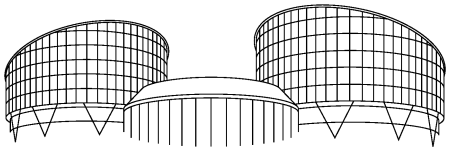

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF BAHNĂ v. ROMANIA

(Application no. 75985/12)

JUDGMENT

STRASBOURG

13 November 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Bahnă v. Romania,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Dragoljub Popović,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 21 October 2014,

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

PROCEDURE

1. The case originated in an application (no. 75985/12) 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 Vasile Bahnă ("the applicant"), on 23 November 2012.

2. The applicant, who had been granted legal aid, was represented by Mr D. Afloroaei, a lawyer practising in Iaşi. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, from the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the physical conditions of detention in Romanian prisons, the illnesses he had developed during his detention, and the lack of adequate medical care for his illnesses had amounted to inhuman and degrading treatment in breach of the rights guaranteed by Article 3 of the Convention.

4. On 4 April 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1976. He is currently detained in Iaşi Prison.

6. On an unspecified date the applicant was convicted of rape and sentenced to fifteen years' imprisonment.

7. According to the medical documents submitted by the parties, the applicant started serving his prison sentence on 9 August 2004.

A. The physical conditions of detention

1. The applicant

8. In his initial letters to the Court the applicant contended that conditions had been overcrowded and squalid in the Romanian prisons. In addition, he submitted that the cells had lacked sufficient air, had been infested by insects and rodents, and constituted a major health hazard. Also the food was insufficient and inadequate and the detainees did not have a place on which meals could be served.

2. The Government

9. Between 28 September 2004 and 10 October 2012 the applicant had been detained on six occasions in Târgu-Ocna Prison Hospital for periods of time varying from one week to more than three months in cells measuring 50.6 sq. m. The number of detainees he had to share the cells with changed every day. For the last seven days of his detention he had been detained in cells with nine beds. The rest of the time he was detained in cells with sixteen beds. The number of detainees had not been higher than the number of beds.

10. From 5 January 2005 to date the applicant was detained on fourteen occasions in Iaşi Prison in various sections of the prison. During his detention he was afforded between 1.33 and 3.98 sq. m of living space.

11. Between 6 July 2006 and 10 January 2007 the applicant was detained three times in Rahova Prison Hospital, for six days on each occasion. During his detention he was afforded between 6.2 and 7.46 sq. m of living space.

12. Between 24 August 2006 and 13 March 2008 the applicant was detained four times in Jilava Prison for periods varying from twelve days to more than three months. During most of his detention he was afforded between 1.54 and 3.65 sq. m of living space. During the last month he spent in the aforementioned detention facility, he was occasionally afforded 5.80 sq. m of living space.

13. From 15 September to 16 November 2006 the applicant was detained in Arad Prison. During his detention he was afforded between 3.46 and 5.77 sq. m of living space.

14. Between 30 September 2011 and 20 November 2012 the applicant was detained on three occasions in Tulcea Prison for periods between two

weeks and two months. During his detention he was afforded between 1.69 and 4.96 sq. m of living space.

15. Between 10 October 2011 and 12 July 2012 the applicant was detained on two occasions in Timişoara Prison. During his detention he was afforded between 2.33 and 2.60 sq. m of living space.

16. From 18 November 2011 to 27 April 2012 the applicant was detained in Botoşani Prison. During his detention he was afforded between 2.31 and 3.52 sq. m of living space.

17. Between 11 September and 5 November 2012 the applicant was detained on two occasions in Vaslui Prison. During his detention he was afforded between 1.98 and 2.45 sq. m of living space.

18. From 14 to 21 November 2012 the applicant was detained in Focşani Prison where he was afforded 4.72 sq. m of living space. The number of available beds in the cell was forty-six and the number of detainees was fifty-two.

19. All the detention cells had sanitary facilities, were fitted with one or more windows and were connected to electricity and running water. They could be ventilated by opening the windows and were equipped with storage areas. In addition they were furnished with beds, tables and chairs, amongst other items.

