

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

CASE OF PETRA v. ROMANIA

(115/1997/899/1111)

JUDGMENT

STRASBOURG

23 September 1998

In the case of Petra v. Romania[1],

The European Court of Human Rights, sitting, in accordance with Article 43 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of Rules of Court B[2], as a Chamber composed of the following judges:

Mr R. BERNHARDT, *President*,
Mr L.-E. PETTITI,
Mr A. SPIELMANN,
Mr N. VALTICOS,
Sir John FREELAND,
Mr G. MIFSUD BONNICI,
Mr P. KŪRIS,
Mr M. VOICU,
Mr V. TOUMANOV,

and also of Mr H. PETZOLD, *Registrar*, and Mr P.J. MAHONEY, *Deputy Registrar*,

Having deliberated in private on 23 May and 24 August 1998,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 15 December 1997 and by Mr Ioan Petra ("the applicant"), a Romanian national, on 21 January 1998, within the three-month period laid down by Article 32 § 1 and Article 47 of the Convention. It originated in an application (no. 27273/95) against Romania lodged with the Commission under Article 25 by the applicant on 19 November 1994.

The Commission's request referred to Articles 44 and 48 and to the declaration whereby Romania recognised the compulsory jurisdiction of the Court (Article 46); the applicant's application to the Court referred to Articles 44 and 48 as amended by Protocol No. 9, which Romania has ratified. The object of the request and of the application was to obtain a decision as to whether the facts of the case disclosed a breach by the

---

Notes by the Registrar

1. The case is numbered 115/1997/899/1111. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

2. Rules of Court B, which came into force on 2 October 1994, apply to all cases concerning States bound by Protocol No. 9.

respondent State of its obligations under Articles 8 and 25 of the Convention.

2. The applicant designated Mr D. Cosma, of the Bucharest Bar, to represent him (Rule 31 of Rules of Court B).

3. The Chamber to be constituted included *ex officio* Mr M. Voicu, the elected judge of Romanian nationality (Article 43 of the Convention), and Mr R. Bernhardt, the Vice-President of the Court (Rule 21 § 4 (b)). On 31 January 1998, in the presence of the Registrar, the Vice-President drew by lot the names of the other seven members, namely Mr L.-E. Pettiti, Mr A. Spielmann, Mr N. Valticos, Sir John Freeland, Mr G. Mifsud Bonnici, Mr P. Kūris and Mr V. Toumanov (Article 43 *in fine* of the Convention and Rule 21 § 5).

4. As President of the Chamber (Rule 21 § 6), Mr Bernhardt, acting through the Deputy Registrar, consulted Mr A. Ciobanu Dordea, the Agent of the Romanian Government ("the Government"), the applicant's lawyer and the Delegate of the Commission, Mr C. Bîrsan, on the organisation of the proceedings (Rules 39 § 1 and 40). Pursuant to the order made in consequence, the Registrar received the Government's and the applicant's memorials on 9 and 15 April 1998 respectively.

5. On 26 February 1998 the Commission had produced the file on the proceedings before it, as requested by the Registrar on the instructions of the President of the Chamber.

6. On 24 April 1998 the Chamber decided to dispense with a hearing in the case, having satisfied itself that the conditions for this derogation from its usual procedure had been met (Rules 27 and 40).

AS TO THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. Mr Ioan Petra, who was born in 1941, is currently in custody in Aiud Prison (county of Alba), serving a fifteen-year sentence for murder imposed on 30 April 1991 by the Târgu-Mureş County Court.

8. On 10 January 1994, when the applicant was in custody at Mârgineni (county of Dâmboviţa), his wife wrote to the Commission to complain that her husband had not had a fair trial in the County Court. She also reported that he had encountered difficulties in sending letters from prison.

9. On 20 May 1994 the applicant himself sent the Commission a letter posted by his wife and asked that correspondence should be sent to him at home. On 22 July 1994 the Commission asked the applicant for additional information and documents in support of the application.

10. On 30 October and 19 November 1994 Mr Petra wrote to the Commission through his wife, reporting that the prison authorities would not allow him to fill in the application form.

11. On 21 January 1995 he sent the Commission a letter from Mârgineni Prison that was received on 14 February 1995. Written on regulation prison paper, it bore a registration number and had been sent from Bucharest in a Ministry of Justice envelope. Although mentioned as an enclosure, the judgment of 30 April 1991 was missing. This letter was written in a different hand from the earlier ones.

12. On 22 February 1995 the Commission sent the applicant an application form.

The form was filled in by the applicant on 9 March 1995 and sent to the Commission by the Romanian Prison Service (*Direcţia Generală a Penitenciarelor*) on 17 April 1995. No mention was made in it of any hindrance of correspondence.

