



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

THIRD SECTION

CASE OF MAZĂLU v. ROMANIA

(Application no. 24009/03)

JUDGMENT

STRASBOURG

12 June 2012

FINAL

12/09/2012

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

In the case of Mazâlu v. Romania,

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

Josep Casadevall, *President*,

Alvina Gyulumyan,

Egbert Myjer,

Ineta Ziemele,

Luis López Guerra,

Nona Tsotsoria,

Kristina Pardalos, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 22 May 2012,

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

PROCEDURE

1. The case originated in an application (no. 24009/03) 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 Petru Mazâlu (“the applicant”), on 25 June 2003.

2. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu.

3. As Mr Corneliu Bîrsan, the judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court), the President of the Chamber appointed Mrs Kristina Pardalos to sit as *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court).

4. The applicant complained about the conditions of his detention in the Iași police station cells and in Iași High-Security Prison. He complained specifically of overcrowding, and alleges that the permanent artificial lighting in the cell damaged his eyesight.

5. On 13 December 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1951 and lives in Iași.

A. First set of criminal proceedings against the applicant

7. The applicant was sentenced in 1992 to ten years' imprisonment for damage to community property (*avut obştească*). By a final decision of 7 September 1993 the Constitutional Court declared unconstitutional the provisions of the Criminal Code referring to crimes against community property.

8. On 27 August 1996 the Prosecutor General lodged a request to have the proceedings against the applicant reopened, on the basis that his conviction was based on provisions declared unconstitutional. By a final decision of 23 September 1997 the Supreme Court of Justice granted the request to reopen the proceedings, quashed the previous conviction, changed the legal qualification of the offences committed by the applicant and sentenced him to four months' imprisonment for fraud, ordering his immediate release from prison. At that time he had already served fifty-four months of the original sentence.

9. On 10 May 2002 the applicant lodged an action in damages against the Ministry of Finance, asking for compensation because he had been imprisoned for fifty-four months, while the final decision of 1997 reduced his sentence to only four months' imprisonment.

10. By a final decision of 20 December 2004, the High Court of Cassation and Justice dismissed his action on the basis of the provisions of Articles 504 and 505 of the Code of Criminal Procedure (CCP), which limited the right to be paid compensation solely to acquittal or a decision of the prosecutor not to pursue criminal proceedings. Taking into account that the applicant had not been acquitted, the domestic courts concluded that he did not qualify for payment of compensation on the basis of the provisions of the CCP as in force at that time, and dismissed his claim in this respect.

B. Second set of criminal proceedings

11. The applicant was arrested on 28 March 2001 on suspicion of fraud. He was committed for trial on 20 June 2001. By a final decision of 16 January 2003 he was found guilty and was sentenced to three years and eight months' imprisonment. The domestic courts, after reviewing evidence, including witness statements, a financial report and the applicant's statements, concluded that the applicant had caused harm to different private companies by issuing cheques without the funds to cover them. The applicant was represented by a lawyer of his own choosing throughout the proceedings. In his appeal on points of law he complained that no evidence had been adduced in his favour. The appellate court reviewed the decisions of the lower courts and concluded that they had assessed the factual situation correctly and identified that the applicant had committed the

offence, and that his requests to adduce evidence in his favour had been allowed.

C. Conditions of detention

12. The applicant had been detained in connection with the second set of proceedings from 28 March 2001 until 19 March 2004, when he was released conditionally.

13. According to him, he was detained in the Iași police station cells until 25 June 2001, when he was transferred to Iași High-Security Prison.

1. The applicant's description of the conditions of his detention

14. The applicant complains mainly of overcrowding and unsatisfactory sanitary conditions. He alleges that during his entire detention he had to share a bed with other prisoners, mostly dangerous criminals.

(a) Iași police station

15. According to the applicant, in Iași police station he occupied cell 20. It had eight beds and was occupied by ten detainees. The surface area of the cell was 14.2 square metres.

16. He complained that the cell had no toilet. The detainees went to the toilets twice a day, at 6 a.m. and 8 p.m. respectively. The rest of the time the detainees had to use a bucket.

