



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

THIRD SECTION

CASE OF PETREA v. ROMANIA

(Application no. 4792/03)

JUDGMENT

STRASBOURG

29 April 2008

FINAL

01/12/2008

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 Petrea v. Romania,

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

Josep Casadevall, *President*,

Elisabet Fura-Sandström,

Corneliu Bîrsan,

Alvina Gyulumyan,

Egbert Myjer,

Ineta Ziemele,

Ann Power, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 1 April 2008

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

PROCEDURE

1. The case originated in an application (no. 4792/03) 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 Alfred-Petronel Petrea (“the applicant”), on 16 December 2002.

2. The applicant was represented by Mr A. Simion, a lawyer practising in Bucharest. The Romanian Government (“the Government”) were represented by their Agent, Mr R.-H. Radu, from the Ministry of Foreign Affairs.

3. On 19 October 2006 the Court decided to communicate the complaints concerning the conditions of the applicant’s detention and the right to respect for his correspondence to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1970 and lives in Iași.

5. On 23 November 1999 the prosecutor attached to the Pitești Court of Appeal issued an arrest warrant against the applicant, who was accused of tax evasion.

6. The applicant was apprehended on 5 September 2000 and was placed in police custody for a period of thirty days. The Pitești District Court, to which the applicant was first brought on 28 September 2000, repeatedly extended his pre-trial detention, until the end of the proceedings before it.

A. Criminal proceedings against the applicant

7. The District Court gave judgment on 19 February 2002. On the basis of the depositions made by the applicant, four co-defendants and twenty-one witnesses, the court convicted the applicant under several heads of tax evasion and forgery, and sentenced him to six years and six months' imprisonment with an obligation, under Article 113 of the Criminal Code, to undergo medical treatment for his mental disorder as identified by the medical reports adduced in the case. The court ordered that the medical treatment be administered through the prison hospitals, while the applicant was in detention, and continue after his release until his complete recovery. It also upheld the order for the applicant's detention.

8. In a decision of 25 June 2002, the Argeș County Court allowed appeals against the judgment and, based on the evidence in the case and the defendants' depositions, reduced the applicant's sentence to five years and six months' imprisonment. It upheld the remainder of the District Court's judgment.

9. This decision was confirmed, upon an appeal on points of law by the defendants, in a final decision of 8 October 2002 of the Pitești Court of Appeal.

B. The applicant's detention and medical care

10. On 20 September 2000 the applicant's lawyer filed a request with the prosecutor for the applicant's psychiatric evaluation. The Argeș Forensic Medicine Institute examined the applicant and concluded, on 2 October 2000, that he had been mentally competent for legal purposes both when the alleged offences had been committed and at the date of the evaluation.

The applicant contested the conclusion of the report.

11. On 18 December 2000 the "Mina Minovici" Forensic Medicine Institute in Bucharest confirmed the Argeș Forensic Institute's report, after having examined the applicant. It also recommended that, pursuant to Article 113 of the Criminal Code, the applicant be required to undergo medical treatment for his mental disorder both during the detention and after his release.

12. On 29 November 2000 the applicant underwent a full medical examination at the Argeș Forensic Medicine Institute. The medical

commission concluded that the applicant's mental disorder did not render him unfit for detention.

13. According to the detailed medical record from the period of pre-trial detention, submitted by the Government, the applicant was hospitalised seven times in prison hospitals. He was mainly diagnosed with thrombophlebitis, venous insufficiency and a mental disorder. Each time he was discharged, the doctors recommended treatment for his various illnesses, periodical re-evaluations and medical check-ups when needed.

During this interval he was seen twenty-seven times by the prison doctors, on 23 and 30 October, 6, 13 and 27 November, 11 and 20 December 2001, 11 February, 17 June, 1, 8, 20, 22 and 29 July, 5, 12, 16, 19 and 26 August, 2, 9, 20, 23 and 30 September, and 7, 13 and 19 October 2002.

Records indicate that medicine was systematically administered for his venous insufficiency and until 20 December 2001 for his mental disorder. The latter treatment was interrupted until 5 August 2002 and after this date was given sporadically.

14. During his detention, several disciplinary measures were taken against the applicant. Accordingly, his visit and parcel rights were withdrawn on 26 March 2001, 28 December 2001, 10 January and 8 April 2002, for possession of forbidden objects. From 4 to 14 January 2002 he was kept in solitary confinement.

15. Lastly, on 5 February 2002 the penitentiary authorities placed the applicant in restrictive confinement (*"regim restrictiv"*), for twelve months due to his recalcitrant behaviour and repetitive infringements of the prison regulations. However, on 14 June 2002 he was reintegrated into the normal detention regime, for good behaviour.