13. On 18 June 1995, in response to a question from the Commission concerning the different handwriting in the letters it had received, Mr Petra indicated that he had been assisted by a friend "wholly unconnected with the case, a man who is discreet and disinterested". He added that the prison authorities had informed him that the documents requested by the Commission had been dispatched. However, the Commission never received any of them.

Referring also to the right to respect for his correspondence, the applicant said that the prison governor, although very "flexible", could not be of any greater assistance to him as the authorities were required to apply Law no. 23/1969 on the execution of sentences and its "secret" implementing regulations. In his view, it followed that there was a violation of Articles 8 and 25 of the Convention.

14. The applicant has stated that he never received the letter of 19 October 1995 in which the Commission informed him, among other things, that his application had been communicated to the Government.

15. On 9 December 1995 Mr Petra sent a letter through his wife to the Commission, informing it that on 26 September 1995 he had been transferred to Aiud Prison and that when he had sought permission to communicate his change of address, the reply had been "the Council of Europe is at Aiud and nowhere else" and that if he persisted, he would be put under the special prison regime.

16. On 4 January 1996 Mrs Petra informed the Commission that her husband had asked her to enquire about his application and to complain about the prison authorities' systematic interference with his correspondence with the Commission. On 26 January 1996 the Commission sent a reply to Aiud Prison.

17. On 22 April 1996 the applicant's wife wrote to the Commission to complain about the conditions in which her husband was being held, stating that he shared a 12 sq. m cell with five other prisoners and that the warders subjected him to inhuman treatment. The applicant had refused to give her the names of the warders who beat the prisoners, because he was too afraid.

18. Mr Petra did not learn that his application had been communicated to the Government until April 1996, when he received a copy of the letter of 19 October 1995 and relevant documents.

19. In a letter of 24 May 1996 posted by his wife the applicant again complained that his correspondence was being censored and stated that he was obliged to give his letters to the prison governor, who forwarded them to the Prison Service in Bucharest and that he was never certain that his letters were actually sent to Strasbourg.

20. On 13 June 1996 the Government submitted to the Commission all the documents concerning the court proceedings that had resulted in the applicant's conviction.

21. On 3 January 1997 the Commission received two further letters sent from Bucharest in a Ministry of Justice envelope. The first of these, written by the applicant on regulation prison paper, was dated 4 December 1996, was stamped and bore a registration number. The second was a covering letter from the Head of the Prison Service, Major-General I.C.

Two other letters from the applicant, dated 24 and 27 February 1997, each stamped and bearing a registration number, were sent together from Bucharest by the Ministry of Justice on 14 March 1997, again with a covering letter from Major-General I.C.

22. In a letter of 9 March 1997 posted by his wife Mr Petra informed the Commission that he had received the decision on the admissibility of his application. He added that his correspondence with the Commission was being routinely opened and that his letters were being sent to the Commission through the Prison Service. He said that he had written the letter secretly for fear of being denounced to Lieutenant-Colonel V.C., who had threatened him in the following terms: "*I'll* give you Council of Europe!" (*Te aranjez eu pe tine cu Consiliul Europei!*).

23. On 14 August 1997 the Commission received another letter written from prison on regulation prison paper on 8 July 1997, which was stamped, bore a registration number and had been sent from Bucharest in a Ministry of Justice envelope on 30 July 1997. No mention was made in it of any hindrance of correspondence.

24. On 15 April 1998 the registry of the Court received the applicant's memorial written on regulation prison paper; it was stamped, bore a registration number and had been sent from Bucharest in a Ministry of Justice envelope.

II. RELEVANT DOMESTIC LAW

A. Law no. 23/1969

25. The relevant provisions of Law no. 23/1969 on the execution of sentences provide:

Section 17

"Convicted prisoners shall be entitled … to receive and send mail and sums of money."

Section 18

"A convicted prisoner's right to receive … and send mail shall be granted according to the nature of the offence he has committed, the length of his sentence, whether he is a reoffender, whether he is doing work, his conduct and his willingness to undergo rehabilitation measures.

…"

Section 20

"Any mail, books, newspapers or magazines whose content the prison governor considers unsuited to the process of rehabilitating a prisoner shall be withheld and kept at the prison. They shall be returned to the prisoner when he is released.

Mail whose content is unsuitable shall, if need be, be forwarded to the competent authorities."

B. Implementing regulations, approved by the Cabinet on 15 December 1969

26. The relevant regulations of the implementing regulations of Law no. 23/1969, which were not published, provide:

Regulation 75

"Convicted prisoners shall be entitled to submit petitions and written or oral requests to the prison governor, the public prosecutor, the President of the County Court for the area in which he is being held or other bodies.

