

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

FOURTH SECTION

CASE OF MARDARE v. ROMANIA

(Application no. 67591/12)

JUDGMENT

STRASBOURG

24 May 2016

This judgment is final but it may be subject to editorial revision.



In the case of Mardare v. Romania,

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

Nona Tsotsoria, *President,*
Krzysztof Wojtyczek,
Gabriele Kucsko-Stadlmayer, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 3 May 2016,

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

PROCEDURE

1. The case originated in an application (no. 67591/12) 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 Dumitru Mardare ("the applicant"), on 29 August 2012.

2. The applicant, who had been granted legal aid, was represented by Mr A. Grigoriu, a lawyer practising in Bucharest. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, from the Ministry of Foreign Affairs.

3. The applicant alleged that the physical conditions of his detention in all the prison facilities in which he had been detained, including the lack of separation between smokers and non-smokers, the repeated transfers from one prison to another within a short period of time and the lack of adequate medical care for his illnesses had amounted to inhuman and degrading treatment in breach of the rights guaranteed by Article 3 of the Convention. He also alleged that he had been unable to obtain copies from his personal file in order to submit them to the Court together with the application.

4. On 7 May 2013 the application was communicated to the Government.

THE FACTS

5. The applicant was born in 1955 and is currently detained in Iași Prison.

6. By a final decision of 2013 the applicant was convicted of fraud and sentenced to a term of imprisonment. He had been detained in several prisons since 18 October 2011.

A. The applicant's account

7. In respect of the establishments in which he had been detained, the applicant alleged that he had been kept in overcrowded cells with poor conditions of hygiene. The food he had received had been of poor quality and had not been adapted to his medical condition. He also claimed that despite the fact that he was a non-smoker, he had had to share the cells with smokers. He also claimed that the cells in which he was detained in Iași Prison were infested with bugs, and the mattresses were old and dirty.

8. The Government submitted that in all the cells occupied by him, the applicant had had his own bed. The cells had natural and artificial light and were ventilated through windows. The detention cells were disinfected daily with chlorine. The detainees were provided with cleaning materials and they were responsible for cleaning the cells. At least every trimester the prison authorities or specialised contractors carried out work to eradicate rodents and insects. The detainees were entitled to two showers per week.

9. The applicant received a special diet for his diabetes.

B. The Government's account

10. The Government made specific submissions in respect of the following detention facilities in which the applicant had been detained.

11. The applicant was detained in Gherla Prison between 18 October and 22 November 2011. He occupied the following cells: (i) cell EG 1.7, which measured 43.25 square metres and which he shared with nine co-detainees between 18 October and 11 November 2011; (ii) cell EG 3.25, which measured 55.20 square metres and which he shared with twenty-five co-detainees between 11 and 16 November 2011; (iii) cell EG 1.15, which measured 43.25 square metres and which he shared with nine co-detainees between 16 and 18 November 2011; and (iv) cell E 1.8, which measured 43.25 square metres and which he shared with eleven co-detainees between 18 and 22 November 2011.

12. The applicant was detained in Bistrița Prison between 22 November 2011 and 18 January 2012. He occupied cell no. 4, which measured 20.03 square metres and which he shared with eight co-detainees.

13. The applicant was detained in Jilava Prison between 4 and 23 February 2012. He occupied the following cells: (i) cell no. 4.21, which measured 44.81 square metres and which he shared with twenty-three co-detainees from 4 to 16 February 2012; and (ii) cell no. 6.24, which measured 43.90 square metres and which he shared with between twenty-two and twenty-six co-detainees from 17 to 23 February 2012.

14. The applicant was detained in Focșani Prison on several occasions: between 2 and 9 March 2012, 11 and 18 January, 5 and 19 February, and

2 and 5 April 2013. He occupied the following cells: (i) cell no. E 1.8, which measured 21.22 square metres and which he shared with ten co-detainees for seven days; (ii) cell no. E 3.28, which measured 25.28 square metres and which he shared with thirteen co-detainees for another seven days; and (iii) cell no E 3.30, which measured 25.28 square metres and which he shared with fourteen co-detainees for five days.

