



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

THIRD SECTION

CASE OF REMUS TUDOR v. ROMANIA

(Application no. 19779/11)

JUDGMENT

STRASBOURG

15 April 2014

FINAL

15/07/2014

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

In the case of Remus Tudor v. Romania,

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

Josep Casadevall, *President*,

Alvina Gyulumyan,

Dragoljub Popović,

Kristina Pardalos,

Johannes Silvis,

Valeriu Grițco,

Iulia Antoanella Motoc, *judges*,

and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 25 March 2014,

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

PROCEDURE

1. The case originated in an application (no. 19779/11) 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 Remus Tudor (“the applicant”), on 4 February 2011.

2. The applicant was represented by Mr M.V. Panaitescu, a lawyer practising in Bucharest. The Romanian Government (“the Government”) were represented by their Agent, Mrs C. Brumar, from the Ministry of the Foreign Affairs.

3. The applicant alleged in particular that the material conditions of his detention in Jilava Prison had breached his rights guaranteed by Article 3 of the Convention. He also complained about the lack of segregation of smokers from non-smokers in the cells he occupied.

4. On 20 February 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1966.

6. In 1990 the applicant was convicted of manslaughter and sentenced to life imprisonment. He was held in a number of different detention centres. No information is available in respect of his places of detention before

8 April 2009. From the latter date until 10 November 2011 he was detained in Jilava Prison. On the latter date he was transferred to Giurgiu Prison.

7. The applicant and the Government disagreed as to most aspects of the conditions of detention in Jilava Prison.

A. The applicant's account

8. The applicant alleged that he had occupied overcrowded cells, without providing details about the surface area and the number of cellmates.

9. He also complained of unsatisfactory sanitary conditions. The cells did not have any furniture in which to keep personal objects and food, therefore the prisoners were forced to keep them under their beds where there were hundreds of insects.

10. The temperature in the cells was very low in winter.

11. The applicant claimed that for three months, from April until July 2009, they had not had hot water. The prisoners were confronted with the same situation in the summer of 2010 when they had to live without hot water from 28 June until 5 August 2010.

12. He also contended that even though he was a non-smoker, he had had to share the cell with smokers. He further claimed that in his cell there were prisoners who frequently consumed drugs and that the smoke from the cigarettes combined with the smoke released from the drugs made the air in the cell unbreathable.

B. The Government

13. The Government supplied the following details concerning the cells in which the applicant has been detained in Jilava Prison:

- Between 8 April and 24 May 2009 the applicant was detained in cell no. 513, measuring 45.30 sq. m. The cell was occupied by between fourteen and seventeen inmates.

- Between 25 May and 28 December 2009 the applicant was detained in cell no. 405, measuring 13.28 sq. m, which he shared with five or six other inmates.

- Between 29 December 2009 and 11 February 2010 the applicant was detained in cell no. 309, measuring 34.78 sq. m. The cell was occupied by up to thirteen inmates.

- Between 12 February and 1 August 2010 the applicant was detained in cell no. 414, measuring 44 sq. m. The cell was occupied by between thirteen and eighteen inmates.

- Between 2 August and 16 September 2010 the applicant was detained in cell no. 413, measuring 12.83 sq. m, which he shared with two or three other inmates.

- Between 17 September 2010 and 4 September 2011 the applicant was detained in cell no. 207, measuring 34.78 sq. m, which he shared with fourteen or fifteen other inmates.

- Between 5 September and 10 November 2011 the applicant was detained in cell no. 305, measuring 32.76 sq. m, which he shared with nine or eleven inmates.

14. The applicant was detained in smoking cells and he had not asked to be transferred to a non-smoking cell.

15. As regards cleanliness and hygiene, the Government submitted that every year the prison authorities signed contracts for rodent and pest control with companies specialising in this work. Disinfection of the cells was carried out at least once every three months. Moreover, the quality of the drinking water was tested regularly by the prison authorities, with the aid of a specialised laboratory. Furthermore, the food was fresh and of good quality.

II. RELEVANT LAW AND PRACTICE

16. Excerpts from the relevant legal provisions concerning the rights of detainees, namely Law no. 275/2006, and from the relevant parts of the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“the CPT”) on prison conditions are given in the case of *Iacov Stanciu v. Romania* (no. 35972/05, 24 July 2012).

17. The relevant legal provisions and case-law concerning the passive smoking in prisons are described in *Florea v. Romania* (no. 37186/03, §§ 29-30, 14 September 2010).

18. The relevant parts of the report of the Romanian Helsinki Committee of 12 June 2008 in respect of the conditions of detention in Jilava Prison read as follows:

“... the basement of the old part of the prison building was completely flooded with waste-water ... Consequently, rats and cockroaches (and bed bugs 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 3034.81 sq. m, while the population was 1460, 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

19. The applicant complained of overcrowding and poor hygiene and claimed that the authorities had failed to segregate smokers from non-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

1. *The alleged redundancy of the application*

(a) The parties' submissions

20. The Government submitted that the instant application was redundant. In this respect they contended that the applicant had lodged another application concerning his conditions of detention in Jilava, Craiova and Rahova Prisons registered under no. 36852/05.