The prison authorities shall provide convicted prisoners with writing materials."

Regulation 76

"Requests and complaints addressed to central or local authorities shall be sent direct to those authorities by the prison authorities. Unsuitable requests shall be sent to the Prison Service so that the measures prescribed by law may be taken.

…"

Regulation 77

"Prison governors shall dispatch requests and complaints within five days of the day on which they receive them. Convicted prisoners shall be informed of the outcome of their requests and complaints as soon as the replies have been received and shall sign to that effect."

According to the table annexed to the implementing regulations, prisoners convicted of murder are entitled to receive and send one letter every two months if they are working in prison and one letter every three months if they are not.

PROCEEDINGS BEFORE THE COMMISSION

27. Mr Petra applied to the Commission on 19 November 1994. He complained of his detention (Article 5 § 1 (e) of the Convention), the unfairness of the criminal proceedings against him (Article 6 § 1) and interferences with his right to respect for his correspondence with the Commission (Articles 8 and 25).

28. On 13 January 1997 the Commission declared the application (no. 27273/95) admissible in respect of the last complaint and inadmissible as to the remainder. In its report of 30 October 1997 (Article 31), it expressed the unanimous opinion that there had been a violation of Article 8 of the Convention and that no separate issue arose under Article 25. The full text of the Commission's opinion is reproduced as an annex to this judgment[1].

FINAL SUBMISSIONS TO THE COURT

29. The Government wished to leave to the Court's discretion the complaint under Articles 8 and 25 concerning the monitoring of the applicant's correspondence with the Commission and asked the Court to dismiss the remainder of the application.

30. Counsel for the applicant asked the Court to find a violation of the above-mentioned Articles and to award his client just satisfaction.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

A. Scope of the case

31. In his application of 21 January 1998 bringing the case before the Court the applicant complained of hindrance of his correspondence (opening and delay in dispatch) not only with the Commission but also with his family and the public authorities. He relied on Article 8 of the Convention, which provides:

> "1. Everyone has the right to respect for … his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

1. *Note by the Registrar*. For practical reasons this annex will appear only with the printed version of the judgment (in *Reports of Judgments and Decisions* 1998), but a copy of the Commission's report is obtainable from the registry.

32. The Government emphasised at the outset that before the Commission Mr Petra had never referred to hindrance of his correspondence with the Romanian authorities and maintained that the restrictions on the applicant's freedom of correspondence with his family were justified under Article 8.

33. The Delegate of the Commission did not express a view.

34. The Court reiterates that it has jurisdiction *ratione materiae* within the compass of the Commission's decision on the admissibility of an application (see, *mutatis mutandis*, the Guerra and Others v. Italy judgment of 19 February 1998, *Reports of Judgments and Decisions* 1998-I, p. 223, § 44). On 13 January 1997 the Commission declared admissible "without prejudice to the merits, the applicant's complaint concerning the hindrance of his correspondence (Article 8 of the Convention)" and on 30 October 1997 it expressed the opinion that there had been a violation of that provision on account of the "opening and delaying [of] the correspondence between the applicant" and it.

However, although the latter two complaints raised by Mr Petra in his application of 21 January 1998 (see paragraph 31 above) relate to the same facts, the case file does not contain any letters sent by him to his family or to his country's authorities that were intercepted and monitored by the prison authorities at Mârgineni or Aiud. For lack of evidence in support of those allegations, the Court considers that it does not have to entertain them.

B. Compliance with Article 8

35. The applicant said that he had been obliged to hand over the letters he had written to the Commission to the prison governor, who sent them to Bucharest, thereby causing considerable delays. Letters from the Commission arrived opened and often took more than a month to reach him. He complained of a violation of Article 8.

36. Like the Government and the Commission, the Court considers that there was "interference by a public authority" with the exercise of the applicant's right to respect for his correspondence, which is guaranteed by paragraph 1 of Article 8. Such an interference will contravene Article 8 unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in paragraph 2 and furthermore is "necessary in a democratic society" in order to achieve them (see the following judgments: Silver and Others v. the United Kingdom, 25 March 1983, Series A no. 61, p. 32, § 84; Campbell v. the United Kingdom, 25 March 1992, Series A no. 233, p. 16, § 34; and Calogero Diana v. Italy, 15 November 1996, *Reports* 1996-V, p. 1775, § 28).

37. The Court reiterates that while a law which confers a discretion must indicate the scope of that discretion, it is impossible to attain absolute certainty in the framing of the law, and the likely outcome of any search for certainty would be excessive rigidity (see, among many other authorities, the Calogero Diana judgment cited above, p. 1775, § 32).