The applicant claimed that while subject to the restrictive detention regime he had been kept in a cold cell wearing worn clothes that had been inadequate for the temperature, sometimes handcuffed with his hands above his head, and that for the first month he had not been seen by a doctor and that correspondence to and from his family had been tampered with.

16. In October 2002, after the adoption of the final decision in the case, the applicant was transferred to Iași high-security Prison and placed in the section designated for extremely dangerous prisoners.

17. The applicant claimed that, despite his repeated requests to be seen by a specialist doctor and administered adequate medical treatment, during the first eight months of detention he had only been examined by the prison doctor, who had consistently informed him that there had been no funds for continuing his treatment. The prison doctor had told him: "there is no problem if you die, we have a priest and there is wood in the store house" (*"nu e nici o problemă dacă mori, avem preot și scânduri la magazie"*).

On an unspecified date, upon repeated requests by his family to the prison authorities, the applicant was transferred to a different dormitory.

18. According to the Government, the applicant was placed in shared dormitories, the first measuring 41.12 sq. m and the latter 60.69 sq. m, which he shared respectively with nine and fifty-three other prisoners. The dormitories had windows. Hygiene facilities were permanently accessible to prisoners in a separate room. Warm water was available once a week. The applicant had daily one-hour walks, frequently received visits from members of his family and participated in the social programme of the penitentiary. His medical treatment continued.

19. On 11 July 2003, the Iași prison authorities informed the applicant's counsel that the applicant was not receiving any medical treatment at that moment, but that such treatment would be administered if necessary.

20. From 3 February 2004 to 7 February 2005, the execution of the sentence was suspended for medical reasons. On 16 June 2005 the applicant was released on probation.

II. RELEVANT DOMESTIC LAW

21. Article 195 of the Criminal Code ("CC") and the relevant provisions of Law no. 23/1969 on the execution of sentences are described at paragraphs 23 and 25 of the *Năstase-Silivestru* judgment (see *Năstase-Silivestru v. Romania*, no. 74785/01, 4 October 2007).

22. Law 23/1969 was replaced by Emergency Ordinance no. 56/2003 ("Ordinance 56") on the rights of prisoners, adopted by the Government on 25 June 2003 and ratified by Parliament on 7 October 2003. This Ordinance constituted a general measure taken by the Government in the execution of the judgment adopted by the Court in the case *Petra v. Romania* (judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VII; see the Committee of Minister's Resolution CM/ResDH(2007)92). The relevant parts of the Ordinance read as follows:

Article 3

"(2) Prisoners may complain against the measures taken by prison authorities (...).

(5) In examining a complaint, the court takes one of the following decisions:

(a) allows the action and orders the annulment, revocation or change of the measure taken by the penitentiary authority;

(b) dismisses the action if it is ill-founded."

23. That Ordinance was replaced by Law no. 275/2006 on the execution of sentences, which in its Article 38 provides for a similar appeal lodged with the judge responsible for the execution of sentences, who has the powers described in Article 3 § 5 of Ordinance 56 and whose decision can be appealed against before a court.

24. The legislation on the organisation of the military prosecutors' offices and military tribunals is summarised in paragraph 40 of the *Barbu Anghelescu* judgment (see *Barbu Anghelescu v. Romania*, no. 46430/99, 5 October 2004) and in paragraph 68 of the *Bursuc* judgment (see *Bursuc v. Romania*, no. 42066/98, 12 October 2004).

Until 28 September 2004 when Law no. 293/2004 entered into force, the penitentiary commanders were active military officers (see Articles 1 and 2 of Law no. 10/1990 and Article 4 § 24 of Government Decision no. 736/2003).

25. The findings of the European Committee for the Prevention of Torture ("the CPT") following visits to Romanian prisons, as well as the Committee's general findings, are summarised at paragraphs 73-75 of the *Bragadireanu* judgment (see *Bragadireanu v. Romania*, no. 22088/04, 6 December 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION

26. 1. The applicant complained under Articles 3 and 8 of the Convention about the conditions of his detention, a lack of adequate medical treatment in prison and a violation, by the prison authorities, of his right to respect for his correspondence, as guaranteed by Article 8 § 1 of the Convention.

27. Article 3 reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

28. Article 8 reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

1. *The parties' submissions*

29. The Government raised a preliminary objection of non-exhaustion of domestic remedies, in so far as the applicant had not lodged any complaint against the prison personnel either for the alleged ill-treatment (under Articles 267 and 267¹ of the CC) or for the alleged infringement of his right to correspondence (under Article 195 of the CC).

30. As of 25 June 2003, the applicant had at his disposal a specific complaint against the acts of the penitentiary authorities, provided for by Ordinance no. 56.

