

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

THIRD SECTION

DECISION

Application no. 31564/04
by Neculai PASCU
against Romania

The European Court of Human Rights (Third Section), sitting on 6 March 2012 as a Committee composed of:

Ján Šikuta, *President,*
Nona Tsotsoria,
Mihai Poalelungi, *judges,*

and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 12 August 2004,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having regard to the comments submitted by the Romanian Government,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Neculai Pascu, is a Romanian national who was born in 1955 and lives in Boldu. The Romanian Government ("the Government") were represented by their Agent, Mr Răzvan-Horaţiu Radu.

A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

3. On 21 February 2002 the applicant was arrested by the Galaţi police on a charge of accepting or soliciting bribes. He was placed in the Galaţi Police detention facilities until 28 February 2002 when he was transferred to Galaţi Prison.

4. On 17 September 2002 he was released from prison for medical reasons.

5. In a decision of 10 February 2004, the High Court of Cassation and Justice found the applicant guilty as charged and sentenced him to two years' imprisonment.

6. On 24 May 2004 the applicant was taken back to Galaţi Prison in order to execute his prison sentence.

7. On an unspecified date the applicant lodged an application for a stay of execution of his prison sentence on medical grounds and on account of the difficult financial situation of his family.

8. On 8 September 2004 the Galaţi County Court dismissed his application on the grounds that he had refused to be examined by a forensic expert and that the financial situation of his family was not so difficult. The appeal lodged by the applicant with the Galaţi Court of Appeal was dismissed on 8 November 2004 and the judgment of the court of first instance became final as the applicant did not lodge an appeal on points of law.

9. According to the applicant the conditions of his detention in the Galaţi Police detention facility and in Galaţi Prison were improper. He mainly referred to the conditions of detention in cell no. 309 to which he had been transferred from the prison's medical ward on 23 August 2004. The cell had 18 square metres and was occupied by twenty prisoners. There were only twelve beds in the cell.

10. According to the applicant, a non-smoker, he was detained with inmates who smoked cigarettes all day long inside the cell. He claimed that his bronchial asthma had worsened because of the conditions in which he had been kept. He also alleged that owing to the unsuitable conditions offered by the prison he had to receive his visitors in a room of 5 square metres where there were seven other prisoners with their visitors at the same time. He added that his phone conversations had also been deprived of any intimacy as the prison staff were always listening very closely.

11. He was released from prison on 1 March 2005 after the execution of his sentence.

12. On 18 March 2009 the Government provided the Court with factual information on the applicant's conditions of detention and a detailed medical report.

B. Relevant domestic law and practice

13. 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, §§ 22-23, 29 April 2008).

14. Ordinance no. 56/2003 stated, in Article 3, that prisoners had the right to bring legal proceedings before a court of first instance concerning the implementing measures taken by the prison authorities in connection with their rights. This has been repealed and replaced by Law no. 275 of 20 July 2006, which restates the content of the above-mentioned Article 3 in its Article 38, providing that a judge has jurisdiction over complaints by convicted prisoners against measures taken by prison authorities.

COMPLAINTS

A. Complaints raised in the applicant's first letter of 12 August 2004

15. Relying on Article 3 of the Convention the applicant complained of the material conditions of his detention and the lack of a proper medical treatment for the period between 21 February and 17 September 2002.

B. Complaints raised in a letter of 6 November 2005

16. Under Article 3 of the Convention the applicant complained of the material conditions of his detention in Galaţi Prison for the period between 24 May 2004 and 1 March 2005. Relying on the same article he claimed that despite his severe medical condition (he was suffering from ischemic cardiopathy, bronchial asthma and hydrocele) he had not received proper medical treatment during his detention for the periods between 21 February and 17 September 2002 and between 24 May 2004 and 1 March 2005.

17. With respect to both periods of detention he complained of a violation of Article 8 of the Convention in so far as he had had no privacy when he received his family visits and during his phone conversations.

18. Under Article 6 § 1 of the Convention he complained about the outcome of the criminal proceedings against him.

19. He complained under Article 5 §§ 1 and 3 of the Convention that he had been unlawfully and improperly arrested. In particular, he claimed that the decision to arrest him had not been sufficiently reasoned and that the pre-trial detention had lasted too long.

THE LAW

A. Article 3 of the Convention

20. The applicant complained of the material conditions of his detention on the premises of the Galaţi Police and in Galaţi Prison between 21 February and 17 September 2002 and between 24 May 2004 and 1 March 2005. He also complained about the lack of proper medical treatment. He relied in substance 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."

