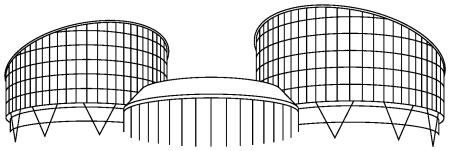

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF BUTIUC AND DUMITROF v. ROMANIA

(Application no. 19320/07)

JUDGMENT

STRASBOURG

15 July 2014

FINAL

17/11/2014

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

In the case of Butiuc and Dumitrof v. Romania,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Ján Šikuta,
Dragoljub Popović,
Luis López Guerra,
Johannes Silvis,
Iulia Antoanella Motoc, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 24 June 2014,

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

PROCEDURE

1. The case originated in an application (no. 19320/07) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Romanian nationals, Mr Mircea Dan Butiuc ("the first applicant") and Mr Andrei Dumitrof ("the second applicant"), on 16 April 2007.

2. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, of the Ministry of Foreign Affairs.

3. The applicants alleged, in particular, that the material conditions of their detention in Poarta Albă Prison had breached their 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

A. The first applicant

5. The first applicant was born in 1978 and lives in Constanţa.

6. On 30 June 2005 he was placed during his pre-trial detention in Poarta Albă Prison. On 9 November 2006 he was convicted of drug trafficking and sentenced to eight years' imprisonment by the High Court of

Cassation and Justice. He served his sentence in the same prison until 16 February 2010, when he was conditionally released.

7. The first applicant alleged that there had been severe overcrowding, having had to share cells measuring 35 sq. m. with fourteen other prisoners without proper ventilation. He further alleged that there had been a severe lack of hygiene, no provision of hygiene products, a lack of heating during the winter, a lack of bedclothes, an infestation of lice and bugs in the cells, as well as frequent water and power cuts and poor quality water.

8. In addition, he alleged that strip-searches were conducted regularly on groups of prisoners in the prison yard, even during the winter, with prisoners being bullied by guards. In this connection, the first applicant submitted statements made by three inmates who declared seeing such a search conducted on prisoners, including the first applicant, in December 2006.

9. The Government submitted that Poarta Albă Prison had been built in 1949 and that no changes were made to the size of the cells since. They further submitted that the prison authorities held no information with respect to the number of persons with whom the first applicant had shared his cell before 5 February 2010, the date a regulation requiring such statistics to be logged entered into force. Hence, between 5 and 16 February 2010 the first applicant had been placed in a cell measuring 68.09 sq. m, which he shared with fourteen other inmates.

10. With respect to hygiene conditions, the Government mentioned that all prisoners had unrestricted access to water and sanitary facilities, while access to showers was allowed twice per week. In addition, hygiene products and bedclothes were provided to all prisoners in accordance with the regulations and within the limits of the budget available. The Government also mentioned that internal prison regulations provided that prisoners could bring or buy their own hygiene products or bedclothes – the first applicant had been given permission to receive bedclothes from his family on two occasions. The Government also submitted that, according to the governor of Poarta Albă Prison, regular disinfections had been carried out between 2005 and 2010.

11. The Government further contended that Poarta Albă Prison had its own heating system with wood-burning stoves and a heating program which provided adequate warmth. In this connection, they submitted documents showing that between 2008 and 2010 certain quantities of wood were consumed each year, while certain quantities remained unused.

12. Lastly, according to documents submitted to the Government by the prison governor, potable water and food were tested regularly and were in compliance with hygiene standards.

B. The second applicant

13. On 6 June 2013 the applicants' representatives at the time informed the Court that the applicant Andrei Dumitrof no longer wished to pursue his application.

14. Two letters, in which Mr Dumitrof's attention was drawn to the fact that the Court may strike a case out of its list of cases where the circumstances lead to the conclusion that the applicant does not intend to pursue the application, were sent by the Court by registered mail directly to him on 30 July and 29 October 2013. The letters remained unanswered and were returned to the Court on 25 September and 5 November 2013 marked "Unknown recipient" and "Recipient moved from the address" respectively.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL STANDARDS

15. Excerpts from the relevant provisions concerning the rights of detainees, namely Emergency Government Ordinance no. 56/2003 and Law no. 275/2006, are quoted in *Iacov Stanciu v. Romania* (no. 35972/05, §§ 113-16, 24 July 2012) and *Petrea v. Romania* (no. 4792/03, § 22, 29 April 2008).

