



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

THIRD SECTION

CASE OF DIMAKOS v. ROMANIA

(Application no. 10675/03)

JUDGMENT

STRASBOURG

6 July 2010

FINAL

22/11/2010

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

In the case of Dimakos v. Romania,

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

Josep Casadevall, *President*,

Elisabet Fura,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Egbert Myjer,

Luis López Guerra, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 15 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 10675/03) 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 Greek national, Mr Ioannis Dimakos (“the applicant”), on 18 February 2003.

2. The applicant was represented by Mr Dănuț Romică Artene, a lawyer practising in Galați. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu, of the Ministry of Foreign Affairs.

3. On 12 May 2009 the President of the Third Section decided to communicate to the Government the complaints concerning the conditions of the applicant's detention and the alleged interference with his right to respect for family life while in prison. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

4. The Greek Government, which have been informed of the application in view of the applicant's nationality (Article 36 § 1 of the Convention and Rule 44 of the Rules of Court), did not wish to intervene.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1951 and currently lives in Certeze, Satu Mare.

A. The background of the case

6. On 12 May 1997 the applicant and his associate ("T.L."), through their company, S.C. Harmony Shipping International S.R.L., made an offer to buy the Romanian Company for Oceanic Fishing Tulcea (*Compania Română de Pescuit Oceanic Tulcea*, "the company"), a State-owned company specialising in oceanic fishing, which was in the process of being privatised by the Bucharest State Property Fund (*Fondul Proprietății de Stat*, "FPS"). While negotiations were taking place, FPS expressly forbade the sale of the company's ships. The applicant and his associate gave their agreement to the prohibition in a statement signed with FPS on 4 June 1997.

7. On 26 November 1997 FPS agreed to sell the applicant and T.L. 51% of the company's stocks.

8. During criminal proceedings against the applicant the courts found that he and his associate had sold five of the company's ships as scrap. They had used part of the money to pay the price asked for by FPS. With the remaining money they had paid some of the company's debts in order to substitute themselves for the company's creditors and thus obtain the remaining 49% of the company's stocks.

B. Conditions of detention

9. The applicant was arrested on 10 March 1998 and released from prison on 22 June 2009, after having served his sentence. He described as follows the conditions of detention in the various penitentiaries where he was held. The Government's view, based on the official documents issued by the penitentiaries, is also presented.

1. Constanța police detention

10. On 10 March 1998 the applicant was taken to the Constanța police detention rooms, situated in the basement of the police headquarters. He remained there until 4 June 1998. His pre-trial detention was endorsed and extended on several occasions by the prosecutor attached to the Constanța Court of Appeal.

11. He claimed that during his detention there he had not been allowed to contact his family, counsel or co-accused either by telephone or in writing. He had not been allowed to have a pen and paper in the cell.

He had shared a cell with ten other detainees. The cell had been equipped with three-tier bunk beds which occupied 12 sq. m. There was no toilet in the cell (the inmates used a bucket for that purpose), no running water or sewerage system, no light and no fresh air.

12. According to the information from the Constanța police, the cells in the police detention facilities measured 12-15 sq. m with three to four beds each, electric light and one window. The detainees were allowed to walk outside for one to two hours per day. Toilets were in the corridor.

No concrete information about the applicant's contacts with family and counsel or about his correspondence rights was furnished by the police, as, according to the regulations, the relevant documents are only kept by the authorities for five years.

2. Jilava Penitentiary

13. In June 1998 the Galați County Court ordered the applicant's transfer to Bucharest Jilava Penitentiary, on health grounds. He was detained in this penitentiary on three occasions: from 4 June to 12 August 1998 and from 10 to 21 May 2005 (in the hospital section); and from 9 October to 19 November 2003 (in the penitentiary itself).

14. The applicant claimed that during his first stay in the hospital section, he had been handcuffed to his bed with chains around his legs after attempting suicide. He was awoken from a period of unconsciousness by bites from lice and bedbugs and recollected having been refused water by a warden on one occasion during his recovery.

The applicant also mentioned one week spent in the transit zone in Jilava before his transfer from Poarta Albă to Galați Prison. He claimed that he was placed in a dirty cell there and received no food or water.