17. He alleged that he had been allowed to walk outside the cell for twenty minutes each day.

18. He also complained that there was no running water.

19. He further complained that the cell had no natural light. It had a small window with a grille.

(b) Iași prison

20. The applicant alleged that between 25 June 2001 and 18 May 2003 he had been placed in several cells: cells 72 and 74 (when he refused to eat), 95, 4 and 51.

21. He alleged that cells 4 and 51, where he spent most of his time while in detention, had no natural light. He claimed that when he had complained to the prison authorities about the lack of natural light he had been transferred to cell 95, which he shared with murderers and paedophiles.

22. He further complained that these cells had more detainees than beds. According to the applicant the cells had a surface area of 32.3 square metres and were occupied by up to forty-five detainees.

23. He acknowledged that he had refused the twenty-minute outdoor walks and therefore he had been disciplinarily punished on

31 October 2002. He justified his attitude by the pain caused to his eyes by natural light.

2. The Government's description of the applicant's conditions of detention

(a) Iași police station

24. According to the information provided by the Iași Inspectorate of Police to the Romanian Government, the applicant was placed in cell 20. Each detainee had his own bed. However, there was no information concerning the surface area of the cell and the number of prisoners occupying it for the relevant period of detention.

25. The cell was fitted with clean toilets and had natural lighting and adequate ventilation.

(b) Iași prison

26. According to the information submitted by the National Prison Administration ("the NPA") and the Iași Prison Administration, the applicant shared cell 27 with inmates with no previous convictions, serving sentences less severe than ten years' imprisonment.

27. The surface area of the cell was 33.3 square metres. However, there was no information concerning the number of prisoners occupying it for the relevant period of detention.

28. They also alleged that the cell had natural lighting and good ventilation. It had a supply of running and drinking water.

29. According to the Government the prison had its own electric and heating facilities. The detainees could take a shower at least once a week.

30. The Government claimed that the applicant used to participate in entertainment and sport activities. However, on the ground that the applicant refused to take the daily walk and to participate in recreation activities, he was sanctioned with a reprimand on 31 October 2002.

D. The applicant's medical condition

31. The applicant alleged that his eyesight had been seriously impaired as a result of his detention in cells with neon light on permanently. He claimed that at the time of his arrest he had 2.5 dioptries in both eyes, while after twenty months of detention he had 3 dioptries in his right eye and 5 dioptries in his left eye. He submitted in this connection a medical certificate issued by the hospital of the Iași Prison on 15 November 2002 attesting to that statement.

32. The Government maintained that according to the applicant's medical record, he had been "healthy and fit for work" when he was placed in Iași Prison. They also admitted that the applicant has since been under

medical surveillance for simple hypermetropy and presbyopia. They also submitted that on 15 November 2002 the applicant had been diagnosed with chronic conjunctivitis and simple hypermetropia and on 7 July 2003 with ophthalmological haemorrhage.

33. According to the applicant's medical file, from the date of his imprisonment he was regularly examined by doctors and was prescribed and administered medication during the course of his detention.

E. The applicant's complaints concerning the conditions of his detention

34. The applicant lodged a civil action in damages against the Romanian State for the worsening of his eyesight. His claims were dismissed by the Iași County Court in a first-instance judgement of 27 January 2003 as unsubstantiated. From the information available in the case file it appears that the applicant lodged an appeal, but no information is available as to the final outcome of the case. According to the Government, the applicant did not continue the proceedings.

II. RELEVANT DOMESTIC LAW

35. The relevant provisions of the Execution of Sentences Act (Law no. 23/1969) are set out in paragraphs 23 and 25 of the Court's judgment in the case of *Năstase-Silivestru v. Romania* (no. 74785/01, 4 October 2007).

36. The Government's Emergency Ordinance 56 of 27 June 2003 ("Ordinance 56/2003") regarding the rights of prisoners states, in Article 3, that prisoners have the right to bring legal proceedings before a court of first instance concerning implementing measures taken by prison authorities in connection with their rights.

III. REPORTS ON THE CONDITIONS OF DETENTION IN ROMANIAN PRISONS

37. The relevant findings and recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") are described in the Court's judgments in the cases of *Bragadireanu v. Romania* (no. 22088/04, §§ 73-76, 6 December 2007) and *Artimenco v. Romania* (no. 12535/04, §§ 22-23, 30 June 2009).