16. The relevant findings and recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") and the Council of Europe Commissioner for Human Rights with respect to Romanian prisons are described in *Iacov Stanciu* (cited above, §§ 125-129).

17. In a report published in 2003 following their visit to Poarta Albă Prison during the same year, the Romanian Helsinki Committee described the existence of a practice of unnecessary violence perpetrated by guards against prisoners, overcrowding, poor quality food and the fact that the food served did not entirely correspond to the menu, and a lack of heating during the winter. In a more recent report following a visit to the prison in 2009, the Romanian Helsinki Committee expressed concerns about a lack of living space in the cells and a severe lack of hygiene in the communal showers and the place where food for prisoners was prepared.

THE LAW

I. PRELIMINARY ISSUE

18. On 6 June 2013 the applicants' representatives at the time informed the Court that the second applicant, Mr Andrei Dumitrof, no longer wished

to pursue his application. Subsequently, he was sent two consecutive letters by the Court but did not reply (see paragraphs 13 and 14 above). In these circumstances, the Court considers that this applicant may be regarded as no longer wishing to pursue his application, within the meaning of Article 37 § 1 (a) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the complaint in respect of this applicant. Accordingly, the application should be struck out of the Court's list of cases in so far as it relates to the second applicant.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

19. The first applicant complained under Article 3 of the Convention of inhuman and degrading treatment on account of the material conditions of his detention in Poarta Albă Prison. In particular, he complained of severe overcrowding, a lack of running water and adequate heating, and poor quality drinking water and food. He also complained that the prison authorities had failed to provide him with bedclothes and hygiene products and that guards had subjected him to strip-searches in inhuman conditions.

Article 3 of the Convention reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

20. The Court notes that this complaint, as submitted by the first applicant, is not 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.

B. Merits

1. The submissions of the parties

21. The first applicant contested the Government's factual submissions and alleged that they did not correspond to the situation in the prison where he had been detained. Mentioning the findings of the Romanian Helsinki Committee (see paragraph 17 above) and the statements of the three co-detainees he had submitted to the case file (see paragraph 8 above), the first applicant asserted that the conditions of his detention amounted to inhuman treatment and even torture.

22. Referring to the information submitted regarding the general conditions of detention (see paragraphs 8-12 above), the Government

contended that the domestic authorities had taken all necessary measures in order to ensure that the first applicant's conditions of detention were adequate. The Government argued that the first applicant's conditions of detention had not amounted to a violation of Article 3 of the Convention.

2. The Court's assessment

(a) General principles

23. 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 do not subject the person 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).

24. When assessing conditions of detention, their cumulative effects as well as the applicant's specific allegations must be considered (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The Court has considered extreme lack of space as a central factor in its analysis of whether an applicant's detention conditions comply 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).

25. The Court further notes that, in addition to overcrowding, other aspects of physical conditions of detention are relevant for its assessment of compliance with Article 3 (see *Ostrovar v. Moldova*, no. 35207/03, § 89, 13 September 2005; *Babushkin v. Russia*, no. 67253/01, § 44, 18 October 2007; and *Iacov Stanciu*, cited above, § 169). The following conditions of detention raise an issue under Article 3 of the Convention: a lack of appropriate furniture in the cells; poor sanitary facilities, such as a limited number of toilets and sinks for a large number of detainees; poor sanitary conditions in general, including the presence of cockroaches, rats, lice and bedbugs; worn-out mattresses and bed linen; and poor quality food (see *Iacov Stanciu*, cited above, § 175).

(b) Application of these principles to the present case

26. The Court observes that the first applicant spent four years, seven months and nineteen days in Poarta Albă Prison.

27. The Court notes that, although the Government did not provide any information about the exact number of inmates in each cell the first

applicant had been detained in before 5 February 2010, his allegations of overcrowding are corroborated by the description of facts established by the Court in similar cases where it has found the conditions of detention in Poarta Albă Prison in breach of Article 3 of the Convention (see *Cucolaş v. Romania*, no. 17044/03, §§ 90 and 94, 26 October 2010, and *Hacioglu v. Romania*, no. 2573/03, §§ 53-56, 11 January 2011).