15. According to the information provided by the Government, the applicant was mainly detained in a 42.08 sq. m cell with eleven beds, a separate toilet and individual heating. The detainees were allowed two showers per week in the common bathroom. They were allowed to walk outside for one hour per day.

The Government also referred to the applicant's telephone conversations, the parcels received from home and a visit from his daughter.

The Government have given no information about the period spent by the applicant in the transit zone.

3. Poarta Albă Penitentiary

16. The applicant spent a few weeks in Poartă Alba Penitentiary in Constanța, from 12 August to 2 September 1998.

17. The applicant alleged that the cells had been overcrowded and had lacked hygiene facilities. The inmates were allowed to walk outside for two to three hours per month and to receive one visit and one telephone call in that time. The applicant was allowed to receive 15 kg of food per month. According to his statement, it was the only time during his detention when he could eat properly. His family brought him medicines and food.

18. The Government stated that the applicant's cell measured 36.35 sq. m and included ten beds, one window, running water, electricity, central heating and a separate toilet room. Seven to ten persons had shared that cell during the applicant's detention. The inmates were allowed to walk outside for thirty minutes to one hour per day. During his stay, the applicant received two visits and two parcels.

4. Galați Penitentiary

19. The applicant was held in this penitentiary on five occasions: from 2 September 1998 to 16 August 2001; from 29 January 2003 to 9 October 2003; from 19 November 2003 to 26 February 2004; from 21 April 2004 to 29 June 2006; and from 5 October 2007 to 12 December 2008.

20. He alleged that the first cell where he had been detained was 25 sq. m in size. There were twenty to twenty five detainees in the cell at all times with an average of three persons to one bed. No outdoor exercise was allowed. Water was available two hours per day. No medicines were given and the food was very poor. After eight months, because of the deterioration of his health, the applicant was moved to a cleaner cell.

21. The Government averred that the applicant spent most of his stay in the infirmary in a 24 sq. m cell with six beds, windows, central heating and separate toilets. The detainees were allowed to walk outside for three hours per day. The penitentiary also had a football field for the detainees' use.

5. Rahova Penitentiary

22. The applicant was held in Bucharest Rahova Penitentiary on three occasions: from 16 August 2001 to 29 January 2003; from 26 February 2004 to 21 April 2004; and from 29 June 2006 to 5 October 2007.

23. According to his statements, he was entitled to three visits per month and 60 packets of cigarettes and 15 kg of food per month – all provided by his family.

24. The official documents submitted by the Government indicate that the applicant shared a 19.55 sq. m cell with ten bunk beds with a maximum of nine co-detainees. A 5.55 sq. m toilet room with cold water was attached to the cell. Hot water was available twice per week, between 12 midday and 2 p.m. and 5 p.m. to 7 p.m. The cells and the toilets had windows, to allow in air and natural light.

The detainees were allowed to walk outside for one to two hours per day and twice per week they were given access to sports fields.

Three public phones were available and the applicant was allowed two ten-minute phone calls per week.

6. *Brăila Penitentiary*

25. The Government informed the Court that the applicant had been held in Brăila Penitentiary from 12 December 2008 to 22 June 2009. During his stay he received 202 visits and 215 parcels.

C. Criminal proceedings against the applicant

26. On 10 March 1998, the applicant gave a statement to the police in the presence of his counsel. The next day he was taken to the prosecutor attached to the Constanța Court of Appeal, who informed him for the first time that he was accused of having sold ships belonging to the Romanian State.

On 9 October 1998 the applicant received the Greek translation of the indictment.

27. On 8 October 1999 the Galați County Court gave judgment in the case, convicting the applicant of bribery, embezzlement (*delapidare*), forgery and use of forged documents and smuggling (*contrabandă*) and sentencing him to fifteen years' imprisonment. The County Court awarded damages of 890,284 US dollars (USD) to the company, to be paid by the applicant together with two other convicted persons. It also ordered the applicant to be expelled after having served his sentence.

28. On 9 March 2001 the Constanța Court of Appeal rejected an appeal lodged by the applicant and upheld the judgment. According to the applicant, the Court of Appeal refused to hear evidence from him, claiming lack of time, and asking him to send his defence statement in writing, from prison.

29. On 27 September 2002 the Supreme Court of Justice upheld that decision, which became final.

30. On 7 November 2005 the Galați County Court declared inadmissible a request by the applicant for revision of the above decisions. The judgment was upheld in a final decision of 2 October 2006 by the High Court of Cassation and Justice.