In the instant case the domestic provisions applicable to the monitoring of prisoners' correspondence are Law no. 23/1969 and its implementing regulations. Sections 17, 18 and 20 of that Law, however, leave the national authorities too much latitude. In particular, they go no further than indicating in a very general way the right of convicted prisoners to receive and send mail and they give prison governors the power to keep any letter or any newspaper, book or magazine "unsuited to the process of rehabilitating a prisoner" (see paragraph 25 above). Monitoring of correspondence therefore seems to be automatic, independent of any decision by a judicial authority and unappealable.

The implementing regulations have not been published, so that the applicant was unable to acquaint himself with them.

38. The Court notes, furthermore, that the Government did not dispute the Commission's conclusion that the implementing regulations did not satisfy the requirement of accessibility entailed by Article 8 § 2 of the Convention and that Romanian law did not indicate with reasonable clarity the scope and manner of exercise of the discretion conferred on the public authorities.

39. In sum, Mr Petra did not enjoy the minimum degree of protection to which citizens are entitled under the rule of law in a democratic society (see the Calogero Diana judgment cited above, p. 1776, § 33). The Court therefore concludes that the interference complained of was not in accordance with the law and that there has been a violation of Article 8.

40. Having regard to the foregoing conclusion, the Court does not consider it necessary in the instant case to ascertain whether the other requirements of paragraph 2 of Article 8 were complied with.

II. ALLEGED VIOLATION OF ARTICLE 25 § 1 OF THE CONVENTION

41. The applicant maintained that the hindrance of his correspondence with the Commission had amounted to a violation of Article 25 § 1 of the Convention, which provides:

> "The Commission may receive petitions addressed to the Secretary General of the Council of Europe 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, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognises the competence of the Commission to receive such petitions. Those of the High Contracting Parties who have made such a declaration undertake not to hinder in any way the effective exercise of this right."

42. The Government and the Commission considered that no separate issue arose under that provision.

43. The Court recalls that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 25 that applicants or potential applicants should be able to communicate freely with the Commission without being subjected to any form of pressure from the authorities to withdraw or modify their complaints.

The expression "any form of pressure" must be taken to cover not only direct coercion and flagrant acts of intimidation of applicants or potential applicants or their families or legal representatives but also other improper indirect acts or contacts designed to dissuade or discourage them from pursuing a Convention remedy. Whether or not contacts between the authorities and an applicant or potential applicant are tantamount to unacceptable practices from the standpoint of Article 25 must be determined in the light of the particular circumstances at issue. In this respect, regard must be had to the vulnerability of the complainant and his or her susceptibility to influence exerted by the authorities (see, as the most recent authority, the Kurt v. Turkey judgment of 25 May 1998, *Reports* 1998-III, pp. 1191–92, §§ 159 and 160).

44. In his letters of 9 December 1995 and 9 March 1997 to the Commission (see paragraphs 15 and 22 above) the applicant stated that he had twice been threatened by the Aiud prison authorities when he had asked to write to the Commission, and those statements were not contradicted by the respondent Government.

In the Court's view, remarks such as "The Council of Europe is at Aiud and nowhere else" and "*I'll* give you Council of Europe!", contained in those letters, amount in this instance to a form of illegitimate and unacceptable pressure which hindered the right of individual petition, contrary to Article 25 § 1.

III. APPLICATION OF ARTICLE 50 OF THE CONVENTION

45. Article 50 of the Convention provides:

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Non-pecuniary damage

46. Mr Petra sought unquantified just satisfaction for the non-pecuniary damage sustained.

47. The Government considered that in the absence of any proof of the alleged damage, a finding of a violation of Article 8 would afford sufficient just satisfaction.

48. The Delegate of the Commission did not express a view.

49. The Court considers that the applicant undoubtedly sustained non-pecuniary damage on account of the opening and delayed dispatch of his correspondence with the Commission and the threats made to him by the Aiud prison authorities. That being so, it awards him 10,000 French francs under that head.

B. Costs and expenses

50. The applicant, who received legal aid in the proceedings before the Commission and the Court, did not seek reimbursement of any additional costs and expenses.

C. Default interest

51. According to the information available to the Court, the statutory rate of interest applicable in France at the date of adoption of the present judgment is 3.36% per annum.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 8 of the Convention;

2. *Holds* that there has been a violation of Article 25 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, in respect of non-pecuniary damage, 10,000 (ten thousand) French francs, to be converted into Romanian lei at the rate of exchange applicable at the date of settlement;
   (b) that simple interest at an annual rate of 3.36% shall be payable from the expiry of the above-mentioned three months until settlement.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 23 September 1998.

Signed: Rudolf BERNHARDT
President

Signed: Herbert PETZOLD
Registrar