28. The Court also notes that in respect of the first applicant's claim concerning a lack of heating in the prison, the Government submitted that Poarta Albă Prison was fitted with wood-burning stoves and that certain quantities of heating products had been used between the years 2008 and 2010. However, they failed to provide any information in respect of cell temperature during wintertime (compare *Praznik v. Slovenia*, no. 6234/10, § 9, 28 June 2012; and *Jirsák v. The Czech Republic*, no. 8968/08, § 70, 5 April 2012, where the respective Governments were capable of providing information concerning the temperature in the cells in question). Consequently, based on the information available, the Court can only conclude that during his detention the applicant was not provided with adequate heating.

29. In addition, the first applicant's submissions about the material conditions of detention in Poarta Albă Prison, more specifically overcrowded conditions, a lack of heating and poor quality food, correspond to the general findings of the CPT in respect of Romanian prisons, as well as to the specific findings of the Romanian Helsinki Committee on their visits to Poarta Albă Prison in 2003 and 2009.

30. With respect to the first applicant's allegation of being subjected to abusive group strip-searches, the Court observes that they were supported by witness statements and corroborated by the findings of the Romanian Helsinki Committee. However, the Government did not make any submissions regarding this specific complaint. The Court reiterates that Convention proceedings, such as the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), because in certain instances the respondent Government alone have access to the information capable of corroborating or refuting these allegations. Failure on the part of a Government to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Kokoshkina v. Russia*, no. 2052/08, § 59, 28 May 2009). Applying the above principles in the present case, and having regard to the material submitted by the parties, the Court finds that the Government failed to submit information capable of refuting the first applicant's allegations regarding abusive strip-searches.

31. In view of the foregoing, the Court concludes that all the above mentioned cumulative conditions of the first applicant's detention caused

him harm that exceeded the unavoidable level of suffering inherent in detention and have thus reached the minimum level of severity necessary to constitute degrading treatment within the meaning of Article 3 of the Convention.

There has, accordingly, been a violation of Article 3 of the Convention in respect of the first applicant.

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

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

33. The first applicant also complained under Article 5 of the Convention of irregularities in his arrest and pre-trial detention and of various irregularities in the criminal investigation against him. He also complained under Article 6 § 1 of the unfairness of the criminal trial against him and of a breach of his presumption of innocence.

34. Having considered the first applicant's submissions in the light of all the material in its possession, and in so far as the matters complained of are within its competence, 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 in accordance with Article 35 §§ 1, 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The first applicant claimed 13,300 euros (EUR) in respect of pecuniary damage, representing the tuition fees he had paid in order to follow private university courses while in detention, as well as the amount spent by his family on food, clothes and personal hygiene products they had to provide him during his detention. He also requested reimbursement of the EUR 1,000 seized from him by prosecutors following his arrest. In respect of non-pecuniary damage, the applicant claimed EUR 10,000, plus EUR 150 for each day of detention.

37. The Government submitted that the damages requested were speculative, excessive and unsubstantiated. In their view, should the Court find a violation of the first applicant' s rights guaranteed by Article 3 in the present case, such a finding should constitute sufficient just satisfaction.

38. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it observes that in the present case it has found a violation of Article 3, and it finds that the first applicant has suffered non-pecuniary damage which cannot be compensated solely by the above finding of a violation. Therefore, deciding on an equitable basis, it awards the first applicant EUR 7,000 in respect of non-pecuniary damage.

B. Costs and expenses

39. The first applicant claimed EUR 7,000 for the costs and expenses incurred during his criminal trial before the domestic courts and before the Court. Copies of invoices were submitted in support of part of these claims, including invoices for the amount of EUR 35 representing postal expenses incurred before the Court.

40. The Government contested these claims as unfounded, since no causal link existed between the violation alleged and the costs incurred before the domestic courts. They did not object to the postal expenses claim as far as it was supported by evidence.

41. 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. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the first applicant the sum of EUR 35 for the proceedings before the Court.

C. Default interest

42. 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. *Decides* to strike out the application in so far as it concerns the complaints lodged by the applicant Andrei Dumitrof;

2. *Declares* the complaint under Article 3 of the Convention admissible and the remainder of the application inadmissible;

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

4. *Holds*
   (a) that the respondent State is to pay the applicant Mircea Dan Butiuc, 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 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 35 (thirty-five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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.

Done in English, and notified in writing on 15 July 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Josep Casadevall
Deputy Registrar	President