



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

THIRD SECTION

CASE OF MIHĂILESCU v. ROMANIA

(Application no. 46546/12)

JUDGMENT

STRASBOURG

1 July 2014

FINAL

01/10/2014

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

In the case of Mihăilescu 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 10 June 2014,

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

PROCEDURE

1. The case originated in an application (no. 46546/12) 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 Gabi Ainăld Mihăilescu (“the applicant”), on 12 July 2012.

2. 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 material conditions of his detention, including the lack of separation between smokers and non-smokers, in the Bacău Police Department’s detention facility and Bacău Prison had breached his rights guaranteed by Article 3 of the Convention.

4. On 2 April 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971. He is currently detained in Iași Prison.

6. On 8 February 2012 the applicant was detained pending trial on charges of human trafficking and was placed in the Bacău Police Department’s detention facility (*Centrul de Rețineră și Arestare Preventivă al Inspectoratului de Poliție Județeană Bacău*).

7. On 6 March 2012 he was transferred to Bacău Prison.

A. Material conditions of detention, including lack of separation between smokers and non-smokers, in the Bacău Police Department's detention facility and Bacău Prison

1. The applicant

8. In his initial letters to the Court the applicant stated that in the Bacău Police Department's detention facility he had been forced to sleep on the floor because there had been more detainees than beds. He was forced to eat without cutlery and sitting on the floor because the cell was unfurnished. In addition, he was not provided with a blanket and had to share the room with smokers even though he was a non-smoker.

9. In the same letters he also stated that in Bacău Prison he had had to sleep in overcrowded, flooded and damp cells infested with bed bugs, without furniture and on very old, smelly and lumpy mattresses without any bed linen, blanket or pillow. He was forced to eat sitting on the floor and was not provided with a broom or any cleaning products. The bathroom pipes and lavatories were defective and he had been splashed with waste from the pipes located on the ceiling. The rooms smelled and he could not sleep at night on account of the constant noise made by some detainees and their conversations with the women inmates detained in the same prison. Furthermore, he was forced on many occasions to eat spoiled food because there was no refrigerator. There was no access to natural light, nor any ventilation or opportunity to air the cells. The food was insufficient and poorly cooked. He was not allowed more than one hour of outdoor exercise per day and his health was affected because he had to share the cell with smoking detainees, even though he was a non-smoker.

2. The Government's submissions

10. The applicant was detained in cell no. 3 of the Bacău Police Department's detention facilities. The cell measured 12.82 sq. m and contained four beds. During the first day of his detention the applicant shared the cell with three other inmates. For the remainder of his time in police custody he shared his cell with two other inmates.

11. The applicant was assigned a bed, and was provided with a mattress, a blanket and a pillow. The cell was also fitted with a window which ensured natural ventilation and light, a radiator for heating the cell and with air-conditioning. No other furniture was available in the cell.

12. On 16 September 2013 the Service for the Coordination of Pre-trial Detention Centers attached to the Romanian Police Inspectorate informed the Government that it would have been impossible to have separated

smokers and non-smokers in the Bacău Police Department's detention facility on account of the large number of smokers.

13. The applicant was detained in Bacău Prison from 6 March to 6 November 2012 and from 13 November 2012 to 2 April 2013.

14. The applicant was detained in several cells measuring 33.23, 32.09, 27.22, 35.81, 39.36, 18.52 and 27.05 sq. m, which he shared with a maximum number of six, two, fourteen, ten, ten, eight and eleven other detainees, respectively.

15. The cells had bathrooms, toilets and showers. They were fitted with windows for natural light and ventilation. The available furniture allowed the detainees to store their clothes and eat. The cells were also fitted with radiators, which were connected to the prison's central heating system.

16. Every detainee was assigned a bed and was provided with a mattress, a blanket and a pillow.

17. In August 2012 the cells in which the applicant was detained were extensively renovated and repaired, and the water infiltration problem on the ceilings was fixed.

18. The cells were properly ventilated. The food was prepared according to the rules in force. Its quality and taste were tested daily by, *inter alia*, a representative assigned by the detainees.

19. The detainees were responsible for cleaning the cells using cleaning materials provided regularly by the prison authorities and given to the detainees against their signature. They also had access to running water.

20. The cells were disinfected regularly each trimester or as often as required, and the detainees were allowed a minimum of three hours' outdoor exercise per day.

21. When he was transferred to Bacău Prison, the applicant declared that he was a non-smoker. However, having been informed by the prison authorities that, as a non-smoker, he could not buy cigarettes, he did not ask to be detained in a cell reserved for non-smokers. In addition, according to the information submitted by the prison authorities, supported by evidence, during his detention in Bacău Prison between 13 March 2012 and 18 March 2013 the applicant had regularly purchased cigarettes and lighters.

