



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

THIRD SECTION

CASE OF VARTIC v. ROMANIA

(Application no. 12152/05)

JUDGMENT

STRASBOURG

10 July 2012

FINAL

10/10/2012

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

In the case of Vartic v. Romania,

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

Josep Casadevall, *President*,

Alvina Gyulumyan,

Egbert Myjer,

Ján Šikuta,

Ineta Ziemele,

Luis López Guerra,

Kristina Pardalos, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 19 June 2012,

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

PROCEDURE

1. The case originated in an application (no. 12152/05) 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 Moldovan national, Mr Ghennadii Vartic (“the applicant”), on 30 March 2005.

2. The Romanian Government (“the Government”) were represented by their Agent, Mrs Irina Cambrea, of the Ministry of Foreign Affairs.

3. The applicant complained in particular about the physical conditions of detention in two different prisons in Romania.

4. On 8 July 2010 the Court decided to give notice of the application to the Government. On the same date the Moldovan Government were informed of their right to intervene in the proceedings in accordance with Article 36 § 1 of the Convention and Rule 44 § 1 b, but they did not communicate any wish to avail themselves of this right.

The Court decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

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 As Mr Corneliu Bîrsan, the Judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court), the President of the Chamber appointed Mrs Kristina Pardalos to sit as *ad hoc* judge (Article 26 § 4 of the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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1973 and is currently detained in Jilava Prison.

A. The applicant's arrest and conviction

7. On 30 January 1996 the applicant was arrested on suspicion of murder.

8. On 3 November 1998 the Bucharest Regional Court sentenced the applicant to twenty years' imprisonment for murder.

9. On 14 April 1999 Bucharest Appeal Court allowed an appeal by the prosecution and increased the applicant's sentence to twenty-five years' imprisonment.

10. On 28 October 1999, before the Supreme Court (now the Court of Cassation), the applicant orally withdrew his appeal, as can be seen from the court decision. According to that decision, the applicant was assisted by an officially assigned lawyer but not by an interpreter. The decision of 14 April 1999 became final.

B. The applicant's conditions of detention in Jilava and Rahova prisons

11. The applicant was detained in the following prisons:

- from 9 May 1996 until 19 April 1998 he was detained in Jilava Prison;
- from 19 April to 30 April 1998 he was detained in the hospital of Jilava Prison;
- from 30 April to 12 May 1998 he was detained in Rahova Prison;
- from 12 May 1998 until 9 February 1999 he was detained in Jilava Prison;
- from 9 February 1999 until 21 February 2009 he was detained in Rahova Prison;
- from 21 February 2009 until 2011 he was detained in Giurgiu Prison;
- since 2011 he has been detained in Jilava Prison.

12. The parties disagreed as to the conditions of detention in Jilava and Rahova prisons.

1. The applicant's account

13. The applicant alleges that while he was in Jilava Prison there were sixty people in one cell, and two or three people had to share each bed. He was moved on numerous occasions to different cells, which were all overcrowded.

The water was contaminated and had worms in it, and the food was of very poor quality. This caused the applicant's hospitalisation for ten days in April 1998 for enterocolitis.

The heating was very low in winter and there was no ventilation in summer. Half the showers were not working and this, coupled with the overcrowding, made it very difficult to take a shower.

14. The applicant alleges that the cells in Rahova Prison were overcrowded. There were always twelve or thirteen detainees for every ten beds and occasionally people had to sleep on the floor. He alleges that to have a bed in the cell detainees had to pay, or else use force.

2. Statements by the applicant's cellmates

15. In a written statement signed by Mr T.X.L., a cellmate of the applicant 'in 1996-97 in Jilava Prison, Mr T.X.L. wrote that the inmates were hungry and that he and the applicant had eaten snakes, cats and dogs.

16. A statement signed by B.S.A. alleged that the drinking water and the food at Jilava Prison contained worms and that there were cockroaches in the cells.

3. The Government's account

17. The Government argued that, in relation to the conditions of detention in Jilava Prison, it could not give any information concerning the dimensions of the cells, the number of beds and the available space.