21. The applicant disagreed and pointed out that the material conditions of his detention in Jilava Prison had not been the object of any other application that he had lodged with the Court.

(b) The Court's assessment

22. The Court notes that the applicant lodged another application concerning the alleged infringement of Article 3 of the Convention registered under the number indicated by the Government. However, in that application the applicant complained about the fact that he had contracted two chronic diseases because of the conditions of detention and he referred to other periods of detention than in the instant case. In the observations submitted to the Court in application no. 36852/05, the applicant made it clear that he had complained about his conditions of detention in Jilava Prison in another case. In the light of the above, the Court dismisses this objection.

2. *The objection of non-exhaustion of domestic remedies*

(a) The parties' submissions

23. The Government also raised a preliminary objection of non-exhaustion of domestic remedies, in so far as the applicant had not complained before the domestic authorities under Law no. 275/2006 about the material conditions of his detention in Jilava Prison. They argued that

the remedy under Law no. 275/2006 was effective. They also contended that the applicant had not tried to obtain compensation for his conditions of detention on the basis of Articles 998-999 of the Civil Code, another effective remedy in their view.

24. The applicant submitted that Law no. 275/2006 did not provide for compensation for inadequate material conditions of detention and therefore could not be considered an effective remedy.

(b) The Court's assessment

25. The Court notes that the applicant's complaint concerns the material conditions of his detention, in particular overcrowding and poor hygiene. In this regard, it notes that in previous 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 do not constitute an effective remedy (see *Lăutaru v. Romania*, no. 13099/04, § 84, 18 October 2011).

26. The Court therefore concludes that the domestic case-law cited by the Government does not indicate how the legal actions proposed by them 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).

27. It therefore rejects the Government's plea of non-exhaustion of domestic remedies in respect of the applicant's complaint concerning the material conditions of detention in Jilava Prison.

28. Noting further that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds, the Court concludes that it must therefore be declared admissible.

B. Merits

1. The parties' submissions

29. The applicant submitted that the conditions of his detention in Jilava Prison were inadequate. He alleged that he was put in overcrowded cells, infested with insects and in a poor state of hygiene. He admitted that he had agreed to occupy a smoking cell although he was a non-smoker because he had not had any other option. The only cells available for inmates who preferred to perform work while in detention were cells for smokers. The applicant also maintained that despite the fact that, according to the prison's regulations, smoking was not allowed in the cells, the inmates used to smoke in the cell.

30. The Government, referring to their description of the detention conditions submitted before the Court, contended that the domestic

authorities had taken all necessary measures to ensure adequate conditions of detention, and that the applicant's complaint was groundless. As regards the applicant's allegation that he had to share the cell with smokers, the Government submitted that, according to the Internal Regulations of the prison, smoking in the cells was prohibited.

2. *The Court's assessment*

(a) **General principles**

31. 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 *Artimenco v. Romania*, no. 12535/04, §§ 31-33, 30 June 2009). 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 *Kudła*, cited above, § 91).

32. 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).

(b) **Application of those principles to the case in hand**

33. Although the Government did not provide information about the exact number of inmates and beds, as well as the existent furniture in each cell in which the applicant had been detained, the Court notes that, even at the occupancy rate indicated by the Government, the applicant's personal space turns out to have been below four square metres, which falls short of the standards imposed by the Court's case-law.

34. The Court has already found violations of Article 3 of the Convention in similar cases in which the applicant cited the material conditions of detention in Jilava Prison (see *Jiga v. Romania*, no. 14352/04, §§ 65-66, 16 March 2010, and *Grozavu v. Romania*, no. 24419/04, § 44, 2 November 2010).

35. Moreover, the applicant's submissions about the overcrowded and unhygienic conditions correspond to the general findings by the CPT in

respect of Romanian prisons and to the findings of the report of the Romanian Helsinki Committee in respect of Jilava.

36. The Court concludes that the conditions of the applicant's 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.

37. 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.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant submitted that he would leave to the Court's appreciation the quantum of compensation to be awarded to him for the suffering caused by the inadequate material conditions of his detention in Jilava Prison.

41. The Government maintained that the applicant had not lodged any claim for just satisfaction within the time-limit established by the Court. They consequently requested that no compensation be awarded to the applicant.

42. The Court notes that it has found a violation of Article 3 in the present case. In these circumstances, making its assessment on an equitable basis, the Court awards the applicant 5,850 euros (EUR) in respect of non-pecuniary damage.

B. Costs and expenses

43. The applicant submitted that he had lost all the documents related to the costs and expenses he had incurred in connection with the proceedings.

44. The Government reiterated their position according to which the applicant had not lodged any claim for just satisfaction.

45. 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 fact that the applicant has not submitted any documents in this respect, the Court rejects the claim for 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 application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in Jilava Prison;
3. *Holds*,
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,850 (five thousand eight hundred and fifty euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (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.

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

Mariarena Tsirli
Deputy Registrar

Josep Casadevall
President