B. Criminal proceedings lodged by the applicant

22. On 24 April 2012 and on an unspecified date the applicant brought two sets of criminal proceedings against some of the staff members and the medical personnel of the Bacău Police Department's detention facility, claiming that they had not provided him with adequate medical care and had failed to correctly fulfil their professional duties. In addition, he claimed that on 20 February 2012 he had been hit and threatened by several State agents, including S.B., which resulted in him losing his eyesight.

23. By decisions of 28 June and 12 September 2012 the Bacău Prosecutor's Office and the Public Prosecutor's Office attached to the Court of Cassation, respectively, discontinued the criminal proceedings. They held that the doctor and other medical and regular staff at the detention facility were constantly involved in examining and appropriately treating the detainees. In addition, according to the available medical reports, the applicant had not suffered any recent trauma in the eye region, but was suffering from severe eyesight problems which made it unlikely that even if he underwent surgery his eyesight would be restored. There is no evidence in the file that the applicant appealed against the decisions before the domestic courts.

C. Proceedings lodged by the applicant on the basis of Law no. 275/2006

24. By an interlocutory judgment of 5 March 2012 the post-sentencing judge dismissed the applicant's complaint that the Bacău Police Department's authorities had not allowed him to receive an electric television set. The applicant was advised to get a battery-powered one.

25. By an interlocutory judgment of 1 November 2012 the post-sentencing judge dismissed the applicant's complaints that the Bacău Prison authorities had refused to allow him to receive chocolate from his wife and that they had forwarded several medical documents from his prison file to the Bacău Police Department without his consent. It held that according to the information provided by the prison authorities there was no evidence that the applicant had not been allowed to receive chocolate from his wife. In addition, Law no. 275/2006 did not provide that medical documents were confidential in so far as the criminal investigation bodies were concerned.

26. By an interlocutory judgment of 29 November 2012 the post-sentencing judge dismissed the applicant's complaint that his right to private life and information had been breached because the Bacău Prison authorities had unlawfully cut the power after 11 p.m. On the same date the applicant's complaint that the Bacău Prison authorities had refused to provide him with copies of the requests he had lodged before them was also dismissed for lack of competence *ratione materiae*.

27. By an interlocutory judgment of 5 December 2012 the post-sentencing judge allowed the applicant's complaint that his right to correspondence had been breached in so far as the Bacău Prison authorities had retained some summonses issued in his name and a judgment delivered by the domestic courts in connection with criminal proceedings instituted against him. The judge ordered the Bacău Prison authorities to stop retaining the applicant's correspondence and to give it to him.

28. By an interlocutory judgment of 14 January 2013 the post-sentencing judge dismissed the applicant's complaint that the Bacău Prison authorities had not allowed him to receive chocolate and prescribed medication from his wife. It held that there was no proof that his wife had brought him chocolate and that the prison authorities had denied it to him. The medication had been returned to his wife because she had brought him capsules instead of tablets as required by law. Moreover, the medication had to be given to the prison's medical office and not directly to the applicant, and had to be managed separately.

29. By an interlocutory judgment of 11 February 2013 the post-sentencing judge dismissed as inadmissible the complaint lodged by the applicant against the Bacău Prison authorities that the food received on a particular day had been insufficient and had not contained the correct ingredients.

30. By an interlocutory judgment of 19 February 2013 the post-sentencing judge dismissed the applicant's complaints that the Bacău Prison authorities had turned off the electricity after 11 p.m., thereby breaching his statutory right to watch television as long as the national television station was being broadcast, and had failed to ensure that he could sleep eight hours a night without disturbance from other detainees. The judge held that the prison authorities did not have a legal duty to keep the electricity on and to allow him to watch television after 11 p.m. In addition, they could not force every detainee to sleep at night. Silence could be enforced by punishments imposed by the prison's disciplinary commission.

31. By an interlocutory judgment of 11 March 2013 the post-sentencing judge dismissed as time-barred the applicant's complaint against the Bacău Prison authorities for failing to commit him to a psychiatric unit following a recommendation of the Jilava Prison Hospital.

32. The applicant challenged some of the interlocutory judgments delivered by the post-sentencing judge before the domestic courts, but subsequently withdrew his challenge. There is no evidence in the file that he appealed against any of the interlocutory judgments before the domestic courts.

D. Other relevant information

33. On 7 March 2012 the Târgu-Ocna Prison Hospital informed the Bacău Prison authorities that they would accept the applicant after a psychiatrist from the Bacău Emergency County Hospital recommended the applicant's hospitalization.

34. On 9 September 2013 the Bacău Prison authorities informed the Government and submitted documents attesting that the applicant had bought items from the prison shops at least three times between 5 November and 6 December 2012.

35. On the same date the Bacău Prison authorities also informed the Government that the applicant's request of 19 March 2013 that he be categorised as a vulnerable detainee had been allowed and he had been transferred to a cell reserved for vulnerable detainees.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE

36. Excerpts from the relevant domestic legislation and international reports – namely the former Romanian Civil Code; 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 given 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).