18. The Government presented a written statement from the National Prison Authority (hereafter NPA) arguing that the food provided in Jilava Prison was fresh and respected the rules of hygiene and standards on calorie intake.

19. The Government acknowledged that the detained persons were regularly searched in order to remove prohibited items such as snakes, cats and dogs. The Government contended however that on no occasion did the applicant introduce such things into his cell.

20. The Government argued that drinking water was provided at all times, except on days when the system was being repaired, or during the summer when it was not functioning properly. On such occasions the water supply was stopped for a short period of time.

The Government argued that reports have shown that the water was of good quality.

21. Detainees could shower each week in a room with nineteen to twenty-three showers. Every cell was allotted fifteen to thirty minutes for this.

22. Heating was provided on a preapproved schedule, with the exception of days when the heating system was being repaired. From 1999 there was heating from 1 November to 31 March.

Because of malfunctions in the heating system the temperature of the water going through the water heater was 30°C.

23. The Government contended that the applicant could participate in sport, cultural and entertainment activities and that he had the opportunity to work.

24. The Government stated, in connection with the conditions of detention in Rahova Prison, the applicant's cell was 26.5 sq. m, of which the toilet had 1.78 sq. m; the bathroom's area was 6.48 sq. m, the luggage storage area was 0.6 sq. m and the food space was 1.2 sq. m.

The applicant's room had a window measuring 1.44 sq. m and two windows of 0.72 sq. m each in the toilet and in the food area.

Light was provided by light bulbs at night.

Each room had ten beds, a table, chairs, a television table, a clothes hanging space, a luggage storage area and a food area.

There were never more than ten people in one cell.

25. The Government argued that during his detention in Rahova Prison the applicant was diagnosed with hepatitis. As a result his diet was prescribed by the doctors and beef was substituted for pork.

26. A room next to the cell provided constant cold water and warm water according to a schedule. Warm water was available twice a week, for two hours each time, from 12 noon until 2 p.m. and from 5 p.m. to 7 p.m.

There was unlimited access to drinking water and to the toilet.

27. The cell was heated for eight hours a day, maintaining a temperature of 18°C.

28. The Government argued that from 2007 the detainees had the opportunity to exercise for half an hour each day and to enjoy outdoor sport activities. The schedule for these activities was approved by the director of the prison.

No evidence was provided as to the precise nature of the exercise or outdoor sport activities enjoyed by the applicant.

29. The Government submitted that the applicant took part in cultural activities. They provided documents from which it appeared that he was registered in 2007 and 2008 to attend computer classes, Romanian language classes and table tennis lessons for several months of the year.

30. The Government argued that no incidents concerning the applicant's right to correspondence were identified after 2002.

II. RELEVANT DOMESTIC LAW

31. Government Emergency Ordinance 56 of 27 June 2003 (“Ordinance no. 56/2003”) regarding certain rights of convicted persons states, in Article 3, that convicted persons have the right to bring legal proceedings before the court of first instance concerning the implementing measures taken by the prison authorities in connection with their rights. Ordinance no. 56/2003 has been repealed and replaced by Law no. 275 of 20 July 2006, which has restated the content of Article 3 mentioned above in Article 38, which provides that a judge shall have jurisdiction over complaints by convicted persons against the measures taken by the prison authorities (see also *Petrea v. Romania*, no. 4792/03, §§ 21-23, 29 April 2008).

III. DOCUMENTS CONCERNING THE SITUATION IN JILAVA AND RAHOVA PRISONS

32. The relevant findings and recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“the CPT”) are described in *Bragadireanu v. Romania* (no. 22088/04, §§ 73-76, 6 December 2007) and *Artimenco v. Romania* (no. 12535/04, §§ 22-23, 30 June 2009). In particular, the Court notes that in the report on the 2002-2003 visits the CPT expressed concerns about the limited living space available to prisoners and the insufficient space provided by the regulations in place at that date. It also noted that prisoners were sometimes obliged to share a bed and that the toilets were not sufficiently separated from the living space.

