

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

THIRD SECTION

CASE OF BORDENCIU v. ROMANIA

(Application no. 36059/12)

JUDGMENT

STRASBOURG

22 September 2015

FINAL

22/12/2015

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



In the case of Bordenciu v. Romania,

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

Luis López Guerra, *President,*
Josep Casadevall,
Kristina Pardalos,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc,
Branko Lubarda, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 1 September 2015,

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

PROCEDURE

1. The case originated in an application (no. 36059/12) 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 Miron Bordenciu ("the applicant"), on 15 May 2012.

2. The applicant was represented by Mr D.-S. Bogdan, a lawyer practising in Bucharest. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the conditions of his detention in Târgu Jiu Prison were inhuman.

4. On 8 October 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1966 and is currently being detained in Târgu Jiu Prison.

6. In 1998 the applicant started serving a twenty-five-year sentence for murder. On 23 July 1998 he was placed in Târgu Jiu Prison. Except for short periods of time when he was transferred to other prisons in order to appear before the courts and three occasions when he was hospitalised for a

maximum of one day in prison hospitals, the applicant was held in Târgu Jiu Prison.

A. The applicant's account of the material conditions of his detention

7. The applicant alleged that the conditions of his detention in Târgu Jiu Prison since his incarceration in 1998 amounted to torture. More specifically, he alleged that he was being held in severely overcrowded cells with thirty-five to forty prisoners, with worn-out furniture and without natural light or ventilation. He further submitted that the cells were full of bed bugs and the food was insufficient and of very poor quality. The applicant also alleged that he was being held in cells with smokers.

8. The applicant lastly alleged that he had become sick as a result of the inhuman conditions to which he had been subjected. He submitted in that connection a medical certificate issued by the prison doctor on 17 March 2014, according to which he was suffering from: chronic cholecystitis, fatty liver disease, chronic venal insufficiency of the legs, type-II diabetes, chronic pancreatitis, gastroduodenitis, lumbar discopathy and impulsive personality disorder.

B. The Government's account of the material conditions of the applicant's detention

9. The Government submitted that the applicant had been held for unspecified periods of time in three different cells of the Târgu Jiu Prison infirmary block, which are described below.

10. Cell E 2.2 measured 22.62 sq. m, of which 2.41 sq. m were occupied by a bathroom (20.21 sq. m of remaining space). The cell had five rows of bunk beds and accommodated eight prisoners (2.52 sq. m of personal space, including the space occupied by the beds). Ventilation was ensured by a window measuring 0.97 by 1.45 m. The bathroom had its own window measuring 40 by 45 cm.

11. Cell E 2.3 measured 21.75 sq. m, of which 3.85 sq. m were occupied by a bathroom (17.92 sq. m of remaining space). The cell had four rows of bunk beds and accommodated five prisoners (3.5 sq. m of personal space, including the space occupied by the beds). Ventilation was ensured by a window measuring 0.97 by 1.45 m. The bathroom had its own window measuring 40 by 45 cm.

12. Cell E 2.4 measured 24.05 sq. m, of which 3.36 sq. m were occupied by a bathroom (20.69 sq. m of remaining space). The cell had four rows of bunk beds and accommodated four to six prisoners (between 3.44 and 4.13 sq. m of personal space, including the space occupied by the beds). Ventilation was ensured by a window measuring 0.97 by 1.45 m. The bathroom had its own window measuring 40 by 45 cm.

13. For the rest of the time the applicant was held in non-smoking cells, a description of which is set out below.

14. Cell E 2.5 measured 49.8 sq. m, of which 7.31 sq. m were occupied by a bathroom (42.49 sq. m of remaining space). The cell had twenty-seven beds and accommodated twenty-five to twenty-six prisoners (an average of 1.63 sq. m of personal space, including the space occupied by the beds). The cell had three windows measuring 90 by 109 cm and the bathroom had a window measuring 40 by 45 cm.

15. Cell E 3.4 measured 36.15 sq. m, of which 5.55 sq. m were occupied by a bathroom (30.6 sq. m of remaining space). The cell had eight rows of bunk beds and usually accommodated twenty prisoners (1.53 sq. m of personal space, including the space occupied by the beds). The cell had a window measuring 118 by 158 cm. The bathroom had its own window measuring 110 by 50 cm.

16. Cell E 1.13 measured 48.40 sq. m, of which 9.25 sq. m were occupied by a bathroom and 2.17 sq. m by a storage room (36.98 sq. m of remaining space). The cell had eleven rows of bunk beds and accommodated twenty-five to twenty-nine prisoners (between 1.47 sq. m and 1.27 sq. m of personal space, including the space occupied by the beds). It also had three windows measuring 100 by 125 cm and 100 by 150 cm. The bathroom had its own window measuring 60 by 50 cm.

17. The Government submitted that all of the cells contained adequate furniture and that disinfection operations took place whenever the presence of insects was reported.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL STANDARDS

18. Excerpts from the relevant legislation concerning the rights of detainees, namely Law no. 275/2006, are quoted in *Iacov Stanciu v. Romania* (no. 35972/05, §§ 113-16, 24 July 2012).