37. The Government submitted three final judgments delivered by the Bucharest and Pitești District Courts, as well as by the Rahova Prison post-sentencing judge, in respect of proceedings brought by detainees against the Rahova and Colibași prison administrations under Law no. 275/2006, seeking, *inter alia*, non-smoking accommodation and sufficient food.

38. By a final judgment of 2 May 2007 the Bucharest District Court dismissed a detainee's request for non-smoking accommodation on the ground that he was already accommodated in a non-smoking cell. By a final judgment of 14 March 2008 the Pitești District Court allowed a similar action by another detainee and ordered the Colibași prison authorities to organise properly ventilated designated smoking areas. By a final interlocutory judgment of 19 June 2008 the Rahova Prison post-sentencing judge allowed a detainee's action seeking sufficient food and dismissed the same detainee's action seeking non-smoking accommodation on the ground that he had opted for a smoking cell and had not submitted a written request to the prison authorities demanding a change of status.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

39. The applicant complained about the material conditions of his detention, including the lack of separation between smokers and non-smokers, in the Bacău Police Department's detention facility and Bacău Prison. He alleged, in particular, that the detention facility had been overcrowded, squalid and unhygienic; the sanitary facilities had been defective; the noise made by the other detainees had prevented him from sleeping; the food was of poor quality and insufficient; there had been insufficient opportunities to take outdoor exercise; the cells had lacked ventilation, beds, cutlery, furniture at which to take meals, blankets, pillows and bed linen; and he had had to share the cell with smokers. 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

40. The Government raised a preliminary objection of non-exhaustion of domestic remedies, in so far as the applicant had not complained before the domestic judicial or non-judicial authorities that smokers and non-smokers had had to share cells and had not asked to be transferred to a cell reserved for non-smokers. Consequently, the applicant's situation was different from that of other applicants in an identical situation who had lodged complaints before the Court and who had repeatedly complained before the relevant domestic authorities of the lack of separation between smokers and non-smokers. They argued that the remedies available under Law no. 275/2006 were effective, as shown by the domestic case-law they had submitted to the Court.

41. Referring to the Court's judgment in *Budaca v. Romania* (no. 57260/10, §§ 31-32, 17 July 2012), the Government further argued that the applicant's complaint concerning the lack of separation between smokers and non-smokers was in any event manifestly ill-founded. They contended that according to the available evidence the applicant could have been considered a smoker given that he had regularly purchased cigarettes and lighters from the Bacău Prison shop and had not presented before the Court any proof to support his allegations.

42. The applicant disagreed. He argued that although he had been classified as a non-smoker at the time of his incarceration, the staff of the Bacău Police Department's detention facility had acknowledged that during his detention non-smokers could not be separated from smokers.

43. The applicant further submitted that the fact that he had purchased cigarettes did not make him a smoker. He argued that because he was a vulnerable detainee, in particular on account of losing his eyesight, he had used the purchased cigarettes to pay other inmates to help him around the prison.

44. The Court notes in the instant case that given the length of the applicant's detention in the Bacău Police Department's detention facility and in Bacău Prison and the fact that he returned to the same prison facilities, the relatively short duration of his transfer (see paragraph 13, above) had not brought significant changes to his detention conditions and that there was therefore a continuous situation (see *Seleznev v. Russia*, no. 15591/03, § 35, 26 June 2008, and, *Eugen Gabriel Radu v. Romania*, no. 3036, § 24, 13 October 2009).

45. According to the available evidence, it appears that during his detention both in the Bacău Police Department's detention facility and Bacău Prison the applicant was classified as a non-smoker (see paragraphs 8 and 21 above).

46. Moreover, the Court observes that, according to the Service for Coordination of Pre-trial Detention Centres attached to the Romanian Police Inspectorate, it would have been impossible to have separated smokers from non-smokers during the applicant's detention in Bacău Police Department's detention facility on account of the large number of smokers (see paragraph 12 above). In those circumstances, the Court cannot accept, in spite of the Government's arguments and submissions, that the applicant's complaints before the relevant domestic judicial or non-judicial authorities, even if they had been allowed, would have yielded any practical results in respect of his situation in the aforementioned detention facility.

47. However, the Court notes that during his detention the applicant regularly purchased cigarettes and lighters from the prison shop (see paragraph 21 above). While it does not appear that his non-smoker status officially changed, he did not submit any proof to support his allegations that he had needed the cigarettes and lighters for purposes other than smoking and he had not lodged any complaint before the non-judicial or judicial authorities attached to Bacău Prison.