38. The CPT report published on 11 December 2008, following a visit to different police detention facilities and prisons in Romania conducted from 8 to 19 June 2006, indicated overcrowding as a persistent problem. The same report concluded that in the light of the deplorable material

conditions of detention in some of the cells of the establishments visited, the conditions of detention could be qualified as inhuman and degrading.

39. In the same report, the CPT declared itself gravely concerned by the fact that a lack of beds remained a constant problem, not only in the establishments visited but at national level, and that this had remained the case since its first visit to Romania in 1999. The CPT also welcomed the changes introduced in domestic legislation providing for personal space of four square metres for each prisoner. The CPT therefore recommended that the Romanian authorities take the necessary measures to ensure compliance with this requirement, as well as to ensure that each detainee had his or her own bed.

40. The Court notes that there are no CPT reports for Iași High-Security Prison. However, the Romanian Helsinki Committee visited this prison on 20 June 2004. The report issued following this visit shows that the prison was overcrowded; that the courtyard where the detainees had their hour's daily exercise was not protected in any way from sun or rain, and that relations between the detainees and the authorities were rather tense.

41. The CPT report issued in April 2004, following a visit from 16 to 25 September 2002 to different police detention centres, including the one at Iași, indicates that the cells had very little natural light, that they were overcrowded, and that numerous inmates had to share a bed.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

42. The applicant complained about the conditions of his detention in Iași police station and in Iași High-Security Prison. He mainly complained of overcrowding and unsatisfactory sanitary conditions. He also alleged that the permanent artificial lighting in the cells had damaged his eyesight. 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.”

1. Admissibility

(a) The parties' submissions

43. The Government 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 Ordinance no. 56/2003. The Government considered the ordinance an efficient, sufficient and accessible remedy. They also submitted that the

civil proceedings for damages brought by the applicant had been suspended due to his failure to sustain his action.

44. The applicant disagreed.

(b) The Court's assessment

45. The Court notes that the applicant's complaint concerns the material conditions of his detention and, in particular, overcrowding, lack of natural lighting and poor sanitary facilities for the period between 28 March 2001 and 19 March 2004. It further observes that Ordinance 56/2003, described by the Government as an effective remedy, entered into force in June 2004, after the applicant had been released from prison.

46. Moreover, the Court notes that in recent applications against Romania concerning similar complaints it has already found that, given the specific nature of this type of complaint, the legal actions indicated by the Government did not constitute effective remedies (see *Petrea v. Romania*, no. 4792/03, §§ 36 and 37, 29 April 2008; *Eugen Gabriel Radu v. Romania*, no. 3036/04, § 23, 13 October 2009; *Cucolaş v. Romania*, no. 17044/03, § 67, 26 October 2010; *Dimakos v. Romania*, no. 10675/03, § 38, 6 July 2010; and *Lăutaru v. Romania*, no. 13099/04, § 84, 18 October 2011).

It therefore rejects the Government's plea of non-exhaustion of domestic remedies.

47. 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.

2. Merits

(a) The parties' submissions

48. The applicant reiterated that he had been held in unstable conditions, that the cells had been overcrowded and that the conditions had not been conducive to maintaining proper hygiene. He referred to the CPT reports of that time as confirming his allegations. He also argued that the Romanian Government had failed to submit to the Court any information with regard to the cells where he had been detained, the period of time he had spent in each cell and the number of detainees occupying the cells he was in. The applicant further claimed that his eyesight has been seriously impaired as a result of his detention in cells where there was neon light on permanently.

49. The Government, referring to the description of the detention conditions in the information provided by the NPA, contended that the domestic authorities had taken all necessary measures to ensure adequate conditions of detention. They further contested the allegation that the applicant had been held in overcrowded cells.

(b) The Court's assessment

50. 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 the execution of the measure 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 *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

51. The Court further observes that Convention proceedings, such as the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) because in certain instances the respondent Government alone have access to information capable of corroborating or refuting the applicant's allegations (see *Khudoyorov v. Russia*, no. 6847/02, § 113, ECHR 2005-X (extracts); and *Seleznev v. Russia*, no. 15591/03, § 41, 26 June 2008).

