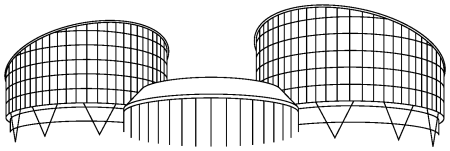

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF TIREAN v. ROMANIA

(Application no. 47603/10)

JUDGMENT

STRASBOURG

28 October 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tirean v. Romania,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Ján Šikuta,
Dragoljub Popović,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 7 October 2014,

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

PROCEDURE

1. The case originated in an application (no. 47603/10) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Gheorghe Tirean ("the applicant"), on 10 August 2010.

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, including the lack of separation between smokers and non-smokers in Aiud, Gherla, Rahova, Jilava, Slobozia, Dej and Miercurea-Ciuc Prisons and the transport conditions between those facilities, had been inappropriate. He further complained that he had been subjected to ill-treatment by the police during the criminal investigation opened against him, and that the medical treatment during his pre-trial detention had been inadequate. This amounted to a breach of his rights guaranteed by Article 3 of the Convention.

4. On 21 May 2013 his complaints under Article 3 of the Convention were communicated to the Government and the remainder of the application was declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1957. He is currently detained in Timişoara Prison.

A. Background to the case

6. On 28 December 2009 the Cluj Directorate for Investigating and Combating Organised Crime and Terrorism ("DIICOT") charged the applicant with aggravated fraud and organising a criminal group, and placed him in police custody for twenty-four hours.

7. By an interlocutory judgment of 29 December 2009 the Cluj County Court allowed a request by DIICOT to detain the applicant pending trial for thirty days. On the same date he was detained in the Cluj Police Department. His pre-trial detention was subsequently extended to cover the entire duration of his trial.

8. By a judgment of 5 December 2011 the Cluj County Court convicted the applicant of aggravated fraud and organising a criminal group, and sentenced him to four years' imprisonment. The judgment remained final, after the Cluj Court of Appeal dismissed an appeal by the applicant on 29 May 2012 and the Court of Cassation dismissed an appeal by him on points of law (*recurs*) on 24 September 2012.

B. Proceedings brought by the applicant

9. In his initial letters to the Court, the applicant contended, without providing details, that during the criminal investigation opened against him in 2009 he had been beaten up by police officers.

10. On 17 June 2010 he brought civil proceedings against the Romanian Ministries of Finance and Justice seeking financial compensation for inadequate medical treatment during his pre-trial detention. In his written submissions he also stated that he had been subjected to violence after his arrest.

11. By a final judgment of 7 January 2011 the Cluj County Court dismissed the proceedings as inadmissible on the grounds that it was not competent *ratione loci* to examine his claim. It referred the case to the Bihor County Court.

12. By a judgment of 31 October 2011 the Bihor County Court dismissed the proceedings on the grounds that the statute of limitations for his claim had taken effect. In addition, the Romanian Ministries of Finance

and Justice lacked the *locus standi* to be sued. There is no evidence in the file that the applicant appealed against the judgment.

C. Physical conditions of detention and conditions of transport

1. The applicant's account

13. In his letters to the Court, the applicant contended that in Aiud, Gherla, Rahova, Jilava, Slobozia, Dej and Miercurea-Ciuc Prisons he had been forced to share cells with between thirty and forty-five smokers, even though he was a non-smoker. They had been noisy and violent. Also, he would constantly be transferred from one prison to another, sometimes for distances of up to 400 kilometres in a vehicle with between thirty and forty detainees, who would smoke, eat and be noisy. Moreover, he had not been provided with adequate medical care during his pre-trial detention.

2. The Government's account

14. Between 8 January and 3 March 2010 the applicant was detained on several occasions in Dej Prison Hospital for a total of thirty-nine days, in non-smoking cells. He was afforded between 4 and 5.62 sq. m of living space, and was provided with adequate medical treatment for his condition.

15. Between 3 February 2010 and 18 January 2011 he was detained in Gherla Prison on several occasions for a total of two hundred and seventy-four days, in non-smoking cells. For sixty-three days of his detention he was afforded 5.31 sq. m of living space. For the remaining period he was afforded between 2.06 and 3.43 sq. m of living space.

16. Between 10 and 15 February 2010 the applicant was detained on two occasions in Jilava Prison for a total of four days, in non-smoking cells. For most of his stay he was afforded between 1.78 and 3.69 sq. m of living space; however, for a few hours he was afforded 6.38 sq. m or more of living space.

17. Between 9 and 11 February 2010 the applicant was detained in Slobozia Prison for three days, in a non-smoking cell. He was afforded 4.66 sq. m of living space.

