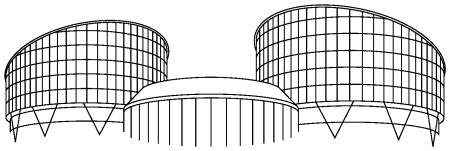

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MIHAI LAURENŢIU MARIN v. ROMANIA

(Application no. 79857/12)

JUDGMENT

STRASBOURG

10 June 2014

FINAL

10/09/2014

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

In the case of Mihai Laurenţiu Marin 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 Griţco,
Iulia Antoanella Motoc, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 20 May 2014,

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

PROCEDURE

1. The case originated in an application (no. 79857/12) 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 Mihai Laurențiu Marin ("the applicant"), on 3 December 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 physical conditions of his detention in Poarta Albă and Măgineni Prisons had breached his rights guaranteed by Article 3 of the Convention.

4. On 7 May 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1975. He is currently detained in Măgineni Prison.

The physical conditions of the applicant's detention in Poarta Albă and Mărgineni Prisons

1. The applicant

6. In his initial letters to the Court the applicant stated that he had been detained in overcrowded cells which had lacked heating.

2. The Government

7. Starting from 2004 the applicant was detained and transferred between a number of prisons, including Poarta Albă and Măgineni Prisons.

8. The applicant was first detained in Poarta Albă Prison on 17 April 2006. The records concerning the cells the applicant had been detained in and the number of detainees he had shared the cells with during his time in detention there between 2006 and 2010 had been destroyed in accordance with the requirements of applicable domestic legislation.

9. From 2010 onwards the applicant was detained in Poarta Albă Prison from 19 February 2010 to 22 July 2013. During this period he was transferred repeatedly from Poarta Albă to Măgineni and other prison facilities as a result, among other things, of his violent behaviour towards other inmates and prison personnel.

10. In Poarta Albă Prison the applicant was detained in several cells where he was afforded between 3, 79 and 5, 03 sq. m of living space.

11. Part of the prison was fitted with its own central heating system, while the remaining part was heated by stoves. The heating was carried out based on a pre-determined schedule and on the available heating supplies and by taking into account the outdoor temperature.

12. The applicant was detained in Măgineni Prison from 5 December 2011 to date. During this period he was transferred repeatedly to Poarta Albă and other prison facilities.

13. In Măgineni Prison the applicant was detained in several cells where he was afforded between 1, 62 and 8, 02 sq. m of living space.

14. Each cell had electrical power and was fitted with individual beds, tables, chairs and benches.

15. The prison was also fitted with its own gas central heating system. The system was working properly. The cells had radiators, which ensured an appropriate temperature in the rooms during winter and when the outside temperature demanded it.

II. RELEVANT DOMESTIC LAW

16. Excerpts from the relevant parts of the applicable domestic legislation and the relevant 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).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

17. The applicant complained that overcrowding and a lack of heating in the cells he had been detained in Poarta Albă and Măgineni Prisons had amounted to inhuman and degrading treatment in breach of his rights guaranteed by 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

18. The Government submitted that the applicant had not complained before the post-sentencing judge or any other domestic authority about the conditions of his detention.

19. The applicant did not submit observations on this point.

20. The Court observes that the applicant's complaint concerns the physical conditions of his detention, in particular overcrowding and a lack of heating. In this regard, it notes that in recent applications lodged against Romania concerning similar complaints it has already found that, given the specific nature of this type of complaint, the legal avenues suggested by the Government do not constitute an effective remedy (see *Lăutaru v. Romania*, no. 13099/04, § 85, 18 October 2011; *Leontiuc v. Romania* no. 44302/10, §50, 4 December 2012; and *Necula v. Romania*, no. 33003/11, §§ 32-39, 18 February 2014 (not final)).

21. The Court therefore concludes that the argument put forth by the Government does not indicate how the avenues they proposed could have afforded the applicant immediate and effective redress for the purposes of his complaint (see, *mutatis mutandis*, *Marian Stoicescu v. Romania*, no. 12934/02, § 19, 16 July 2009).

22. It therefore rejects the Government's plea of non-exhaustion of domestic remedies in respect of the applicant's complaint concerning the

physical conditions of his detention, in particular overcrowding and a lack of heating, in Poarta Albă and Măgineni Prisons.

23. The Court notes that this part of the application 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

24. The applicant submitted that the physical conditions of his detention had been inappropriate.

25. The Government, referring to their description of the detention conditions submitted before the Court (see paragraphs 7-15 above), contended that the domestic authorities had taken all the measures necessary to ensure adequate conditions of detention, and that the applicant's complaint was unsubstantiated.

26. 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).

27. 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).

28. 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).

29. The Court notes from the outset that during the applicant's detention, according to the available evidence, he has been repeatedly transferred between Poarta Albă and Măgineni Prisons and to other prison facilities.