1. Material conditions of detention

21. The Government contended that the applicant had not complied with the six-month rule in so far as his complaint referred to the conditions of his detention. They alleged that the applicant had complained about those conditions only in his letter of 6 November 2005, whilst he had been released from prison on 1 March 2005.

22. The applicant did not refer in his observations to the objection thus raised by the Government.

23. The Court reiterates that the object of the six-month time-limit under Article 35 is to promote legal certainty, by ensuring that cases raising issues under the Convention are dealt with within a reasonable time and that past decisions are not continually open to challenge. The rule also affords the prospective applicant time to consider whether to lodge an application and, if so, to decide on the specific complaints and arguments to be raised (see, for example, *Worm v. Austria*, 29 August 1997, §§ 32-33, *Reports of Judgments and Decisions* 1997-V).

24. The Court observes that the applicant complained about the conditions of his detention with reference to two periods. The first period of detention started on 21 February 2002 and ended on 17 September 2002 when the applicant was released from prison for medical reasons. The second period of detention ran from 24 May 2004 to 1 March 2005.

25. The Court notes that the applicant complained about the conditions of his first period of detention in his initial letter of 12 August 2004, more than six months after his release from prison on 17 September 2002. He complained about the conditions of his second period of detention in his subsequent letter of 6 November 2005, more than six months after his release from prison on 1 March 2005.

26. Therefore in the light of the above, the Court considers that the complaint concerning the conditions of detention in respect of both periods of detention was lodged more than six months after the date when the

situation complained of ended (see *Rosengren v. Romania* (dec.), no. 70786/01, 27 April 2004).

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

2. Medical treatment in detention

27. The Government raised a preliminary objection of non-exhaustion of domestic remedies, in so far as the applicant had not complained to the authorities of the lack of adequate medical treatment on the basis of Ordinance no. 56/2003.

28. The applicant did not submit any observation in this respect.

29. The Court notes that in the case of *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 situations such as the one complained of by the applicant. However, after that date, persons in the applicant's situation had an effective remedy to complain about the alleged lack of medical treatment even if their applications had already been pending with the Court at the relevant date (see *Petrea*, cited above, §§ 35-36). The Court sees no reason to depart in the present case from the conclusions it reached in *Petrea*.

30. The Court notes that the applicant did not lodge a complaint about the lack of adequate medical treatment on the basis of Ordinance no. 56/2003 but asked for the postponement of his prison sentence on the grounds that the medical treatment he needed could not be provided by prison hospitals. He based his application on Article 453 of the Romanian Code of Criminal Procedure.

31. Although the Court is not convinced of the necessity of lodging another request on the basis of Ordinance no. 56/2003 with largely the same object as the request for the postponement of the prison sentence, namely to determine whether the conditions from which the applicant was suffering could have been treated in prison hospitals (see *Aharon Schwarz v. Romania*, no. 28304/02, § 95, 12 January 2010), it considers that the applicant did not exhaust the domestic remedies as he did not lodge an appeal on points of law against the decision of 8 November 2004 dismissing his appeal (see paragraph 8 above).

Therefore, it follows that the part of the complaint concerning the alleged lack of medical treatment after 27 June 2003 should be rejected for non-exhaustion of domestic remedies in accordance with the *Petrea* case-law, cited above.

32. As for the period before the entry into force of Ordinance no. 56/2003, the Court notes that the applicant formulated his complaint about the alleged lack of medical treatment between

21 February 2002 and 17 September 2003 only in his first letter addressed to the Court on 12 August 2004.

33. Therefore, the Court considers that the complaint was lodged more than six months after the date when the situation complained of ended.

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

B. Complaint under Article 8

34. The applicant also complained that his right to respect for his private life had been jeopardised, as the authorities had not allowed him any privacy to receive visits and have phone conversations while in detention. He relied on Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence (...).

35. The Government raised a plea of non-observance of the six-month rule on the grounds that the applicant had complained about the lack of privacy only in his letter dated 6 November 2005.

36. The Court observes that the applicant complained about the infringement of his right to respect for private life only on 6 November 2005, more than six months after his release from prison on 1 March 2005.

37. Therefore in the light of the above, the Court considers that the complaint was lodged more than six months after the date when the situation complained of ended.

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.

C. Other complaints

38. With regard to all the other complaints raised by the applicant under Articles 5 and 6 of the Convention, 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.

For these reasons, the Court unanimously

Declares the application inadmissible.

Marialena Tsirli	Ján Šikuta
Deputy Registrar	President