18. Between 11 May and 8 November 2010 the applicant was detained repeatedly in Jilava Prison Hospital for a total of forty-five days, in non-smoking cells. He was afforded between 4.68 and 5.43 sq. m of living space, and was provided with adequate medical treatment for his condition.

19. On 4 October 2010 the applicant was detained in Rahova Prison for three days, in a non-smoking cell. He was afforded 2.10 sq. m of living space.

20. On 23 December 2010 the applicant was detained in Miercurea-Ciuc Prison for twelve days. He was afforded 1.80 sq. m of living space.

21. The applicant was detained in Aiud Prison repeatedly, but only while in transit to another facility. He would only remain there for a few hours, in a non-smoking cell, and would be afforded between 1.45 and 2.05 sq. m of living space.

22. The applicant was transferred between detention facilities in twenty-two special vehicles fitted with windows, lights, heating and sunroofs. The vehicles had between sixteen and thirty-eight seats. The number of detainees transported would never exceed the number of available seats. Detainees were provided with food and water during transfers, and were allowed bathroom breaks and access to running water and smoking areas every time the vehicle stopped at a prison. Smoking was strictly prohibited during transfers.

23. During his detention, the applicant had refused to provide information on his pre-existing medical condition and had repeatedly refused treatment for his chronic and psychiatric problems.

24. On 18 January 2011 the applicant was released from pre-trial detention under the condition not lo leave the country pending the outcome of the criminal proceedings opened against him.

25. On 10 June 2013 the applicant was detained again following his conviction of 24 September 2012 (see paragraph 8 above) and was incarcerated in Timişoara Prison.

II. RELEVANT DOMESTIC LAW

26. Excerpts from the relevant parts of the applicable domestic legislation and the relevant international reports – namely the former Romanian Civil Code; 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 ("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).

27. In its report (CPT/Inf (2011) 31) published on 24 November 2011 following a visit from 5 to 16 September 2010 to a number of detention facilities in Romania, the CPT expressed concerns over the limited living space available to prisoners and the insufficient space provided for by the regulations in place at that time.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

28. The applicant complained that the overcrowded conditions of detention, including the lack of separation between smokers and non-smokers in Aiud, Gherla, Rahova, Jilava, Slobozia, Dej and Miercurea-Ciuc Prisons and the overcrowded and poor transport conditions every time he was transferred between those facilities, had been inappropriate. He further complained that he had been subjected to ill-treatment by police officers, and that the medical care during his pre-trial detention had been inadequate. This amounted to inhuman and degrading treatment within the meaning of 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. Physical conditions of detention, including the lack of separation between smokers and non-smokers

1. Admissibility

29. The Government contended that the domestic authorities had provided the applicant with adequate conditions of detention, and that for the most part of his detention he had been afforded living space in excess of 4 sq. m. Consequently, his complaint could be dismissed as manifestly ill-founded.

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

31. The Court notes that according to the available evidence, the applicant faced overcrowded conditions for the better part of his detention. In these circumstances, the Court cannot accept the Government's submission that the applicant's complaint concerning the physical conditions of his detention is 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.

2. Merits

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

33. The Government, referring to their description of the detention conditions submitted to the Court (see paragraphs 14-25 above), contended that the domestic authorities had taken all the measures necessary to ensure adequate conditions of detention, and that the applicant was afforded living space in excess of 4 sq. m for the most part of his detention. Consequently,

his conditions of detention did not meet the level of severity required by Article 3 of the Convention.

34. The Court reiterates that under Article 3 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).

35. 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).

36. 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).

37. The Court notes from the outset that during the applicant's detention from 8 January 2010 to 18 January 2011, according to the available evidence, he was repeatedly transferred between Aiud, Gherla, Rahova, Jilava, Slobozia, Dej and Miercurea-Ciuc Prisons and/or their hospitals.

38. The Court further notes in the present case that the applicant complained exclusively about the physical conditions of his detention in the aforementioned facilities and not about conditions in any other facilities to which he may have been transferred for the periods of time he was not detained in those prisons. However, having regard to the date he lodged his complaint before the Court, the length of his detention 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).

39. The Court notes that the Government provided information on the living space afforded to the applicant in all of the detention facilities. Even at the occupancy rate put forward by the Government, the applicant's living space during the periods he spent there seems to have regularly been below 4 sq. m and was sometimes as little as 1.45 sq. m (see paragraphs 21 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 must also have contained detainees' beds and other items of furniture.