II. RELEVANT DOMESTIC LAW

31. The domestic legislation on the execution of sentences, in particular Law no. 23/1969, Emergency Ordinance no. 56/2003 ("Ordinance

no. 56/2003”) and Law no. 275/2006 are described in *Petrea v. Romania*, no. 4792/03, §§ 21-23, 29 April 2008.

III. COUNCIL OF EUROPE DOCUMENTS

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, §§ 73-75, 6 December 2007, and *Artimenco v. Romania* (no. 12535/04, §§ 22-23, 30 June 2009). The Court notes, in particular, that in a report on visits made by them between 2002 and 2003, the CPT expressed concern about the restricted living space both actually available to prisoners and provided for 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 adequately separated from the living space in the cells.

33. During its 1999 visit to Romania, the CPT found that the Jilava transit area was the most overcrowded prison facility at that time – the number of detainees exceeding more than twice its capacity.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

34. The applicant complained that the conditions of his detention contravened the requirements 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

1. *The parties' submissions*

35. The Government raised a preliminary objection of non-exhaustion of domestic remedies, in so far as the applicant had not complained to the authorities about the conditions of his detention or the alleged lack of medical treatment, either before or after the coming into force of Ordinance no. 56/2003. In addition, they averred that the applicant could have lodged a

civil law complaint with the domestic courts against the prison authorities about the conditions of his detention.

36. Furthermore, the Government considered that the applicant had not complied with the six-month rule in so far as his complaints referred to his detention in the Constanța police headquarters. They relied on an *a contrario* interpretation of *Kokoshkina v. Russia*, no. 2052/08, § 53, 28 May 2009.

37. The applicant contended that he had observed the admissibility requirements.

2. The Court's assessment

38. The Court notes that the applicant complained mainly of overcrowding and conditions of poor hygiene in all the detention facilities in which he was imprisoned. It sees no reason to make an artificial distinction between the period spent in the Constanța police headquarters and the other detention facilities (see *Kokoshkina*, cited above, § 53, and *Brândușe v. Romania*, no. 6586/03, § 42, ECHR 2009 -... (extracts)). Furthermore, it points out that as regards the general conditions of the detention, such as those complained of in the case at hand, the applicant could not be expected 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).

39. It therefore rejects the Government's preliminary pleas.

40. The Court also notes that this complaint 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

41. The Government contended that the authorities made an effort to ensure that the applicant enjoyed adequate living conditions while in detention.

42. The applicant contested the Government's position.

43. The Court refers to the principles established in its case-law regarding the conditions of detention (see, for reference, *Petrea*, cited above, § 43).

44. It also states 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 these allegations. A failure on a government's part to submit such information without a satisfactory explanation may give rise to the drawing

of inferences as to the well-foundedness of the applicant's allegations (see *Kokoshkina*, cited above, § 59).

45. The focal point in the case at hand is the assessment by the Court of the living space afforded to the applicant in the detention centres where he was held, in particular in Galați and Rahova Penitentiaries where the applicant spent most of his time (about seven years in Galați and three years in Rahova).

46. The Court notes that, particularly as regards the two detention centres mentioned above, the applicant did not contradict the Government's submissions on the size of the cells. What is contested between the parties is the real occupancy of those cells: while the Government submitted that the number of persons in a cell was always inferior or equal to the designed occupancy, the applicant claimed that sometimes prisoners had even been obliged to share beds.

However, even at the occupancy rate put forward by the Government, the applicant's living space seems to have been below 3 sq. m in Rahova, which falls short of the standards imposed by the case-law (see *Kokoshkina*, cited above, § 62, and *Orchowski v. Poland*, no. 17885/04, § 122, ECHR 2009-...(extracts)). The amount of outdoor exercise claimed by the Government to have been available to the applicant, cannot compensate, in this case, for his severe lack of personal space (see, *a contrario*, *Sulejmanovic v. Italy*, no. 22635/03, §§ 8-49, 16 July 2009).

Moreover, the applicant's description of the overcrowding, in particular in Galați Penitentiary, corresponds to the findings made by the CPT (see paragraphs 32-33 above).