15. For the rest of the period of detention until the present, the applicant has been detained in Iași Prison, in cells E 4.4., E 3.3, E 5.12, E 6.6, E 6.9, which each measured 33.30 square metres and which he shared with twenty-five co-detainees.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

16. The applicant complained principally of the inadequate conditions of his detention. He also alleged that he had not received proper medical treatment for his diabetes and ischemic discopathy. He relied on 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

17. The Government submitted that the applicant had not complained before the post-sentencing judge or any other domestic authority about the conditions of his detention and the alleged lack of proper medical treatment.

18. The applicant did not file any complaint concerning the alleged lack of proper medical treatment before the competent authorities. In this respect the Court notes that it has already acknowledged the existence of an effective domestic remedy available for complaints on this issue (see *Petrea v. Romania,* no. 4792/03, § 35, 29 April 2008). It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

19. As regards the applicant's complaint concerning the physical conditions of his detention, in particular overcrowding, the Court notes that in recent applications lodged against Romania concerning similar complaints it has already found that, given the specific nature of this type of complaint, the legal avenues suggested by the Government do not constitute an effective remedy (see *Necula v. Romania*, no. 33003/11, §§ 32-39, 18 February 2014). The Court therefore dismisses the Government's objection.

20. The Court further notes that this part of the application concerning the applicant's physical conditions of detention is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

21. The Court notes that the applicant was kept in detention in poor conditions. The Court refers to the principles established in its case-law regarding inadequate conditions of detention (see, for instance, *Kudła v. Poland* [GC], no. 30210/96, §§ 90-94, ECHR 2000-XI, and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 139-165, 10 January 2012). It reiterates in particular that 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 and may disclose a violation, both alone or taken together with other shortcomings (see, amongst many authorities, *Karalevičius v. Lithuania*, no. 53254/99, §§ 39, 7 April 2005, and *Ananyev and Others*, cited above, §§ 145-147, 149).

22. In the leading case of *Iacov Stanciu v. Romania* (no. 35972/05, 24 July 2012), the Court already found a violation in respect of issues similar to those in the present case.

23. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the merits of these complaints. Having regard to its case-law on the subject, the Court considers that in the instant case the applicant's conditions of detention were inadequate.

24. The applicant also complained of other aspects concerning his conditions of detention. In the light of its findings above, the Court does not consider it necessary to examine these remaining aspects (see, *Epistatu v. Romania*, no. 29343/10, § 55, 24 September 2013, and *Bahnă v. Romania*, no. 75985/12, § 53, 13 November 2014).

II. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

25. The applicant complained that he had been unable to support his initial application with the necessary documents because he had had difficulties in obtaining copies from his personal file kept with the prison authorities.

He relied on Article 34 of the Convention, which reads as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the

> Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

26. Having examined the parties' submissions and the material available to it, the Court considers that there is an insufficient factual basis on which to conclude that there has been any unjustified interference by the State authorities with the applicant's exercise of the right of petition in the proceedings before the Court in relation to the present application.

27. Therefore, the Court concludes that the respondent State has complied with its obligations under Article 34 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicant claimed 12,000 euros (EUR) in respect of non-pecuniary damage.

30. The Government considered the applicant's claim excessive.

31. The Court considers that the applicant has undeniably suffered distress, frustration and anxiety caused by the material conditions in which he has been detained. However, it accepts the Government's argument that the specific amount claimed appears excessive. Making its assessment on an equitable basis, it awards the applicant EUR 7,800, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

32. The applicant did not claim the reimbursement of any costs and expenses.

C. Default interest

33. 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 applicant's complaint under Article 3 concerning the material conditions of his detention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's material conditions of detention;

3. *Holds* that the State has complied with its obligation under Article 34 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 7,800 (seven thousand eight hundred euros) in respect of non-pecuniary damage, to be converted into the currency of the respondent State 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 May 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Nona Tsotsoria
Deputy Registrar	President