33. With regard to Jilava Prison, excerpts from the CPT’s findings following the visits of 1999 and 2006 are given in the case of *Eugen Gabriel Radu v. Romania* (no. 3036/04, §§ 14-17, 13 October 2009). In particular, the CPT expressed concern about the restricted living space, as the number of detainees was more than twice the prison’s capacity, the shortage of beds, the lack of adequate separation between the toilets and the living space in the cells, and described the conditions as “lacking privacy” and “an affront to human dignity”.

34. There is no CPT report concerning Rahova Prison. However, a Romanian NGO, APADOR-CH (Association for the Defence of Human Rights in Romania – the Helsinki Committee) visited this establishment on 13 February 2009. The report prepared following this visit indicated, based on the information submitted by the authorities, that the average personal space for prisoners was 2.77 sq. m. The overcrowding was obvious when visiting individual cells: one of the cells visited, measuring 18 sq. m accommodated eleven prisoners, even though it had only ten beds. As regards the prison’s food, the report indicated that only one detainee had

complained about its quality and that many prisoners preferred to eat the food they received from home or that they bought from the shop.

35. Following visits in June 2006 to several prisons in Romania, the CPT published a report on 11 December 2008, in which it stated, *inter alia*:

“70. (...) the Committee is gravely concerned that the lack of beds remains an ongoing problem not only in the establishments visited, but also at the national level, and has been since the first visit to Romania in 1995. It is high time that major steps are taken to put an end to this unacceptable situation. The CPT calls upon the Romanian authorities to take decisive priority action to ensure that each inmate housed in a prison has a bed.

However, the Committee welcomes the fact that shortly after the visit in June 2006, the official standard of living space per inmate in the cell was increased from 6 cubic metres (which amounted to an area of about 2 square metres per detainee) to 4 sq. m or 8 cubic metres. The CPT recommends that the Romanian authorities take the necessary steps to meet the standard of 4 sq. m of living space per inmate in shared cells in all prisons in Romania.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

36. The applicant complained that the conditions of his detention in Jilava and Rahova prisons were in breach 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. Admissibility

37. The Government stated that the complaint about the conditions of detention in Jilava and Rahova prisons before 9 February 1999 should be rejected as out of time.

38. The Court reiterates that Article 35 § 1 of the Convention permits it to deal with a matter only if the application is lodged within six months of the date of the final decision in the process of exhaustion of domestic remedies. It also reiterates that in cases where there is a continuing situation, the six-month period runs from the cessation of that situation (see *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004). In the instant case, during the period of his detention the applicant was held in two prisons and was transferred between them several times.

39. The Court then notes that it has previously held that where the applicant's transfer from one facility to another did not in any way change his circumstances there was a continuous situation (see *Seleznev v. Russia*, no. 15591/03, § 36, 26 June 2008).

40. The Court observes that the applicant consistently complained about the conditions of detention in Jilava and Rahova prisons, which seem to be substantially identical. His complaints do not relate to any specific event but concern the whole range of problems regarding the sanitary conditions, the temperature in the cells, overcrowding and so on, which he suffered during the entire period of his detention. It follows that the applicant's detention in Jilava and Rahova prisons can be regarded as a continuous situation. Accordingly, the Court dismisses the Government's objection.

41. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

42. The Government, referring to the description of the conditions of detention in the information provided by the NPA (paragraphs 18-30 above), 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. They stressed that the quality of water and food in the prisons had been adequate, as had been shown by the relevant authorities.

43. The applicant submitted that the cells had at all times been severely overcrowded, that there was a serious lack of water to drink and for showering, and that the food was poor and unhygienic.

44. The Court reiterates that Article 3 enshrines one of the most fundamental values of democratic societies. The Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

45. 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). The length of the period for which a person is detained in the particular conditions also has to be considered (see, among others, *Alver v. Estonia*, no. 64812/01, 8 November 2005).