40. Moreover, while it appears that on some occasions the space available to the applicant was in excess of 4 sq. m (see paragraphs 14-18 above), the Court is not convinced that the short periods of time he was exposed to non-overcrowded conditions may amount to a change in his situation.

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

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

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

44. Consequently, the Court concludes that the physical 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 prescribed by Article 3.

45. There has accordingly been a violation of Article 3 of the Convention in respect of the physical conditions of the applicant's detention on account of overcrowding in Aiud, Gherla, Rahova, Jilava, Slobozia, Dej and Miercurea-Ciuc Prisons.

46. Having regard to its finding the Court does not consider necessary to examine the remaining aspects of the applicant's complaints concerning the physical conditions of his detention.

B. Conditions of transport

47. The Government contended that the conditions in which the applicant had been transported had been adequate. The vehicles had been well maintained and met the legal comfort requirements. They had been fitted with heating and natural ventilation systems. The number of detainees transported had not exceeded the number of seats. In addition, smoking was forbidden during detainee transfers and cigarettes and lighters would be taken away by the prison guards when detainees climbed aboard the vehicle, and would only be returned again at the destination. Furthermore, the applicant had failed to complain before the domestic authorities about the transport conditions.

48. The applicant maintained that the transport conditions had been inappropriate.

49. The Court notes that there is considerable disagreement between the parties as to the conditions of transport the applicant had to face. It appears, however, that the applicant had been transferred repeatedly between facilities and that on occasion that had entailed long journeys. At the same time, the court notes that the applicant had not contested the Government's

submissions that during transfers, detainees had received water and food and had been allowed bathroom breaks every time the car stopped at a prison.

50. In addition, the Court notes that except for the applicant's submissions, there is no evidence in the file that the vehicles had been overcrowded, that the detainees smoked, or that the applicant had not had an assigned seat he could have used. In this connection, the Court notes that he failed to raise any complaint with the relevant domestic authorities about the conditions of transport. While the Court doubts the efficiency of such a complaint, it would have served the applicant as evidence to substantiate his claim.

51. In these circumstances, although it accepts that the other detainees would eat and be noisy during transfers, the Court is not convinced that the treatment the applicant was subjected to was of such intensity as to induce physical suffering or mental weariness, or was an attempt to humiliate him.

52. It follows that this part of the applicant's complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. Alleged ill-treatment by police officers and lack of adequate medical care during pre-trial detention

53. The Government contended that the applicant had failed to exhaust the available domestic remedies. In particular, he had failed to bring any criminal proceedings against the police officers who had allegedly ill-treated him. In addition, he had failed to complain under Law no. 275/2006 to the post-sentencing judge of a lack of adequate medical treatment.

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

55. The Court finds that it is not necessary to examine whether the applicant exhausted the available domestic remedies as, even assuming that he did, the complaints are in any event inadmissible for the following reasons.

56. The Court notes that the civil proceedings opened by the applicant seeking compensation for lack of adequate medical care, including his submission about police violence, were dismissed by the first-instance court without it touching on the merits of the case. There is no evidence in the file that the applicant appealed against that judgment. In addition, it does not appear that the applicant lodged any other proceedings before the relevant domestic authorities in respect of his complaints. Moreover, except for the applicant's submissions, there is no medical or other form of evidence in the file that he was subjected to violence by police officers. Furthermore, he appears to have been repeatedly hospitalised and treated in prison hospitals for his medical condition. Also, except for the times when he refused

medical assistance or treatment, it appears that he received ongoing medical care and medication. Lastly, there is no evidence in the file that the applicant's medical condition became any worse during his detention.

57. In these circumstances, the Court considers that these parts of the applicant's complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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

59. The applicant claimed 45,000 euros (EUR) in respect of pecuniary damage and EUR 150,000 for non-pecuniary damage. He argued that the amount claimed for pecuniary damage was to cover his private pension, which he alleged had been terminated after his release.

60. The Government submitted that the applicant had not submitted any evidence in support of his claim for pecuniary damage and that it should therefore be dismissed. Further, they argued that the sum claimed by the applicant in respect of non-pecuniary damage was excessive.

61. The Court shares the Government's view that the applicant had not submitted any documents to support the amount claimed for pecuniary damage. Consequently, it finds no reason to award the applicant any sum under that head.

62. The Court considers, however, that the applicant must have suffered distress as a result of the physical conditions of his detention. Consequently, making an assessment on an equitable basis, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Default interest

63. 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 complaint under Article 3 of the Convention concerning the physical conditions of the applicant's detention in Aiud, Gherla, Rahova, Jilava, Slobozia, Dej and Miercurea-Ciuc 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 from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at 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 28 October 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Josep Casadevall
Deputy Registrar	President