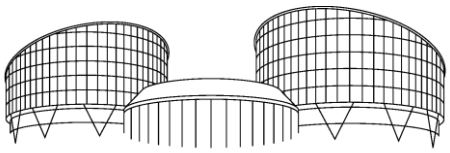

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF NECULA v. ROMANIA

(Application no. 33003/11)

JUDGMENT

STRASBOURG

18 February 2014

FINAL

18/05/2014

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

In the case of Necula v. Romania,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Ján Šikuta,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 28 January 2014,

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

PROCEDURE

1. The case originated in an application (no. 33003/11) 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 Florin Necula ("the applicant"), on 12 May 2011.

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 detention in Mărgineni Prison had been inappropriate and had breached his rights guaranteed by Article 3 of the Convention.

4. On 24 May 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1970. He is currently detained in Mărgineni Prison.

A. Background information to the present application

6. On 22 November 2003 the applicant was detained pending trial on charges of aggravated murder and placed in Mărgineni Prison.

7. By a final judgment of 22 June 2007 the Dâmbovița County Court convicted him of aggravated murder and sentenced him to twenty-two years' imprisonment.

8. On 27 July 2004 the applicant lodged his first application before the Court, namely application no. 31470/04, alleging that his rights under Article 3 of the Convention had been violated on account of, *inter alia*, the material conditions of his detention in Mărgineni Prison. He argued in particular that the cells were small and overcrowded; that the toilets were not separated from the cells, were uncovered and smelled badly because there was no running water; that he lacked sufficient physical exercise given that he was rarely taken out of his cell and allowed to walk in the small courtyard, which in any case smelled unpleasant; and that his food was inadequate and low in calories.

9. On 19 January 2009 the applicant's complaint concerning the material conditions of detention was communicated to the Romanian Government and they were asked to submit observations on the admissibility and merits of the case.

10. On 9 June 2009 the observations submitted by the Romanian Government were forwarded to the applicant and he was asked twice to submit observations in reply. However, he failed to submit any observations.

11. By a decision of 3 July 2012 the Court decided to strike application no. 31470/04 out of its list of cases, pursuant to Article 37 § 1(a) of the Convention. The applicant did not ask for the aforementioned application to be restored to the Court's list of cases.

B. Conditions of detention in Mărgineni Prison

1. The applicant

12. According to the applicant, in Mărgineni Prison he had to sleep on metal beds with large holes in them. The cells lacked natural light and air, were squalid and damp, infested with lice and bed bugs, and there were no proper facilities for serving food. The sanitary facilities lacked air vents and running water and had no doors or mirrors, while the waste bins were made out of cut plastic containers.

13. The applicant attached to his letter several photographs allegedly taken by him in prison to support his allegations.

14. The applicant also contended that the food was poor and that he did not have access to adequate medical care.

2. The Government

15. The Government informed the Court that the applicant had been detained in Mărgineni Prison from 22 November 2003 to 26 April 2005, 18

to 21 July 2005, 10 August 2005 to 30 October 2007 and 2 November 2007 to the present date.

16. During his detention the applicant had stayed in several detention cells.

17. All the detention cells where the applicant had stayed had been connected to electricity, heating and water supplies. Each cell had a window measuring 0.92 metres long by 0.78 metres wide or 1.75 metres long by 1.25 metres wide, depending on the size of the cell and the number of occupants. The cells were aired manually by opening the available window. They had a separate area with sanitary and personal hygiene facilities, which could be accessed from the detention room directly. The sanitary facility area was fitted with an air vent.

18. The cells had individual beds and were adequately furnished for the detainees to be able to eat their meals and store their personal belongings. They were fitted with radiators connected to the prison's own heating system, which provided an adequate temperature when needed. The sanitary utilities were functioning adequately and they were promptly fixed whenever they were damaged.

19. The detainees had permanent access to drinking water and bathed twice a week in specially designated areas, based on a schedule approved by the prison authorities.

20. The applicant received a diet which was served in accordance with the regulation in force. The quality of the food was checked daily by, *inter alia,* a medical office representative and a detainee representative. There was no indication that the food quality had been inappropriate during the applicant's detention. The food was served in the cells, which were furnished with wooden tables and chairs or benches.

21. Hygiene in the cells was the detainees' responsibility, and they were provided regularly with cleaning materials by the prison authorities. From 2009 to 2012 the cells were fumigated by specialist companies every quarter or periodically by the hygiene manager attached to the medical office. The inmates were provided with waste baskets and the sanitary facilities were cleaned daily with chlorine by the prison hygiene manager.

C. Proceedings instituted by the applicant under Law no. 275/2006 on the execution of prison sentences

22. On an unspecified date the applicant brought proceedings against the Mărgineni Prison authorities, contending that his right to adequate medical assistance had been breached. He argued that on one occasion he had not been examined by the doctor and had been unable to purchase the prescribed antibiotics the following day.