20. The detention cells were disinfected daily with chlorine. The detainees were provided with cleaning materials and they were responsible for cleaning the cells. At least every trimester the prison authorities or specialised contractors carried out work to eradicate rodents and insects. In some prisons, like Focşani Prison, the prison authorities undertook measures to eradicate bed bugs. The bed bugs had been spotted occasionally by detainees, but had not developed into a general problem. In Iaşi and Jilava prisons the walls were also painted at regular intervals or whenever necessary. The latter prison authorities also provided the detainees with waste baskets and collected garbage daily.

21. The food was prepared hygienically and was fresh. Its quality was inspected daily by a representative of the prison personnel, a member of the medical staff and a representative of the detainees. It also had the legally required quality and number of calories.

B. The applicant's illnesses developed in prison and the medical treatment

22. On 10 August 2004 the applicant underwent a medical examination to determine his medical condition at the time of incarceration. According to the medical paper issued on the same day, he was suffering from a psychological disorder. No other medical condition was identified in the medical paper.

23. From 28 September 2004 to 5 January 2005 the applicant was a patient in Târgu-Ocna Prison Hospital. He was diagnosed with tuberculosis, reactivated chronic sinusitis and antisocial personality disorder. He was provided with treatment for these conditions and given a special food diet. He was discharged from the hospital to Iaşi Prison upon request, after his condition had improved. He was recommended anti-tuberculosis treatment under strict supervision.

24. From 6 to 22 June 2005, from 19 January to 1 February 2006, 21 March to 6 April 2007 and 16 to 26 September 2008 the applicant was hospitalised repeatedly in Târgu-Ocna Prison Hospital for medical evaluation of his condition following his tuberculosis. He was examined, provided with treatment and a special diet.

25. On 15 November 2006 and 10 January 2007 the applicant was diagnosed and treated for otitis, amongst other things, in Rahova Prison Hospital, having initially refused treatment. His condition improved and he was discharged with the recommendation to avoid getting water in his ears and to steer clear of infections. Subsequently, his condition was monitored and treated repeatedly.

26. On 13 October 2011 the applicant was examined by the Timişoara Prison doctor and was diagnosed with a deviated septum.

27. On 16 March 2012 the applicant was examined by a specialist doctor at the Botoşani Emergency County Hospital. He was diagnosed *inter alia* with sinusitis and was provided with treatment.

28. From 2 to 9 October 2012 the applicant was again hospitalised in Târgu-Ocna Prison Hospital. He was diagnosed and treated for toxic hepatitis, chronic obstructive bronchopneumonia, microcytic anaemia and breathing difficulties. The fact that he was a smoker was considered a risk factor. According to his discharge papers, he was discharged at his own request and ignoring medical advice to remain hospitalised. His condition had evolved favourably. He had been advised to avoid smoking or inhaling toxic agents, and to obtain treatment with antibiotics or other stronger medication if needed during periods of respiratory infection.

29. After he had been discharged from the prison and civilian hospitals, the applicant's medical condition continued to be monitored and treated regularly in prison and civilian hospitals every time he agreed to be examined, tested and to take his medication.

C. Proceedings opened by the applicant

30. On 12 March 2007 the applicant asked the Iaşi Prison authorities to release a copy of his medical file in order for his family to be able to send it to the Romanian Ministry of Health. In his request he had mentioned that the prison doctor had refused to examine him and provide him with medical treatment.

31. On 5 June 2011 and 5 March 2012 the applicant allegedly lodged two separate sets of complaints with the Iaşi and Botoşani District Courts, respectively, concerning the inhuman and degrading conditions in Romanian Prisons. However, his complaints allegedly remained unanswered.

32. On 20 May 2013 the Rahova Prison Hospital informed the Government that the illnesses that the applicant had complained about before the Court, namely anaemia, breathing difficulties, sinusitis, otitis, deviated septum, bronchopneumonia and toxic hepatitis – some of them chronic – had not been generated purely by the ambience the applicant lived in. Consequently, the fact that he had developed the said illnesses during his detention had been only a coincidence.

33. On the same date the prison authorities informed the Government that, except for his request of 12 March 2007, the applicant had not lodged any other complaints before the relevant domestic non-judicial or judicial authorities in respect of the alleged lack of adequate medical care.