30. The Court further notes in the present case that the applicant complained exclusively about the physical conditions of his detention in Poarta Albă and Măgineni Prisons and not about conditions in any other detention facilities to which he may have been transferred for the periods of time he was not detained in the aforementioned prisons. However, having regard to the date he lodged his complaint before the Court, the length of the applicant's detention in Poarta Albă and Măgineni Prisons and the fact that he returned to the aforementioned prisons each time, the Court cannot

conclude that the transfers in question brought about significant changes to his detention conditions and that there was therefore no 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).

31. The Court notes that the Government failed to provide any information about physical conditions of the applicant's detention in Poarta Albă Prison for the period between 2006 and 2010. However, the Government provided information on the living space afforded to the applicant in Poarta Albă and Măgineni Prisons starting from 2010. Even at the occupancy rate put forward by the Government, the applicant's living space during the periods he spent in Poarta Albă and Măgineni Prisons seems to have regularly been below 4 sq. m and was sometimes as little as 1.62 sq. m (see paragraphs 13 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 also contained the detainees' beds and other items of furniture (see *Toma Barbu v. Romania*, no. 19730/10, § 64, 30 July 2013, and *Lăutaru v. Romania*, no. 13099/04, § 99, 18 October 2011).

32. Moreover, while it appears that on some occasions the space available to the applicant was in excess of 4 sq. m (see paragraphs 10 and 13 above), the Court is not convinced that the applicant's cells were adequately heated. In this connection, the Court notes that the Government submitted that both prison facilities were fitted with central heating systems, supplemented by stoves. However, they failed to provide any information in respect of the number of hours per day the heating systems were actually operational and about the average temperature the system operated at and in the cells. Consequently, the Court can only conclude that during his detention the applicant was not provided with adequate heating.

33. The Court has frequently found a violation of Article 3 of the Convention on account of a lack of personal space afforded to detainees and unsatisfactory heating (see *Toma Barbu*, cited above, § 66).

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

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

36. Consequently, the Court concludes that the physical conditions of the 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.

There has accordingly been a violation of Article 3 of the Convention in respect of the physical conditions of the applicant's detention, in particular overcrowding and a lack of heating, in Poarta Albă and Măgineni Prisons.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

37. Relying on Article 3 of the Convention, the applicant complained that during his detention in Poarta Albă and Mărgineni Prisons he had had serious dental problems and had lost some of his teeth on account of a lack of adequate dental treatment. In addition, his rights to receive packages, to watch television and to education had been restricted and he had been insulted and punished every time he had attempted to complain.

38. After his application had been communicated to the respondent Government, the applicant complained, relying in substance on the aforementioned Article of the Convention, that the cells he had been detained in had been poorly ventilated and dark because they had been fitted with small windows covered by a metal grille. In Poarta Albă Prison he had been forced to sleep on rusty metal beds and dirty and damaged mattresses. In addition, the cells had been damp and mouldy. There had been no warm water and cold water had only been available for four hours per day. In Măgineni Prison the sanitary facilities had been located close to the beds and had not been separated from the rest of the room, and cold water had only been available for two hours per day. In addition, the prison had had a dentist's practice that had only performed extractions, but no other treatment. Furthermore, he had not received appropriate psychological treatment in prison. He had been handcuffed to the bed and had therefore been forced to relieve himself in bed and sleep in his own faeces.

39. Relying expressly and in substance on Articles 8 and 10 of the Convention, the applicant complained that his right of access to information had been restricted by the Poarta Albă and Mărgineni Prison authorities. In addition, the working days he had accumulated had not been deducted from his sentence and he had been prevented from contacting his family for certain periods of time. Relying on Article 14 of the Convention and Article 1 of Protocol No. 12 to the Convention the applicant complained that he had been discriminated against in prison.

40. The Court has examined these complaints as submitted by the applicant. However, having regard to all the material in its possession, and in so far as they were raised prior to communication of the application to the respondent Government and fall within its jurisdiction, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. The applicant claimed 42,000 euros (EUR) in respect of non-pecuniary damage.

43. The Government considered the sum claimed by the applicant to be excessive and argued that there was no causal link between some of the alleged violations and the damages sought. They submitted that a finding of a violation would constitute sufficient just satisfaction in the case.

44. The Court notes that it has found a violation of Article 3 in the present case. In these circumstances, 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 15,300 in respect of non-pecuniary damage.

B. Costs and expenses

45. The applicant did not claim any costs and expenses.

C. Default interest

46. 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 part of the applicant's complaint under Article 3 of the Convention concerning the physical conditions of his detention, in particular overcrowding and a lack of heating, in Poarta Albă and Mărgineni Prisons admissible, and the remainder of the application inadmissible;

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

3. *Holds*
   (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 15,300 (fifteen 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 10 June 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President