23. By a decision of 18 November 2008 the judge responsible for the execution of prison sentences attached to Mărgineni Prison dismissed the

applicant's action on the grounds that the medical examination and the required treatment had been made available to him a couple of days later. There is no evidence in the file that the applicant appealed against the decision before the domestic courts.

24. On an unspecified date the applicant brought a new set of proceedings against the Mărgineni Prison authorities, contending that his rights to adequate medical assistance, to correspondence, to working and educational activities, as well as to access to running water and adequate detention conditions, had been breached. He had to share a cell with twenty other inmates, was involved in activities only once a week, was not provided with adequate medical care or given the correct diet. In addition, the sanitary facilities were out of order, the prison lacked running water, his cell was squalid and lacked air, his right of correspondence was restricted and he was not allowed to work.

25. By a decision of 19 September 2011 the judge responsible for the execution of prison sentences attached to Mărgineni Prison dismissed the applicant's action. On the basis of the information provided by the prison authorities, it held that the size of the prison did not allow any reduction in the number of detainees per cell, and that the applicant's cell allowed six cubic metres of air for each detainee. Moreover, he had access to daily activities and exercise, and was provided with adequate medical care in the prison hospital. His cell had been disinfected in August 2011 and no insects had been found during the sanitary inspection of September 2011. Furthermore, the applicant was provided with an adequate diet. The quality of the food was checked daily and there was no indication that it was of poor quality. In addition, the applicant's cell was equipped with private and hygienic sanitary facilities, which provided permanent access to running water. Also, the applicant's right to correspondence was observed. Lastly, his request to be allowed to work had not been examined by the work commission on the grounds that he did not meet the work-related requirements. The applicant appealed against the decision before the domestic courts.

26. On 14 December 2011 the Moreni District Court, sitting as a final-instance court, dismissed the applicant's appeal against the decision of 19 September 2011. It held that the applicant had failed to identify a particular circumstance when his right of correspondence had been breached. The distribution of correspondence to prisoners by the supervisors of the prison sections rather than by specially authorised personnel had not been unlawful. The applicant had made a general complaint about the absence of adequate medical treatment without identifying the circumstances in which his right had been breached. His medical file contained information that he had repeatedly refused treatment or examinations by specialist doctors. The quality of the food had been adequate and had been reviewed daily by a representative of the medical

office. Although the cells were overcrowded, the detainees had access to the statutory number of cubic metres of air, and to sanitary facilities and installations which provided access to drinking water as well as adequate privacy. They also had access to daily activities and exercise. The photographs of the cell bathroom submitted to the court by the applicant did not prove the absence of running or drinking water. Some of the bathroom installations were indeed damaged or missing, but that was linked to the inmates' behaviour and the limited budget available to the National Administration of Prisons. In addition, according to the documents submitted by the detention centre, in August 2011 the prison had been disinfected twice. The aspects the applicant complained of had been examined bearing in mind the needs of the other detainees and the aspects which made the observance of the detainees' rights possible, namely the available staff and budget. Lastly, the applicant's remaining complaints were examined and dismissed by the judge responsible for the execution of prison sentences on the basis of the documents submitted by the prison authorities.

27. On unspecified dates the applicant brought two further sets of proceedings against the Mărgineni Prison authorities, seeking an injunction to be allowed to receive several food items from his family.

28. By decisions of 10 January and 13 September 2012 the judge responsible for the execution of prison sentences attached to Mărgineni Prison allowed the applicant's actions seeking to be allowed to receive several food items.

II. RELEVANT DOMESTIC LAW AND PRACTICE AND INTERNATIONAL AND NATIONAL DOCUMENTS

29. Excerpts from the relevant parts of the 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).

30. The relevant extracts from the report of the Romanian Helsinki Committee (RHC), following its visit of 28 August 2013 to Mărgineni Prison, read as follows:

> "... According to the information provided by the prison authorities on the date of the visit, the occupancy rate was much higher than the maximum capacity of the

prison. The running water supply problem, which had also been highlighted during the visits of 2002 and 2006, remained unresolved ... Consequently, the detainees enjoyed running water only three times a day for an hour or two. The absence of cold water resulted in poor hygiene and caused anger and disgruntlement amongst the detainees ...

The prison had three wings for housing detainees, two of which were in an advanced state of degradation and required urgent repairs ...

Hygiene was poor in the area where the food was prepared owing to a lack of investment and on account of the chronic absence of cleaning materials ... Hygiene was also poor in the detainees' locker-room, and cockroaches were roaming on the shelf where the rice for the evening meal was stored. Some of the detainees ... complained about the poor quality of the food. In fact, some of the food containers had food left in them after they were returned to the kitchen, a sign that the meal had been refused ... The only food which looked and smelled good was the bread which the prison had received from a bakery ...