II. RELEVANT DOMESTIC LAW

34. Excerpts from the relevant domestic legislation and international reports – namely Emergency Ordinance no. 56/2003, and subsequently Law no. 275/2006 on the serving of prison sentences; the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT"); and Recommendation Rec(2006)2 of the Committee of Ministers of the Council of Europe to member States on prison conditions are set out in the cases of *Bragadireanu v. Romania* (no. 22088/04, §§ 73-75, 6 December 2007), *Artimenco v. Romania* (no. 12535/04, §§ 22-23, 30 June 2009), and *Iacov Stanciu v. Romania* (no. 35972/05, §§ 116-29, 24 July 2012).

35. In its report (CPT/Inf (2011) 31) published on 24 November 2011 following a visit from 5 to 16 September 2010 to a number of detention facilities in Romania, the CPT expressed concerns over the limited living space available to the prisoners and the inadequate amount of space specified by the regulations in place at that time.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

36. The applicant complained about the physical conditions of his detention in all the prison facilities in which he had been detained since 2004, the fact that during his detention he had become ill with toxic

hepatitis, obstructive bronchopneumonia, anaemia, breathing difficulties, sinusitis, otitis and a deviated septum, and the lack of adequate medical treatment for his illnesses. 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. The physical conditions of the applicant's detention

1. Admissibility

(a) The parties' submissions

37. The Government contended that the applicant had failed to substantiate all the submissions he had made before the Court concerning the physical conditions of his detention. In addition, the applicant had not been subjected to treatment that had exceeded the unavoidable level of suffering inherently caused by a person's detention. Consequently, his complaint may be dismissed as manifestly ill-founded.

38. The applicant did not submit observations on this point. However, in the observations submitted in his reply to the Government's observations he contended that during his detention he had often been insulted and beaten by the prison guards. Moreover, he suspected that the prison authorities had stopped his correspondence, in particular his complaints lodged before the domestic courts in respect of his conditions of detention, which he had sent by registered post.

(b) The Court's assessment

39. The Court notes from the outset that after the applicant's case had been communicated to the Government he had also complained about violence he had allegedly suffered at the hands of the prison guards and alleged interference with his right to correspondence. However, these complaints do not fall within the scope of the present application as delimited by the communication of 4 April 2013 and must therefore be dismissed as manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

40. The Court notes, however, in respect of the part of the applicant's complaints raised by him prior to the communication of his application that – according to the available evidence – he faced overcrowded conditions for the better part of his detention. This being so, the Court cannot accept the Government's submission that the applicant's complaint concerning the physical conditions of his detention as raised by him prior to communication of the application is manifestly ill-founded within the

meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) The parties' submissions

41. The applicant submitted that the physical conditions of his detention since 2004 had been inappropriate. In addition, the complaints he lodged before the Iaşi and Botoşani District Courts concerning inhuman and degrading conditions of detention remained unanswered.

42. The Government, referring to their description of the detention conditions submitted to the Court (see paragraphs 9-21 above), reiterated that the applicant had not been subjected to treatment that had exceeded the unavoidable level of suffering inherently caused by a person's detention.

(b) The Court's assessment

43. The Court reiterates that under Article 3 of the Convention, the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of execution of the measure of detention in question do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Valašinas v. Lithuania*, no. 44558/98, § 102, ECHR 2001-VIII, and *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

44. When assessing conditions of detention, account must be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II).

45. A serious lack of space in a prison cell weighs heavily as a factor to be taken into account for the purpose of establishing whether the detention conditions described are "degrading" from the point of view of Article 3 (see *Karalevičius v. Lithuania*, no. 53254/99, § 39, 7 April 2005).

46. The Court notes at the outset that, according to the available evidence, the applicant has been repeatedly transferred between prison facilities and prison hospitals during his detention.

47. The Court notes that the Government provided information on the living space afforded to the applicant in almost all the detention facilities in which he had been detained since 9 August 2004. Even at the occupancy rates reported by the Government, the applicant's living space during the periods he spent there seems to have regularly been below 4 sq. m and was sometimes as little as 1.33 sq. m (see paragraphs 10 above), which falls short of the standards imposed by the Court's case-law (see *Orchowski v. Poland*, no. 17885/04, § 122, ECHR 2009). The Court further points out

that these figures were even lower in reality, taking into account the fact that the cells contained the detainees' beds and other items of furniture (see paragraph 19 above).