31. The Government presented some 100 decisions from domestic courts concerning complaints under Ordinance no. 56 for various acts of the penitentiary authorities. Some ten percent had been allowed.

32. The applicant contested the effectiveness of the appeals before the adoption of the Ordinance no. 56. In addition, he considered that any complaint against the prison authorities would only have worsened his situation in the penitentiary. Moreover, he considered that the authorities had an obligation to investigate of their own motion his allegations of ill-treatment.

Lastly, he pointed out that Ordinance no. 56 was not available when he lodged this application with the Court.

2. *The Court's assessment*

(a) **The objection of non-exhaustion of domestic remedies**

33. The Court reiterates that the purpose of the exhaustion rule is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it. However, the only remedies which Article 35 of the Convention requires to be exhausted are those that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, §§ 74-75, ECHR 1999-IV).

It is true that in order for the exhaustion rule to come into operation, the effective remedy must exist at the date when the application is lodged with the Court. However, this rule is subject to exceptions which might be justified by the specific circumstances of each case (see *Baumann*

v. France, no 33592/96, § 47, 22 May 2001 and *Brusco v. Italy*, (dec.), no. 69789/01, ECHR 2001-IX).

The Court has accepted that this was the case when at the national level a new law, specifically designed to provide direct redress for violations of fundamental procedural rights, was introduced with retroactive effect and thus put an end to a structural problem that existed in the national legal system before its adoption (see *Içyer v. Turkey* (dec.), no. 18888/02, §§ 83-84, ECHR 2006-I; *Charzyński v. Poland* (dec.), no. 15212/03, §§ 40-41, ECHR 2005-V and, *mutatis mutandis*, *Ismayilov v. Azerbaijan*, no. 4439/04, § 38, 17 January 2008).

34. The Court has already found that before the entry into force of Ordinance no. 56 no effective remedy for alleged violations of the right to correspondence was available (see *Petra*, § 38; and *Năstase-Silivestru*, §§ 47-54, judgments cited above). Likewise, it has established in its case-law that a military prosecutor could not be considered independent and impartial in an investigation conducted against another member of the military, as the penitentiary commander was at the date of the facts (see, *mutatis mutandis*, *Barbu Anghelescu*, § 67 and *Bursuc*, § 107, judgments cited above).

35. However, from June 2003 Ordinance no. 56 introduced an appeal before the courts against any act of the prison authorities. It regulated the procedure to be followed and the possible outcome of the appeal.

It is true that at that date, this application had already been pending with the Court. However, the circumstances of the case, the gravity of the allegations made (lack of medical treatment and interference with the right to correspondence) are of such nature that would require immediate action by the authorities. Moreover, the Court notes that this remedy was specifically designed to provide direct redress for such complaints, thus putting an end to a structural problem that existed in the national legal system before its adoption (see paragraph 22 above). The case-law presented by the Government shows that the remedy is effective in practice.

For these reasons, the Court considers that it was in the applicant's interest to lodge a complaint with the courts under the newly introduced procedure when it became available, in order to allow the domestic authorities to put the situation right as swiftly as possible.

36. It follows that the complaints of lack of medical treatment under Article 3 and infringement of the right to respect for correspondence under Article 8 should be rejected for non-exhaustion of domestic remedies in so far as they concern the period after the entry into force of Ordinance no. 56.

37. However, the Court reiterates that for the general conditions of detention, in particular the alleged overcrowding, the applicant could not be required to have recourse to any remedy (see *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001 and *Solovyev v. Russia* (dec.), no. 76114/01, 27 September 2007).

(b) Other grounds of inadmissibility

38. The Court notes that the complaint concerning the right to respect for correspondence during restrictive confinement was lodged more than six months after the date when the situation complained of ended (see *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004; *Rosengren v. Romania* (dec.), no. 70786/01, 27 April 2004 and *Mujea v. Romania* (dec.), no. 44696/98, 10 September 2002). The Court also notes that the applicant did not substantiate any of the allegations of interference with his right to correspondence for the period before the entry into force of Ordinance no. 56 (see paragraph 36 above).

39. Therefore, 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 complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

40. However, the Court notes that the part of the complaint concerning the conditions of detention before June 2003, and the alleged overcrowding in Iași Penitentiary, 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

1. The parties' submissions

41. The Government considered that the conditions of detention, including during the periods of solitary and restrictive confinement, had been adequate (see, *a contrario*, *Kehayov v. Bulgaria*, no. 41035/98, 18 January 2005 and *Kalashnikov v. Russia*, no. 47095/99, ECHR 2002-VI).

