



The authorities failed to safeguard the health of the applicant, who had been exposed to fellow prisoners' tobacco smoke

In today's Chamber judgment in the case [Elefteriadis v. Romania](#) (application no. 38427/05), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights

The case concerned the applicant's exposure to fellow prisoners' tobacco smoke in shared cells, while being transported to court and in the waiting areas before his court appearances.

Principal facts

The applicant, Anesti Elefteriadis, is a Romanian national who was born in 1966. He is currently serving life imprisonment for murder in Poarta Albă Prison (Romania). When he entered prison in 1992 the prison doctor pronounced him clinically fit. Between 1994 and 2000 he served his sentence in a 13.81 sq. m cell together with three smokers. In 1999 he was diagnosed with pulmonary fibrosis. According to the applicant, his numerous requests for transfer made from 1994 onwards failed to produce results until 1999. Between 2000 and 2005 he was imprisoned in different establishments. According to medical certificates issued in 2005, his overall state of health was good. After being transferred to Rahova Prison in February 2005 he was again placed in a cell with two prisoners who, according to the applicant, smoked day and night. Following his requests to that effect, he was transferred in November 2005 to a cell where none of the prisoners smoked. Medical tests in 2008 showed the applicant to be suffering from grade two chronic obstructive bronchopneumopathy.

The applicant was transported on several occasions between the prison and the domestic courts, where he had been summoned to appear at public hearings. He travelled in vans transporting large numbers of prisoners in cramped conditions and without any ventilation. During the journeys, and also in the prisoners' waiting areas at the courts, smoking was allegedly permitted and the applicant inhaled other prisoners' cigarette smoke.

The applicant's first complaint, lodged in 2005, was rejected on the ground that Rahova Prison did not have the resources to provide separate cells for non-smokers. A further complaint was rejected by a judgment of 14 June 2006. The court referred to the fact that the national prisons authority had banned prisoners from smoking in the vehicles

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

transporting them to court; with regard to the waiting areas, it stated that prisons were not responsible for the manner in which the courts organised their activities.

In the context of proceedings brought by the applicant against Rahova Prison seeking to be placed in a no-smoking cell, the national prisons authority stated that it had been physically impossible to separate smokers and non-smokers in accordance with the anti-smoking legislation. Finding that the applicant's detention satisfied the criteria laid down by the prison's internal regulations and the national legislation, the court rejected his complaint, and did likewise when the case was referred back to it following two appeals on points of law. The court observed that the applicant had been placed with prisoners who smoked owing to the physical impossibility for the authorities in Rahova Prison to provide dedicated cells for non-smokers. Furthermore, the applicant had subsequently been transferred to a cell shared with a fellow non-smoker, as the prison had sufficient capacity at that time to make that possible. The court further found that the applicant had not provided proof of the alleged damage. The judgment was upheld on appeal.

In January 2009 the applicant was transferred to Poarta Albă Prison and placed in an individual cell.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), the applicant claimed that he had been obliged to share a cell with smokers, that he had contracted pulmonary illnesses for which he had received no treatment and that he had been transported and locked up with smokers prior to hearings before the domestic courts.

The application was lodged with the European Court of Human Rights on 8 October 2005.

Judgment was given by a Chamber of seven, composed as follows:

Josep **Casadevall** (Andorra), *President*,
Elisabet **Fura** (Sweden),
Corneliu **Bîrsan** (Romania),
Egbert **Myjer** (the Netherlands),
Ineta **Ziemele** (Latvia),
Luis **López Guerra** (Spain),
Ann **Power** (Ireland), *Judges*,

and also Santiago **Quesada**, *Section Registrar*.

Decision of the Court

Article 3

The applicant's complaint concerning the period from June 1994 to December 2000 was rejected as being out of time. His complaint that he had not received appropriate treatment was rejected for failure to exhaust domestic remedies. The Court examined the applicant's conditions of detention in Rahova Prison and during his journeys between prison and court.

The Court reiterated that it was incumbent on States to organise their prison systems in such a way as to ensure respect for prisoners' dignity, regardless of logistical or financial difficulties. From February to November 2005 the applicant had been detained in a cell together with prisoners who smoked, in spite of his repeated requests to be transferred

to a no-smoking cell. While his health had stabilised between 2003 and 2005, the pulmonary fibrosis for which he had been under observation for several years was a chronic illness. The authorities had therefore been under an obligation to take measures to safeguard his health by separating him from prisoners who smoked; this could have been done, given that there was a cell in the prison containing only non-smokers.

The overcrowding in Rahova Prison – confirmed by the CPT² in the reports on its visits – in no way dispensed the authorities from their obligation to protect the applicant's health. Daily exercise in the prison yard, sports activities and a relatively large cell which was not overcrowded and had natural light and ventilation were not sufficient to offset the harmful effects of the second-hand smoke to which the applicant had been subjected as a result of being accommodated with smokers.

The medical certificates issued by several doctors after 2005 testified to a deterioration in the applicant's respiratory condition and noted the emergence of a fresh illness in the form of chronic obstructive bronchitis, which the applicant claimed had been made worse by his exposure to other prisoners' smoke in the vehicles transporting him to court and in the waiting areas prior to his appearances before the domestic courts.

While there were no precise indications that the applicant had been subjected to the effects of cigarette smoke during his journeys, the fact that he had been held in court waiting rooms with prisoners who smoked was amply confirmed by the Bucharest County Court judgment of 14 June 2006. Although it was not known how often the applicant had been locked up in those rooms, it had undoubtedly occurred on several occasions when he had been summoned to appear before the domestic courts. Even assuming that it had been for a short period on each occasion, the conditions in question had been contrary to the doctors' advice to avoid exposure to tobacco smoke.

The fact that the applicant had subsequently been placed in a cell with a non-smoker and was now in an individual cell in a different prison was not due to the objective criteria laid down in the legislation but to a combination of circumstances (the existence of sufficient capacity in the prison at the particular time), and there was no indication that the applicant would continue to be held in such favourable conditions if the prison were to be overcrowded in the future.

Lastly, the courts had rejected the applicant's claim for compensation on the grounds that he had not provided physical evidence of the alleged damage and that his conditions had improved following his transfer. The mere fact that the situation complained of by the applicant had ceased to exist in the meantime on account of his transfer to a more favourable setting did not dispense the domestic courts from the obligation to examine whether that situation had had harmful effects on him. It was not reasonable to place the onus on the applicant to provide proof of the suffering caused. Adopting such a formalistic approach would mean excluding the possibility of compensation in numerous cases in which detention was not accompanied by an objectively measurable deterioration in the prisoner's physical or mental health.

The Court therefore held that there had been a violation of Article 3.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Romania was to pay the applicant 4,000 euros (EUR) in respect of non-pecuniary damage.

The judgment is available only in French.

² European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.