



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

THIRD SECTION

**CASE OF MIHĂILĂ v. ROMANIA**

*(Application no. 66630/10)*

JUDGMENT

STRASBOURG

11 February 2014

**FINAL**

**11/05/2014**

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



**In the case of Mihăilă v. Romania,**

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

Josep Casadevall, *President*,

Alvina Gyulumyan,

Ján Šikuta,

Nona Tsotsoria,

Kristina Pardalos,

Johannes Silvis,

Iulia Antoanella Motoc, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 21 January 2014,

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

## PROCEDURE

1. The case originated in an application (no. 66630/10) 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 Daniel Claudiu Mihăilă (“the applicant”), on 3 November 2010.

2. The applicant was represented by Ms M. Stan, a lawyer practising in Bucharest. The Romanian Government (“the Government”) were initially represented by their Co-Agent, Ms I. Cambrea, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that he had been held in Jilava Prison in conditions that were incompatible with the requirements of Article 3 of the Convention.

4. On 23 January 2012 the application was communicated to the Government.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1973 and lives in Iași.

6. On 14 December 2009 the District Court convicted the applicant of battery and threatening behaviour, for which he was sentenced to two and a half years’ imprisonment and ordered to pay a fine. The conviction was

upheld by the Bucharest County Court on 3 May 2010, following an unsuccessful appeal by the applicant.

7. On 26 January 2010 the applicant started serving his sentence. He was released from prison on 1 March 2011.

#### **A. Applicant's description of the prison conditions**

8. The applicant provided the following description of the conditions of his detention in Jilava Prison. There was a general problem of overcrowding and constant noise. Cells were dirty, the air was stale and there were cockroaches, rats, bedbugs and lice in the cells and beds. Hygiene conditions were poor throughout the prison, including in the kitchen and in the toilets, where there was no privacy. The building was poorly insulated, which made it very cold in the winter and very hot in the summer, when the temperature could often reach 50°C. Living in those conditions had caused him to lose consciousness several times.

9. The tap water was undrinkable, being filled with impurities and rust from the pipes. The food was of poor quality and cooked with the prison water. In addition, there were cockroaches on the canteen tables and the place was infested with mice.

10. The applicant maintained that drugs were dealt openly in the prison and that drug users would attack him, steal his clothes and abuse him in order to get money for drugs. He did not report the abuse, as his attackers had threatened to kill him if he did.

11. The applicant stated that after the first six months of his detention, he was deprived of sleep, food and water, had lost his teeth and weight, and had become depressed.

#### **B. Conditions of detention according to the official prison records**

12. According to the official prison records, the applicant was transferred sixteen times during his detention but served most of his sentence in Jilava Prison. The cells he was placed in measured between 36 and 38.34 sq. m and contained eighteen or nineteen beds, most of the time being slightly below full capacity. The applicant had between 2 and 3.4 sq. m of personal space in his cell at all times.

13. As the applicant was assigned to a semi-open regime (*regim semi-deschis*), cell doors were left open except when food was served, and he had daily access to the courtyard between 8 and 11 a.m. and again between 1 and 5 p.m. Cells could be aired by opening the windows. The applicant had unrestricted access to the toilet, which was completely separated from the cell living space by a wall. There was central heating throughout the prison. Detainees had access to showers twice a week; the shower rooms had even been renovated in 2009.

14. The quality of water was tested periodically and that of food daily. The results were satisfactory.

15. Hygiene and pest control were performed by specialist companies. Toilets were disinfected daily and cells whenever necessary.

16. Prisoners' clothes were washed weekly upon request.

## II. RELEVANT DOMESTIC LAW

17. Excerpts from Law no. 275/2006 on the execution of sentences concerning the rights of detainees and the remedies provided therein are summarised in *Iacov Stanciu v. Romania* (no. 35972/05, §§ 113-119, 24 July 2012).

18. 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 reports by the Council of Europe Commissioner for Human Rights, made following numerous visits to Romanian prisons, including Jilava Prison, are also summarised in *Iacov Stanciu* (cited above, §§ 125-129).

19. The relevant part of the report of the Romanian Helsinki Committee of 12 June 2008 in respect of the conditions of detention in Jilava Prison reads as follows:

"... the basement of the old part of the prison building was completely flooded with waste water ... Consequently, rats and cockroaches (and bedbugs 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 3,034.81 sq. m, while the population was 1,460 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

20. Relying on Articles 3 and 5 of the Convention, the applicant complained about the conditions of his detention in Jilava Prison.

21. The complaint falls to be examined under 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**

22. The Government raised an objection of non-exhaustion of domestic remedies, arguing that the applicant had failed to lodge any complaint against the prison administration concerning the conditions of his detention or the deterioration of his health in prison.

23. The applicant did not present his arguments within the time-limits set by the Court.

24. The Court notes that the applicant’s complaint concerns the material conditions of his detention relating, *inter alia*, to overcrowding and poor sanitary facilities. He did not formulate a separate complaint concerning healthcare in prison, and described his health issues only to substantiate his allegations about the poor conditions of detention.

25. The Court has already found, in numerous similar cases regarding complaints about material conditions of detention relating to structural issues such as overcrowding or dilapidated installations, that given the specific nature of this type of complaint, the legal actions suggested by the Romanian Government do not constitute effective remedies (see, among other authorities, *Petrea v. Romania*, no. 4792/03, § 37, 29 April 2008; *Cucu v. Romania*, no. 22362/06, § 73, 13 November 2012; and *Niculescu v. Romania*, no. 25333/03, § 75, 25 June 2013).

26. The Government’s objection should therefore be dismissed.

27. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

### **B. Merits**

28. The applicant argued that the conditions of his detention had fallen short of the standards imposed by the Court in its case-law on the matter.

29. The Government contested his arguments, based on the official prison records.

30. 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 *Iacov Stanciu*, cited above, §§ 165-170). 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 *Kudla*, cited above, § 91).

31. 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). Moreover, it has already found violations of Article 3 of the Convention on account of the material conditions of detention in Jilava Prison, especially with respect to overcrowding and lack of hygiene (see, for example, *Cucu*, cited above, §§ 9 and 82; *Goh v. Romania*, no. 9643/03, § 66, 21 June 2011; *Györgypál v. Romania*, no. 29540/08, § 73, 26 March 2013; and *Constantin Tudor v. Romania*, no. 43543/09, § 75, 18 June 2013).

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

33. Moreover, the applicant's submissions in respect of the overcrowded and unhygienic conditions correspond to the general findings by the CPT in respect of Romanian prisons (see paragraph 18 above) and to the findings of the report of the Romanian Helsinki Committee in respect of Jilava Prison (see paragraph 19 above).

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

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

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

35. The applicant complained under Article 6 of the Convention that the criminal proceedings against him had been unfair, and that his right to the presumption of innocence had been breached by the prosecutor dealing with his case.

36. However, 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 these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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.”

38. The applicant did not submit a claim for just satisfaction within the time-limits set. Accordingly, the Court considers that there is no call to award him any sum on that account.

**FOR THESE REASONS, THE COURT, UNANIMOUSLY,**

1. *Declares* the complaint concerning the conditions of detention in Jilava Prison admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Dismisses* the applicant’s claim for just satisfaction.

Done in English, and notified in writing on 11 February 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada  
Registrar

Josep Casadevall  
President