19. Excerpts from the relevant parts of the General Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT"), as well as their reports concerning Romanian prisons, are also quoted in *Iacov Stanciu* (cited above, §§ 121-27).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

20. The applicant complained in substance under Article 3 of the Convention of inhuman and degrading treatment on account of the material conditions of his detention in Târgu Jiu Prison. In particular, he complained of severe overcrowding, poor hygiene and the presence of bed bugs, inadequate ventilation and natural light, poor quality of food and a lack of segregation between smokers and non-smokers.

Article 3 of the Convention reads as follows:

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

A. Admissibility

21. 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

22. The applicant reiterated that he was being held in unhealthy conditions, that the cells were overcrowded and full of bed bugs, with inadequate ventilation and that the quality of food was very poor. He also alleged that there was a lack of natural light and that he was being held in cells with smokers. He referred to reports by the CPT and various domestic non-governmental organisations confirming his allegations. The applicant further alleged that while in detention he had contracted various diseases as a result of the poor conditions.

23. Referring to the information submitted on the general conditions of detention (see paragraphs 10-17 above), the Government contended that the domestic authorities had taken all necessary measures in order to ensure that the applicant's conditions of detention were adequate. Consequently, his conditions of detention did not meet the level of severity required by Article 3 of the Convention.

24. The Court reiterates that under Article 3 of the Convention, the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of execution of the measure of detention do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and

well-being are adequately secured (see *Valašinas v. Lithuania*, no. 44558/98, § 102, ECHR 2001-VIII, and *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

25. When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II).

26. A serious lack of space in a prison cell weighs heavily as a factor to be taken into account for the purpose of establishing whether the detention conditions described are "degrading" from the point of view of Article 3 (see *Karalevičius v. Lithuania*, no. 53254/99, § 39, 7 April 2005). In a series of cases the Court considered that a clear case of overcrowding was a sufficient element for concluding that Article 3 of the Convention had been violated (see *Colesnicov v. Romania*, no. 36479/03, §§ 78-82, 21 December 2010; *Flamînzeanu v. Romania* , no. 56664/08, § 98, 12 April 2011; and *Budaca v. Romania*, no. 57260/10, §§ 40-45, 17 July 2012).

27. Turning to the present case, the Court notes that the applicant complained of the inhuman conditions in which he has been detained, with short interruptions, for a period of sixteen years and four months in Târgu Jiu Prison.

28. The Court notes that the statistics provided by the Government in reply to the applicant's allegations of overcrowding show that most of the time the applicant's personal space has been significantly less than that required by the Court's case-law. The Court further points out that those figures were even lower in reality, taking into account the fact that the cells also contained detainees' beds and other items of furniture. This state of affairs in itself raises an issue under Article 3 of the Convention (see *Flămînzeanu*, cited above, § 92 and *Iacov Stanciu*, cited above, § 173).

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

30. Moreover, the applicant's submissions concerning the overcrowded detention conditions correspond to the general findings by the CPT in respect of Romanian prisons.

31. Consequently, the Court concludes that the physical conditions of the applicant's detention have caused him suffering that exceeded the unavoidable level of suffering inherent in detention and that attained the threshold of degrading treatment prescribed by Article 3.

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

33. Having regard to this finding and in the circumstances of the case, the Court does not consider necessary to examine the remaining aspects of the applicant's complaint concerning the physical conditions of his detention (see *Vartic v. Romania*, no. 2152/05, § 54, 10 July 2012).

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

34. Lastly, the applicant complained, under Article 6 § 1 of the Convention, of the unfairness of several disciplinary proceedings instituted against him by the prison administration.

35. The Court has examined the complaint as submitted by the applicant. However, having regard to all the material in its possession, and in so far as they fall within its jurisdiction, the Court finds that these complaints 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 pursuant to Article 35 § 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage as compensation for the inhuman and degrading treatment to which he has been subjected in Târgu Jiu Prison.

38. The Government submitted that the amount claimed was excessive.

39. The Court observes that in the current case it has found the respondent State to be in breach of Article 3 of the Convention on account of the inhuman conditions of the applicant's detention in Târgu Jiu Prison. It accordingly awards the applicant the entire amount claimed in respect of non-pecuniary damage.

B. Costs and expenses

40. The applicant also claimed EUR 2,500 for the costs and expenses incurred before the Court, to be paid directly into the bank account of his representative. A detailed document was submitted indicating the precise dates and the number of hours worked in preparing the case, which amounted to five hours for the applicant's representative at an hourly fee of

EUR 175 and twenty-five hours for the representative's assistant at an hourly fee of EUR 65.

41. The Government submitted that the amount claimed was excessive.

42. 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 (see *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI). In the present case, regard being had to the documents in its possession and the above criteria, the Court, making an equitable assessment, considers it reasonable to award the sum of EUR 1,500 for costs and expenses for the proceedings before the Court, to be paid into the bank account indicated by the applicant's representative.

C. Default interest

43. 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 complaint under Article 3 of the Convention concerning the physical conditions of the applicant's detention in Târgu Jiu Prison 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, within three months from 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 currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to the applicant;

(ii) EUR 1,500 (one thousand five hundred euros), in respect of costs and expenses, to be paid directly to the applicant's representative, Mr Dragoş-Sebastian Bogdan;

(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 22 September 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Luis López Guerra President