42. The applicant made reference to the description of the conditions in prison he had provided in his submissions to the Court, and as evidenced by his medical record and inmates' statements concerning the conditions during his restrictive detention.

2. The Court's assessment

43. The Court refers to the principles established in its case-law regarding the conditions of detention and the medical care of detainees (see, for instance, *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI; *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX and *Sarban v. Moldova*, no. 3456/05, §§ 75-77, 4 October 2005).

44. The Court notes that according to the medical records, the applicant's psychiatric treatment was interrupted at least from December 2001 to August 2002, although there is no evidence of a reassessment by specialist doctors of his condition during that time. After August 2002 the treatment was given sporadically. The Court notes with concern the applicant's allegations, which the Government did not refute, that during the first eight months of detention in Iași Prison his repeated requests to be seen by a specialist doctor were ignored without any explanation from the prison doctor (see paragraph 17 above).

45. Furthermore, the Court notes that according to the information available from the Government, in Iași Penitentiary the applicant was held in large capacity dormitories with 1.1 sq. m to 4 sq. m per person, that he was only allowed one hour of daily exercise and only had access to a warm shower once a week.

46. 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, in particular, *Kalashnikov*, cited above, §§ 97 et seq., *Labzov v. Russia*, no. 62208/00, § 44 et seq.; *Mayzit v. Russia*, no. 63378/00, § 39 et seq., 20 January 2005; *Khudoyorov v. Russia*, no. 6847/02, § 104 et seq., 8 November 2005; *Novoselov v. Russia*, no. 66460/01, § 41 et seq., 2 June 2005 and *Popov v. Russia*, no. 26853/04, § 215 et seq., 13 July 2006).

47. Moreover, the CPT has stressed the detrimental effect of large capacity dormitories in penitentiaries especially when coupled with a poor regime of activities and inadequate access to washing facilities (see also, *mutatis mutandis*, *Kalashnikov*, § 97, and *Kehayov*, § 66, judgments cited above).

48. The Court accepts that in the present case there is no indication that there was a positive intention of humiliating or debasing the applicant. However, although the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, the absence of any such purpose cannot exclude a finding of a violation of Article 3 (see *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III and *Romanov v. Russia*, no. 63993/00, § 80, 20 October 2005). The Court considers that the above described conditions of detention in which the applicant was held, in the context of his psychiatric condition and lack of adequate treatment for it, must have had a harmful effect on the applicant's human dignity.

49. The foregoing considerations are sufficient to enable the Court to conclude that the conditions in prison, in particular the lack of ongoing medical treatment before June 2003, the date of the entry into force of Ordinance no. 56, and the overcrowding, caused the applicant suffering attaining the threshold of degrading treatment proscribed by Article 3.

50. There has accordingly been a violation of Article 3 of the Convention in so far as the conditions of the applicant's detention are concerned.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

51. Under Article 5 § 3 of the Convention the applicant complained that he had been arrested by a prosecutor who had not met the requirements of independence set forth by the Convention and that he had not been brought promptly before a judge after his arrest.

52. He also alleged a violation of Article 6 §§ 1 and 2, as he considered that the domestic courts had wrongly interpreted the evidence and had been influenced by the wide media coverage of the case as a result of the prosecutor's public declarations following his apprehension.

53. Having regard to 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 must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. The applicant claimed the reimbursement of the sums that were confiscated from him at the beginning of the criminal investigations and the following sums in respect of non-pecuniary damage:

- 500,000 euros (EUR) for the Article 3 violation;
- EUR 1,000,000 for the Article 5 violation;
- EUR 3,000,000 for the Article 6 § 1 violation;
- EUR 1,000,000 for the Article 6 § 2 violation;
- EUR 100,000 for the Article 8 violation.

56. The Government considered that the amounts requested by the applicant under Articles 3 and 8 were exorbitant and did not present any observations in respect of the other claims. They also considered that the finding of a violation should constitute sufficient reparation in the case.

57. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; likewise it reiterates that it found the applicant's complaints under Articles 5, 6 and 8 inadmissible; it therefore rejects the respective claims. On the other hand, it awards the applicant EUR 3,000 in respect of non-pecuniary damage for the violation found.

B. Costs and expenses

58. The applicant claimed EUR 58,000 for the costs and expenses incurred before the domestic courts. He also claimed the reimbursement of the costs incurred before the Court, without quantifying them.

59. The Government pointed out that the applicant had not sent any documents to support his claims.

60. 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 information in its possession and the above criteria, the Court rejects the claim for costs and expenses.

C. Default interest

61. The Court considers it appropriate that the default interest 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 concerning Article 3, in so far as it refers to the conditions of detention before June 2003 and the overcrowding in Iași Penitentiary 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 respondent State's national currency 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 29 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President