48. In these circumstances, even assuming that the applicant's complaint before the Bacău Prison authorities would not have amounted to an effective remedy, the Court considers that the applicant's complaint concerning the lack of separation between smokers and non-smokers in both Bacău Police Department's detention facility and Bacău Prison is in any event manifestly ill-founded and must be dismissed pursuant to Article 35 §§ 3 and 4 of the Convention (see *Budaca*, cited above, § 33).

49. Lastly, the Court notes that the applicant's remaining part of the complaint concerning the material conditions of detention in Bacău Police Department's detention facility and Bacău Prison 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

50. The applicant submitted that the material conditions of his detention had been inappropriate and that he had been made to share his cells with smokers, which had affected his health. In addition, the applicant contested the information submitted by the Government before the Court and submitted that it was inaccurate and plagued by contradictions and did not reflect the poor conditions of detention he had had to endure.

51. The Government, referring to their description of the detention conditions submitted before the Court (see paragraphs 10-21 above), contended that the domestic authorities had taken all the measures necessary to ensure adequate conditions of detention, and that the applicant's complaints were groundless. In addition, they submitted that the information provided to the Court was based on the records sent to them by the detention facilities.

52. 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 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).

53. When assessing conditions of detention, account has to 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).

54. 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).

55. The Court has also found a violation of Article 3 in circumstances where the applicant had to share his cell for significant periods of time with other detainees who smoked (see *Florea v. Romania*, no. 37186/03, § 64, 14 September 2010).

56. In the instant case, although the Government provided information to the Court concerning the periods of time the applicant had been detained in the Bacău Police Department's detention facility and Bacău Prison, the size of the cells and the number of detainees, they did not provide precise details

about the number of days the applicant spent in each cell or the number of detainees he shared them with on a daily basis. However, even at the occupancy rate put forward by the Government, the applicant's living space during the periods he spent in police custody and Bacău Prison seems to have been regularly below 4 sq. m and sometimes even as low as 1.8 sq. m, 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 points out that these figures were even lower in reality, taking into account the space taken by beds and, in Bacău Prison, other items of furniture (see paragraphs 14 and 15 above).

57. Moreover, while it appears that on certain occasions the space available to the applicant was in excess of 4 sq. m, the Court is not convinced that the police cells were properly furnished, that he was provided with cutlery and furniture to eat his meals adequately, or that the cells were not damp or flooded. In this connection, the Court notes that according to the available evidence, the police cells had no furniture except beds and that the Government did not clarify whether the applicant had been given cutlery (see paragraph 11 above). In addition, it appears that the leaking water pipes in the ceiling in Bacău Prison were not repaired until August 2012 (see paragraph 17 above). Consequently, the Court can only conclude that during his detention the applicant was unable to take his meals adequately on account of the absence of furniture and cutlery, and that some of the cells were damp or flooded.

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

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

60. Moreover, the applicant's submissions concerning the overcrowded and poor detention conditions correspond to the general findings by the CPT in respect of Romanian prisons (see paragraph 48 above).

61. There has accordingly been a violation of Article 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

62. Relying expressly or in substance on Articles 2, 3, 8 and 34 of the Convention, the applicant raised numerous other complaints concerning lack of adequate medical care in detention, alleged physical abuse by State agents which resulted in loss of eyesight, interference with his correspondence, right to petition, medical information, and other detention rights.

63. The Court has examined the 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 these complaints 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 pursuant to Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicant claimed 3,500,000 euros (EUR) in respect of non-pecuniary damage for loss of eyesight on account of lack of adequate medical treatment and for the suffering he had endured on account of being detained with smokers during his detention, from which he had developed serious health problems.

66. The Government considered the sum claimed by the applicant to be excessive and argued that there was no causal link between the alleged violations and the damage sought.

67. The Court has found a violation of Article 3 in the present case. In these circumstances, notwithstanding the wording of the applicant's claim for just satisfaction, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,300 in respect of non-pecuniary damage.

B. Costs and expenses

68. The applicant also claimed EUR 500 for the costs and expenses incurred before the Court.

69. The Government submitted that the applicant had not submitted any proof in support of his claim and therefore was not entitled to any costs and expenses.

70. The Court reiterates that in order for costs and expenses to be reimbursed under Article 41, it must be established that they were actually and necessarily incurred and are reasonable as to quantum (see, for example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII, and *Boicenco v. Moldova*, no. 41088/05, § 176, 11 July 2006). In accordance with Rule 60 § 2 of the Rules of Court, itemised particulars of all claims must be submitted, failing which the Chamber may reject the claim in whole or in part.

71. In the present case, having regard to the above criteria and the absence of any proof submitted by the applicant in support of his claim, the Court dismisses his claim for costs and expenses.

C. Default interest

72. 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* part of the complaint under Article 3 of the Convention concerning the material conditions of the applicant's detention in Bacău Police Department's detention facility and Bacău Prison 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 of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,300 (three thousand three hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the respondent State's national currency at the rate applicable on 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 1 July 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President