicant claimed 120,000 euros (EUR) in respect of non-pecuniary damage.

40. The Government considered that the amount requested was excessive.

41. The Court considers that the applicant suffered distress as a result of the conditions of his detention. It therefore awards him EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

42. The applicant also claimed EUR 2,965 for the costs and expenses incurred before the Court. He claimed EUR 2,665 for his lawyer’s fees and EUR 300 for telephone, postal and photocopying costs.

43. The Government considered that the amounts requested were excessive and maintained that the present case merely concerned the conditions of detention.

44. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court notes at the outset that no invoice has been submitted to substantiate the costs. It therefore rejects those claims. As regards the lawyer’s fees, in view of the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 800¹, to be paid separately into the bank account indicated by the applicant’s representative, Ms N. Popescu.

¹ Rectified on 12 May 2014: “to be paid separately into the bank account indicated by the applicant’s representative, Ms N. Popescu” has been inserted.

C. Default interest

45. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the conditions of the applicant's detention in Bucharest police station, Rahova and Jilava Prisons admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds* that there is no need to examine the complaint under Article 3 of the Convention concerning the non-segregation of smokers from non-smokers;
4. *Holds*
 - (a) that the respondent State is to pay¹, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 6,000 (six thousand euros) to the applicant², plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 800 (eight hundred euros) to Ms N. Popescu³, plus any tax that may be chargeable, in respect of the lawyer's fees;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

¹ Rectified on 12 May 2014: "to the applicant" has been deleted.

² Rectified on 12 May 2014: "to the applicant" has been inserted.

³ Rectified on 12 May 2014: "to Ms N. Popescu" has been inserted.

Done in English, and notified in writing on 1 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President