46. An extreme lack of space in a prison cell weighs heavily as a factor to be taken into account for the purpose of establishing whether detention conditions are "degrading" within the meaning of view of Article 3 (see *Karalevičius v. Lithuania*, no. 53254/99, 7 April 2005).

47. An outline of the Court's case-law under Article 3 of the Convention in connection with conditions of detention can be found in a number of judgments concerning Romania (see, in particular, *Măciucă v. Romania*, no. 25763/03, 26 May 2009; *Ali v. Romania*, no. 20307/02, 9 November 2010; *Goh v. Romania*, no. 9643/03, 21 June 2011; and *Bădilă v. Romania*, no. 31725/04, 4 October 2011).

48. The key issue in the case at hand is the assessment by the Court of the living space afforded to the applicant in the two establishments concerned. The Court notes that the applicant did not contradict the Government's submissions on the size of the cells. What is contested between the parties is the actual occupancy of those cells: while the Government submitted that the number of prisoners in a cell was always inferior or equal to the cell's designated occupancy, the applicant claimed that in Jilava Prison there were sixty detainees in one cell and that very often two or three people had to share one bed. The same was true for Rahova Prison, where twelve or thirteen people had to share ten beds.

49. The Court notes that the Government could not provide any information concerning the years spent by the applicant in Jilava Prison. The Court keeps in mind the findings of the CPT in this respect (see § 33).

As to the eleven years spent by the applicant in Rahova Prison, it appears that he had around 2.9 sq. m available to him on average.

The Court concludes thus that the applicant's personal space seems to have been consistently below 3 sq. m, which falls short of the standards imposed by the Court's case-law (see *Marian Stoicescu v. Romania*, no. 12934/02, §§ 13 and 24, 16 July 2009, and *Orchowski v. Poland*, no. 17885/04, § 122, ECHR 2009-... (extracts)).

50. The applicant's situation was further exacerbated by the fact that he could not take a shower often enough and had to share a bed with other detainees, taking turns to sleep.

51. The Court has frequently found a violation of Article 3 of the Convention on account of the lack of personal space afforded to detainees and unsatisfactory sanitary conditions (see, in particular, *Ciorap v. Moldova*, no. 12066/02, § 70, 19 June 2007; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; and *Răcăreanu v. Romania*, no. 14262/03, § 49, 1 June 2010).

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

52. Even though in the present case there is no indication that there was an intention to humiliate or debase the applicant, the Court concludes that the conditions of his detention caused him suffering which exceeded the unavoidable level of suffering inherent in detention and which attained the threshold of degrading treatment proscribed by Article 3.

53. There has accordingly been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in Jilava and Rahova prisons.

54. Taking into account this finding, the Court does not consider it necessary to examine further the part of the complaint concerning the poor quality of food and water.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

55. The applicant raised complaints under Articles 3, 5 § 1 (c), 5 § 3, 6 §§ 1-3, 13, 8, 14, 34 and 1 of Protocol No. 12 of the Convention.

56. However, 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 this part of the application is 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

57. 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

58. The applicant claimed 61,000 euros (EUR) in respect of pecuniary damage and 1,540,000 EUR in respect of non-pecuniary damage.

59. The Government considered that there was no causal link between the amount requested as pecuniary damage and the subject of the present case. The Government further considered that the amount requested as non-pecuniary damage was exaggerated.

60. The Court notes that it has found a violation of Article 3 in the present case. In these circumstances, it considers that the applicant must have experienced a serious distress. It therefore awards him EUR 12,000 in respect of non-pecuniary damage.

B. Costs and expenses

61. The applicant also claimed EUR 2,500 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

62. The Government contested these amounts.

63. 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 350 covering costs under all heads.

C. Default interest

64. 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 Article 3, in so far as they refer to the material conditions of detention in Jilava and Rahova Prisons, admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the respondent State's national currency at the rate applicable on the date of settlement:
 - (i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 350 (three hundred and fifty euros), plus any tax that may be chargeable to the applicant, 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;

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

Done in English, and notified in writing on 10 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President