47. Furthermore, the Court considers that, in comparing each party's claims regarding the sanitary conditions with the findings of the CPT reports, it can only conclude that the applicant was deprived of the possibility of maintaining adequate bodily hygiene in prison.

48. Lastly, the Court notes that the applicant was transferred fourteen times during his eleven years in detention. Such frequent transfers may increase the feelings of distress experienced by a person deprived of liberty and held in conditions which fall short of the Convention's standards (see, *mutatis mutandis*, *Orchowski*, cited above, § 133, and *Khider v. France*, no. 39364/05, §§ 110-111, 9 July 2009).

49. 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 *Kokoshkina*, § 64, and *Petrea*, §§ 49-50, judgments cited above).

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

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

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

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

51. Invoking Article 8 of the Convention, the applicant complained that his right to respect for family life has been jeopardised, as the authorities have not allowed his family to visit him in prison. He also claims that his correspondence was censored until 2000.

52. The Government raised a plea of non-exhaustion of domestic remedies and of non-observance of the six-month rule, based on the same arguments as those invoked under Article 3 above (see paragraphs 35-36 above).

53. In his observations the applicant claimed that his correspondence had been censored until 2003.

54. The Court has already had the opportunity to examine a similar objection raised by the Government in the case *Petrea*, cited above. It concluded that before the entry into force of Ordinance no. 56/2003, on 27 June 2003, there was no effective remedy for the situation complained of by the applicant. However, after that date, persons in the applicant's situation did have an effective remedy to complain about the alleged interference with their correspondence and family life even if their applications were already pending with the Court at that time (see *Petrea*, cited above, §§ 35-36).

55. The Court sees no reason to depart in the present case from the conclusions it reached in *Petrea*.

56. It therefore considers that after the entry into force of Ordinance no. 56/2003, the applicant should have lodged a complaint with the domestic courts about the alleged interference with his Article 8 rights. There is no evidence in the file that he had done so.

It follows that the part of the complaint concerning the alleged breach of Article 8 after 27 June 2003 should be rejected for non-exhaustion of domestic remedies.

57. Lastly, the Court finds no evidence in the file of any other potential breach of the applicant's right to correspondence and family life before the entry into force of Ordinance no. 56/2003.

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.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

58. The applicant complained, under Article 5 of the Convention, that he was arrested by a prosecutor and was not brought promptly before a judge. In addition, he complains that his detention was not extended every thirty days as required by the Code of Criminal Procedure and that he had no possibility of appealing against the interlocutory judgments extending his detention.

59. The Court notes that from 28 February 2000, when the applicant was convicted by the County Court, his continued detention was justified, for the purpose of Article 5, by that decision. His complaints refer, therefore, to the period before the adoption of the County Court decision. However, the applicant lodged them on 6 August 2001, that is, more than six months after the date when the situation complained of ended (see *Mujea v. Romania* (dec.), no. 44696/98, 10 September 2002, and *Negoescu v. Romania* (dec.), no. 55450/00, 17 March 2005).

It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

60. The applicant complained of various violations of Articles 6 §§ 1, 2 and 3, 7, 14 and 17 of the Convention. In particular, he denied that the acts he had committed had constituted the crimes of which he had been convicted. He disagreed with the manner in which the courts had assessed the evidence and claimed that they had disregarded evidence in his favour. He complained that he had been treated as a convicted person from the time of his arrest. He complained that he had not been informed promptly in Greek of the nature and cause of the accusations against him and that the decisions adopted had not been communicated to him in Greek so he could effectively defend himself. Lastly, he complained that he was treated differently and had fewer rights and facilities than the Romanian detainees.

Under Article 10 of the Convention he complained that he had not been allowed to speak during the investigations and court proceedings.

61. 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 these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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

63. The applicant claimed 458,792,500 euros (EUR) in respect of pecuniary and non-pecuniary damage, representing his share of the company's capital. He considered that EUR 10,000,000 of this amount represented just satisfaction for the non-pecuniary damage incurred.

64. The Government contended that the applicant's claims were unjustified and that they lacked any causal link with the violations alleged. They also considered that finding a violation could offer sufficient compensation for the non-pecuniary damage incurred by the applicant.

65. 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 and it awards him EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

66. The applicant made no claim for the costs and expenses.

C. Default interest

67. 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 the conditions of detention under Article 3 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 6,000 (six 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 6 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President