Wing no. 2 of the prison, housing the inmates detained pending trial, had not been repaired for five years ... The walls were dirty and the detainees claimed that they hosted bed bugs which they could not eliminate. According to the prison authorities, the occasional disinfection carried out with the available limited budget had been ineffective. The sanitary facilities were in an advanced stage of degradation, the walls were damp, there was a single Turkish toilet and the water pipes were leaking onto the floor. Because running water was available only three times a day for an hour, the detainees collected the available water in a 60-litre barrel and then used it for flushing the toilet or for other needs. Next to the toilet another barrel filled up with water was used to keep the food fresh ... The window pane in the visited cell had been removed ... The prison authorities argued that the window pane had been removed following the detainees' request for more air ... The detainees claimed that they had not received soap and toilet paper for three months and cleaning detergent for the room for the whole year ...

Wing no. 1 of the prison, housing high-risk inmates, was maintained better ... Although the hygiene conditions were better, the absence of running water resulted in the detainees having to make the same improvisations in order to be able to use the sanitary facilities ...

In the prison the detainees' irritation, caused by the poor detention conditions, the absence of running water, the poor quality food, the overcrowding ... was visible."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

31. The applicant complained that the material conditions of detention in Mărgineni Prison had breached 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

1. Non-exhaustion of domestic remedies

32. The Government referred to the observations on the admissibility and merits and the annexes listing relevant domestic case-law submitted in several other applications lodged before the Court in respect of, *inter alia*, material conditions of detention, including application no. 31470/04. In so doing, they raised a preliminary objection of non-exhaustion of domestic remedies, in so far as the applicant had not complained to the authorities of the conditions of his detention on the basis of Emergency Ordinance no. 56/2003. In addition, they submitted that the applicant could have lodged a civil claim on the basis of Articles 998-999 of the former Romanian Civil Code, seeking to establish the prison authorities' liability for the poor conditions of detention. They contended – and they referred to domestic case-law supporting their arguments – that both remedies were efficient, sufficient and accessible. They further argued that bringing a claim under Law no. 275/2006, which provided for an effective remedy for the applicant's complaint, constituted a preliminary and mandatory step to be taken before instituting civil proceedings under Articles 998-999 of the former Romanian Civil Code in order for any claim for damages to be granted.

33. The applicant disagreed.

34. The Court reiterates that an applicant who has availed himself of a remedy that is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see, *mutatis mutandis*, *A. v. France*, 23 November 1993, § 32, Series A no. 277-B).

35. The Court notes from the outset in the instant case that the applicant's complaint concerns the material conditions of his detention. In this regard, it observes 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 actions suggested by the Government did 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 *Macovei v. Romania*, no. 28255/08, § 23, 22 October 2013, not final).

36. In addition, the Court notes that the applicant brought proceedings before the Romanian judicial authorities under Law no. 275/2006, complaining of the material conditions of his detention. His complaint was dismissed based on the general information provided by the prison authorities and the budgetary constraints the prison authorities faced in ensuring appropriate conditions of detention for inmates.

37. In this context, and taking into consideration the Government's argument that an action under Law no. 275/2006 constitutes a preliminary

and mandatory step to be taken before instituting civil proceedings under Articles 998-999 of the former Romanian Civil Code in order for a claim for damages to be granted, the Court is not convinced that a separate civil claim or an action under Emergency Ordinance 56/2003 would have yielded more favourable results.

38. Consequently, the Court considers that neither the Government's arguments nor the domestic case-law referred to by them indicate how the actions they proposed could have afforded the applicant immediate and effective redress for the purposes of his complaints (see, *mutatis mutandis*, *Marian Stoicescu v. Romania*, no. 12934/02, § 19, 16 July 2009).

39. The Court therefore rejects the Government's plea of non-exhaustion of domestic remedies.

2. Redundancy of the application and abuse of the right of application

40. The Government argued that in the present application, the applicant had complained before the Court about the same violations as in application no. 31470/04, which had been struck out of the Court's list of cases. The only difference between that application and the present one was that the applicant had sought to avail himself of the remedies provided by Law no. 275/2006.

41. In addition, they contended that the applicant had abused his right of application. By not submitting observations on the admissibility and merits of the case in respect of application no. 31470/04 and by subsequently lodging a new application before the Court after instituting proceedings before the domestic courts under Law no. 275/2006, he had cast doubt on his own good faith. It could therefore be concluded that his current application was vexatious or devoid of any real purpose, especially given that his applications pursued a real pecuniary purpose.

