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

FOURTH SECTION

DECISION

Application no. 54313/16
Florin ANGHEL
against Romania

The European Court of Human Rights (Fourth Section), sitting on 26 November 2024 as a Committee composed of:

Anne Louise Bormann*, President*,
Sebastian Răduleţu,
András Jakab*, judges*,
and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 54313/16) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 19 October 2016 by a Romanian national, Mr Florin Anghel ("the applicant"), who was born in 1975, lives in Krefeld and was represented by Mr C. Lascoschi, a lawyer practising in Bucharest;

the decision to give notice of the complaint concerning the right to family life to the Romanian Government ("the Government"), represented by their Agent, Ms O.F. Ezer, of the Ministry of Foreign Affairs, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the right to family visits in detention.

2. The applicant started serving a prison sentence in the Miercurea-Ciuc Prison on 6 April 2015. As the prison was located in the same town as his family's residence, he received regular visits from his mother and other family members.

3. In October 2016 the National Administration of Prisons decided his transfer to Bârcea Mare Prison, located at 300 km from Miercurea-Ciuc.

4. Between 31 October 2016 and 3 April 2017, the applicant was detained in the Bârcea Mare Prison. According to the Government's submissions, the applicant did not receive any visits or parcels with food during his detention in that prison.

5. Despite of this, the applicant did not lodge any appeal with the competent domestic authorities to challenge his transfer from the Miercurea-Ciuc Prison to the Bârcea Mare Prison.

6. In December 2016 and January 2017 respectively, the applicant's mother lodged two requests with the National Administration of Prisons, demanding the transfer of her son to the Miercurea-Ciuc Prison or to another detention facility, located closer to his family's residence. She contended that due to the long distance between her home and the Bârcea Mare Prison she could not pay regular visits to her son in prison.

7. On 11 January 2018, the National Administration of Prisons forwarded one of the requests to the director of the Bârcea Mare Prison. However, as acknowledged by the applicant himself in his submissions to the Court, he had decided not to pursue the request as he preferred to stay in the Bârcea Mare Prison where he had been allowed to work.

8. On 4 April 2017 the applicant was transferred to Baia Mare Prison from which he was released on parole on 3 April 2018.

THE COURT'S ASSESSMENT

9. The applicant alleged a violation of his right to respect for his family life under Article 8 of the Convention, on account of his transfer to a prison located at about 300 km from his family's residence. He claimed that travel was burdensome for his family members, in particular for his mother who had health problems. Since there was no direct public transport from Miercurea-Ciuc to Bârcea Mare his family stopped visiting him or sending parcels with food.

The Court invited the parties to submit observations under Article 8 and *ex proprio motu* to submit observations under Article 13 combined with Article 8 of the Convention. Having regard to the parties' observations and being the master of the characterisation to be given in law to the facts of the case (*Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018) the Court finds it appropriate to examine the matter under Article 8 only.

10. The Government argued that the applicant had failed to exhaust the available domestic remedies, because he had not lodged with the post-sentencing judge a complaint regarding the effect of his transfer on his right to maintain a relationship with his family based on Article 56 § 2 of Law no. 254/2013 on sentencing and execution of sentences and detention measures.

11. The Government also submitted that even though the applicant had been informed of one of his mother's requests that he be transferred to a detention facility located closer to his family's residence, he had refused to pursue his mother's request.

12. The applicant contested the Government's objection. He submitted, firstly, that there were no remedies available in Romania that were effective and adequate to deal with his complaint under Article 8 of the Convention. As to why he had not lodged a complaint with the post-sentencing judge he argued that the transfer decision had never been communicated to him. In addition, he considered that 10 days for filing a complaint with the post-sentencing judge was not sufficient as his transfer alone took five days.

13. The applicant acknowledged that he had refused to pursue his mother's request for his transfer from the Bârcea Mare Prison to a prison located closer to his family's residence but justified his position by the fact that he had been granted the right to work in the Bârcea Mare Prison. He further argued that the work hours he had completed in detention had resulted in him being released sooner from prison, on parole.

14. The general principles concerning the exhaustion of domestic remedies have been summarised in *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014).

15. The Court's task is to determine whether, in the light of the parties' submissions and all the circumstances of the case, domestic remedies were available at the material time, and if so, whether the applicant has exhausted them.

16. From the outset the Court notes that the applicant raised doubts as to whether the remedy suggested by the Government (see paragraph 10 above) could provide redress and offered reasonable prospects of success, without however substantiating these doubts (see paragraph 12 above).

17. Examining the applicant's arguments justifying his omission to lodge a complaint with the post-sentencing judge based on Law no. 254/2013 (see paragraph 12), the Court notes that even though the applicant did not personally receive the transfer decision, the prison's authorities had the obligation to provide the post-sentencing judge with any documents in his file, including the transfer decision.

18. Moreover, under Article 56 §§ 3 and 4 of the said law the post-sentencing judge has the obligation to hear the prisoner lodging a complaint at the prison's headquarters or by videoconference if the prisoner is transferred to another prison. Another option in case of the prisoner's transfer is his hearing by the post-sentencing judge at the new place of detention. Accordingly, the Court considers that the applicant had enough time to lodge a complaint with the post-sentencing judge despite his transfer. The Court considers, therefore, that the arguments put forward by the applicant to justify not challenging the transfer decision are unconvincing.

19. Noting that the applicant did not lodge any complaint to challenge his transfer to another detention facility with the post-sentencing judge, the Court reiterates that the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust domestic remedies (see *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 70, 17 September 2009 and *Vučković and Others v. Serbia* (preliminary objection) [GC], cited above, §§ 74 and 84). The Court considers therefore that if the applicant had any doubts about the effectiveness of this remedy, it was for him to dispel those doubts by applying to the post-sentencing judge.

20. The Government also submitted that the applicant had not lodged any request to be transferred to a prison closer to his home residence (see paragraph 11 above).

21. In this connection, the Court notes that under Article 45 § 2 of Law no. 254/2013, the general director of the ANP could order the transfer of prisoners upon their requests for well-founded reasons to another prison. Moreover, in case of rejection of his request, the applicant could have challenged the decision of the general director of the ANP before the competent administrative court seeking its annulment under Law no. 554/2004 on administrative litigation.

22. Even though the applicant claimed that he was unable to maintain personal contacts with his family, while detained in the Bârcea Mare Prison, he never actually lodged a request for transfer to a detention facility located in his county of residence, nor did he contest his transfer to another prison in any other way. In addition, when the request lodged by his mother, who did not have legal standing for filing it, had been forwarded to the director of the Bârcea Mare Prison, the applicant refused to pursue it. His explanation why he did not do so indicates that he preferred to stay in the Bârcea Mare Prison as he had been granted the right to work there (see paragraph 13 above).

23. In the light of the above, the Court is of the opinion that the applicant had failed to provide the Romanian authorities with an opportunity of redressing the alleged violations of his rights under Article 8 of the Convention.

24. It follows that the application is inadmissible for non-exhaustion of domestic remedies and must as such be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 December 2024.

Simeon Petrovski Deputy Registrar	Anne Louise Bormann President