48. Moreover, while it appears that on some occasions the space available to the applicant was in excess of 4 sq. m (see paragraphs 9-18 above), the Court is not convinced that these short periods of time during which the applicant was exposed to non-overcrowded conditions amount to a change in his situation. In this connection, the Court notes that on some occasions, even if the applicant had access to more than 4 sq. m of living space, the detention cells were not fitted with sufficient beds for all the detainees (see paragraph 18 above).

49. The Court has frequently found a violation of Article 3 of the Convention on account of a lack of personal space afforded to detainees (see *Toma Barbu v. Romania*, no. 19730/10, § 66, 30 July 2013).

50. In the case at hand, the Government has failed to put forward any argument that would allow the Court to reach a different conclusion.

51. Moreover, the applicant's submissions concerning the overcrowded detention conditions correspond to the general findings by the CPT in respect of Romanian prisons.

52. Consequently, the Court concludes that the physical conditions of the applicant's detention caused him suffering that exceeded the unavoidable level of suffering inherent in detention and that attained the threshold of degrading treatment prescribed by Article 3 in respect of all the detention facilities he had been detained in since August 2004. There has accordingly been a violation of Article 3 of the Convention in respect of the physical conditions of the applicant's detention on account of overcrowding.

53. Having regard to the above finding, the Court does not consider necessary to examine the remaining aspects of the applicant's complaint concerning the physical conditions of his detention.

B. The applicant's illnesses and medical treatment during detention

Admissibility

(a) The parties' submissions

54. The Government raised a preliminary objection of non-exhaustion of domestic remedies, given that the applicant had not complained or pursued complaints before the domestic courts in respect of the aggravation of his medical condition and the lack of adequate medical treatment in prison on the basis of Emergency Ordinance no. 56/2003 and subsequently on the basis of Law no. 275/2006.

55. In addition, they contended that the applicant's complaints were in any event manifestly ill-founded. The applicant's medical condition had been regularly and carefully monitored and he had been provided with the

appropriate treatment for his illnesses. Moreover, the applicant was a smoker and on some occasions he had refused to be examined or treated for his conditions. He had also asked to be discharged from the hospital even though his discharge had not been medically recommended.

56. The Government submitted that the illnesses the applicant complained of before the Court had not been generated by the environments in which he had been kept and had not been linked to the conditions of his detention. The applicant appears to have suffered from numerous respiratory problems which could be explained by his weakened immune system. While they might have caused him some discomfort, they could not be considered to amount to serious illnesses which irreversibly affected his general health. Moreover, the applicant had continued to smoke during his detention, against the advice of doctors and without due consideration for his state of health.

57. The Government also contended that while the applicant had become ill with toxic hepatitis in October 2012, that form of hepatitis was non-viral and could therefore not be transmitted from one host to another. It was caused by the consumption of toxic substances, drugs, medicines or alcohol which affected the person's liver. Some people were more predisposed than others to develop the illness but there was no clear medical explanation why certain individuals developed the disease by consuming certain substances. The fact that a person might be more susceptible to develop the illness than others could also not be detected in advance. However, in the applicant's case once he had been diagnosed he had immediately been provided with the requisite treatment and his state of health had improved.

58. The Government argued that, unlike other illnesses, the ones complained of by the applicant could not be considered to be linked to the conditions of his detention. Moreover, the applicant's condition had been constantly monitored by professionals during his detention and he had been regularly provided with the necessary treatment.

59. After his application had been communicated to the Government, in his observations in reply to those of the Government the applicant had submitted that during his detention he had suffered from several illnesses, including tuberculosis, on account of his conditions of detention. In spite of repeatedly raising complaints before the prison authorities concerning his conditions of detention, they had not taken any measures in order to improve his situation. The prisons' medical personnel could never provide him with the necessary medication and they had even advised him to lodge an application before the Court.

60. The applicant also submitted that until he received the Government's observations and relevant annexes, he had not been informed by the prison authorities that he was suffering from tuberculosis. Although he had been provided with the treatment for the said disease he had never been informed what the treatment had been for.