42. The applicant did not submit observations on these points.

43. The Court notes from the outset that according to the Government's submissions, which were not contested by the applicant, he was detained in Mărgineni Prison from 22 November 2003 to 26 April 2005, 18 to 21 July 2005, 10 August 2005 to 30 October 2007 and 2 November 2007 to the present date.

44. The Court also notes that the applicant complained exclusively about the conditions of detention in Mărgineni Prison and not about conditions in any other detention facilities to which he may have been transferred from 26 April to 18 July 2005, from 21 July to 10 August 2005 and from 30 October to 2 November 2007.

45. In respect of the Government's argument that the applicant's previous application and the present one lodged before the Court concern the same violations, in so far as it can be considered to amount to a preliminary objection, the Court accepts that both applications were lodged by the same applicant and concern the same issue, namely the material

conditions of his detention in Mărgineni Prison. In addition, although the Government acknowledged that, unlike in his first application, in the present application the applicant had made use of the remedies provided by Law no. 275/2006, the Court is prepared also to accept that the current application is based on the same factual circumstances as the first one.

46. The Court notes that the applicant's first application, namely application no. 31470/04, was communicated to the Government on 19 January 2009. After the Government submitted their observations on the admissibility and merits of the case, the applicant was asked repeatedly and unsuccessfully to submit his observations in reply. He failed to provide any clear explanation as to the reasons which prompted him to remain silent. Consequently, on 3 July 2012 the Court struck application no. 31470/04 out of its list of cases given the applicant's disinterest in pursuing his application. He did not ask the Court to restore the aforementioned application to the Court's list of cases.

47. However, even before application no. 31470/04 had been struck out, on 12 May 2011 the applicant lodged a second application before the Court complaining, *inter alia*, of the same issue, albeit by relying mainly on other aspects concerning the material conditions of his detention.

48. In these circumstances the Court considers that the applicant's actions amounted to a temporary waiver of his right to have his complaint concerning the material conditions of his detention in Mărgineni Prison examined by the Court. Therefore, it sees no reason to pursue the examination of the part of the applicant's complaint concerning the material conditions of his detention in Mărgineni Prison prior to 3 July 2012.

49. It follows that the Government's exceptions concerning the current application, namely application no. 33003/11, must be rejected only with regard to the part of the complaint concerning the period of detention that lapsed after 3 July 2012.

50. Lastly, the Court notes that the applicant's complaint concerning the material conditions of detention in Mărgineni Prison after 3 July 2012 is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

51. The applicant submitted that the material conditions of his detention had been inappropriate.

52. The Government argued that the applicant had not proved beyond reasonable doubt that he had been subjected to the alleged inhuman and degrading treatment of which he had complained. In addition, the authorities in Mărgineni Prison had taken all the necessary steps to ensure that he enjoyed appropriate conditions of detention.

53. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25, and *Măciucă v. Romania*, no. 25763/03, § 22, 26 May 2009).

54. The Court also 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).

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

56. In the instant case the Court notes that the applicant had already been detained in Mărgineni Prison on 3 July 2012 and that his detention is ongoing.

57. The Court also notes that it has already found a violation of Article 3 of the Convention on account of the unsatisfactory hygiene conditions, lack of appropriate furniture, inadequate sanitary facilities, lack of running water and poor food in Mărgineni Prison (see *Iacov Stanciu*, § 175, cited above).

58. In the case at hand, notwithstanding the length of the applicant's detention in the aforementioned prison, the Government have failed to put forward any argument that would allow the Court to reach a different conclusion.

59. Moreover, the applicant's submissions in respect of the improper detention conditions correspond to the general findings by the CPT in respect of Romanian prisons (see paragraph 29 above) and to the findings of the report of the Romanian Helsinki Committee in respect of Mărgineni Prison (see paragraph 30 above).

60. Given the length of the applicant's detention and the combined effect of the conditions with which he was faced, the Court concludes that the material conditions of his detention caused him suffering 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 Mărgineni Prison after 3 July 2012.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

61. Relying on Article 3 of the Convention, the applicant alleged that the Mărgineni Prison authorities had failed to provide him with adequate medical care. Invoking Article 8 of the Convention, the applicant complained of an alleged interference with his right of correspondence by the prison authorities. Relying on Article 4 of Protocol No. 7 to the Convention, the applicant complained that he had been punished several times for the same unlawful act.

62. 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 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

63. 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."

64. The applicant did not submit a claim for just satisfaction within the allowed time-limit.

FOR THESE REASONS, THE COURT, UNANIMOUSLY

1. *Declares* the complaint under Article 3 of the Convention concerning the material conditions of detention in Mărgineni Prison after 3 July 2012 admissible and the remainder of the application inadmissible;

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

3. *Holds* that there was no call to award just satisfaction.

Done in English, and notified in writing on 18 February 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada	Josep Casadevall
Registrar	President