(i) The applicant's conditions of detention

52. The Court has frequently found a violation of Article 3 of the Convention on account of the lack of personal space afforded to detainees (see, among others, *Răcăreanu v. Romania*, no. 14262/03, § 49, 1 June 2010; *Dimakos* cited above, § 49; and *Lăutaru*, cited above, § 102).

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

53. The Court further notes that the applicant's description of the overcrowding corresponds to the findings made by the CPT reports.

54. In the light of the above, the Court considers that the conditions of the applicant's detention caused him suffering which exceeded the unavoidable level of suffering inherent in detention and which attained the threshold of degrading treatment prescribed by Article 3.

There has accordingly been a violation of Article 3 of the Convention in this respect.

(ii) The applicant's alleged impairment of eyesight

55. The Court notes that the parties disagreed in respect of the applicant's allegation that the lack of natural light in the cells in which he had been detained had impaired his eyesight. The Government submitted that the cells in Iași Police Station and Iași High Security Prison had natural light and the applicant had been under permanent medical surveillance and treatment for his ophthalmological conditions. They also stressed that the applicant's visual impairment in prison could be considered in direct

connection to his age, as when he was medically examined in 2002 he was 51 years old.

56. The Court observes that according to the applicant's submission he already wore glasses when he started his detention in 2001. In the absence of a clear indication in the applicant's medical record of a causal link between the conditions of detention and the impairment of his eyesight the Court cannot establish with certainty that his allegation was proved. Moreover, the applicant was permanently under medical surveillance and was receiving medical treatment for his conditions.

57. Therefore, having regard to the above considerations, the Court can conclude that there has been no violation of Article 3 in this respect.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Complaints concerning the first set of proceedings

58. The applicant raised several complaints concerning the pre-trial detention, the outcome of the proceedings and the alleged judicial error in connection with the first set of criminal proceedings. The Court notes that he lodged his application with the Court on 25 June 2003, while the proceedings were terminated by a final decision delivered on 23 September 1997. It follows that these complaints have been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Complaints concerning the civil proceedings in damages (final decision of 17 December 2004)

59. Relying on Article 5 of the Convention the applicant complained that he had not been awarded damages for his alleged illegal detention during the period 1993-96, making reference to the civil proceedings in damages he had brought in this connection. The Court notes that the national law in force at that time limited the right to be paid compensation solely to acquittal. Taking into account that the applicant had not been acquitted it follows that he should have lodged his complaint with the Court within six months of the date his sentence was reduced to four months' imprisonment and he became aware that there was no effective remedy. The final decision reducing his sentence was delivered on 23 September 1997, while he only lodged his action in damages against the Ministry of Finance on 10 May 2002 and addressed the Court on 14 June 2005.

It follows that these complaints have been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

C. Other complaints

60. With regard to the rest of the complaints raised by the applicant under Articles 5, 6, 7, 8 and 14 of the Convention and Article 1 of Protocol No. 12 and Article 2 of Protocol No. 1 to the Convention, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, 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 these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicant claimed 2,500,000 euros (EUR) in total in respect of pecuniary and non-pecuniary damage.

63. The Government put forward that the applicant did not quantify or justify the claims in respect of pecuniary damages. They considered that the request for non-pecuniary compensation was excessive and that the conclusion of a violation of the Convention Articles would suffice to compensate for the non-pecuniary damage allegedly incurred.

64. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicant suffered distress as a result of the conditions of his detention. It therefore awards him EUR 7,500 in respect of non-pecuniary damage.

B. Costs and expenses

65. The applicant also claimed EUR 2,500 for costs and expenses incurred before the Court.

66. The Government claimed that the applicant had not submitted documents to support his claims.

67. 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 documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 100 for the proceedings before the Court.

C. Default interest

68. 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 complaints concerning the conditions of detention and the impairment of the applicant's eyesight admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of detention in Iași police station and Iași high-security prison;
3. *Holds* that there has been no violation of Article 3 of the Convention in connection with the impairment of the applicant's eyesight;
4. *Holds*
 - (a) that the respondent State is to pay to the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, which are to be converted into the respondent State's national currency at the rate applicable on the date of settlement:
 - (i) EUR 7,500 (seven thousand five hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable,
 - (ii) EUR 100 (one hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 June 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President