(b) The Court's assessment

61. The Court finds that it is not necessary to examine whether or not the applicant has exhausted the available domestic remedies as, even assuming that he did, the complaints are in any event inadmissible for the following reasons.

62. The Court notes at the outset that after the applicant's case had been communicated to the Government he also complained that during his detention he had become ill with tuberculosis, which he had found out about only when the Government submitted their observations before the Court in respect of his application. However, he acknowledged that he had received treatment for this condition.

63. In this connection, the Court notes that during his detention the applicant had repeatedly been hospitalised, treated and monitored for tuberculosis (see paragraphs 23-24 above). Consequently, in spite of the applicant's submissions, the Court is not convinced that he was completely unaware that he had been suffering from the said disease. In addition, even assuming that the Court were to accept the applicant's submission, his complaint was lodged before the Court after the present application had been communicated to the Government. Consequently, the Court does not consider that his complaint about tuberculosis could be considered to fall within the scope of the present application and must therefore be dismissed as manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

64. In respect of the applicant's remaining illnesses, the Court notes that the applicant had not contested the Government's submission that his illnesses might have been caused and influenced by factors other than his conditions of detention. In addition, according to the available medical papers the fact that the applicant was a smoker amounted to a risk factor underlying at least some of his medical problems (see paragraph 28 above). Moreover, the chronic nature of some of the illnesses developed by him also raises doubt as to whether the applicant had developed these illnesses in prison as a result of the conditions of detention described by him (see paragraphs 23 and 28 above).

65. Furthermore, the Court notes that the applicant had not disagreed with the Government that toxic hepatitis was a non-viral condition that was caused by consuming various substances, including medicines taken by individuals, and that it could be neither detected nor prevented.

66. In these circumstances, the Court is not convinced that the applicant's medical condition was caused exclusively by his detention, or that the authorities can be held responsible for it (see, *mutatis mutandis*, *Viorel Burzo v. Romania*, nos. 75109/01 and 12639/02, § 81, 30 June 2009).

67. With regard to the medical treatment received by the applicant, the Court notes that the authorities made efforts to meet the applicant's health needs by regularly taking him to prison or civilian doctors or by hospitalising him whenever the applicant agreed to accept their assistance. Moreover, the Court observes that the applicant was provided with medical treatment regularly and that the treatment had positive effects on his condition (see paragraphs 23 and 28 above). Furthermore, in spite of the applicant's allegations, there is no evidence in the file that the required medical treatment was not available to him free of charge.

68. While it cannot be disputed that the applicant became ill during his detention, the Court notes that the authorities reacted promptly and transferred him to hospital or allowed him access to medical professionals. Moreover, the applicant's general medical condition appears to have been constantly monitored and had improved after the requisite treatments had been administered. In this connection, the Court also finds it relevant that on occasions the applicant had left the prison hospitals at his own request and against the doctor's advice (see paragraphs 23 and 28 above).

69. Having regard to the foregoing, the Court considers that this part of the applicant's case is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

71. The applicant claimed 16,000 euros (EUR) in respect of pecuniary damage and the same amount in respect of non-pecuniary damage. He argued that the amount claimed for pecuniary damage was intended to cover the cost of the medical treatment required for his medical condition.

72. The Government submitted that the applicant had not presented any evidence in support of his claim for compensation for pecuniary damage and that there was no causal link between the applicant's medical condition and his conditions of detention. Further, they argued that the sum claimed by the applicant in respect of non-pecuniary damage was excessive and that a potential finding of a violation would amount to sufficient just satisfaction.

73. The Court shares the Government's view that the applicant has not submitted any documents to support the amount claimed in respect of pecuniary damage. In addition, it notes that it has declared inadmissible the applicant's complaint in respect of the alleged lack of medical care. Consequently, it finds no reason to award the applicant any sum under that head.

74. The Court considers, however, that the applicant must have suffered distress as a result of the physical conditions of his detention which could not be made good by the mere finding of a violation. Consequently, making an assessment on an equitable basis, the Court awards the applicant EUR 12,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Default interest

75. 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 under Article 3 of the Convention concerning the physical conditions of the applicant's detention in all the prison facilities in which he had been detained since August 2004 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 November 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Josep Casadevall
Deputy Registrar	President