

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

THIRD SECTION

DECISION

Application no. 5251/11
Gianni MAGALETTO against Romania
and 2 other applications
(see list appended)

The European Court of Human Rights (Third Section), sitting on 4 September 2012 as a Chamber composed of:

Egbert Myjer, *President,*
Alvina Gyulumyan,
Ján Šikuta,
Ineta Ziemele,
Luis López Guerra,
Nona Tsotsoria,
Kristina Pardalos, *judges,*

and Marialena Tsirli, *Deputy Section Registrar*,

Having regard to the above applications lodged on 6 January 2011, 29 June 2011 and 9 August 2011 respectively,

Having deliberated, decides as follows:

THE FACTS

A list of the applicants is set out in the appendix.

The facts of the cases, as submitted by the applicants, may be summarised as follows.

A. *Magaletto v. Romania*, no. 5251/11

In a final decision of 23 October 2009 the applicant was convicted by the High Court of Cassation and Justice for drug related crimes and sentenced to five years' imprisonment. He was placed in pre-trial detention on 24 June 2008 and remained imprisoned until his conditional release on 4 October 2010.

He spent the first two months of detention in Craiova Police Detention Centre and afterwards was transferred to Craiova Prison where he remained until July 2009. He served most of the remaining sentence in Jilava Prison.

He claims that the overall conditions of his detention were characterised by overcrowded cells, a lack of hygiene, and pest infestation. In particular he outlines that in Craiova Prison his cell measured 80 sq. m for 49 detainees and that in Jilava Prison he shared a 50 sq. m cell with 27 co-detainees. He allegedly shared cells with persons suffering from tuberculosis, hepatitis or AIDS, and with drug addicts. Because of the precarious conditions in detention, the applicant claims that he contracted various diseases for which he did not receive proper care.

B. *Racoltea v. Romania*, no. 42384/11

On 20 March 2000 the applicant started serving a sentence for murder in Codlea Prison. He remained there until his release from prison on 20 January 2012.

During his detention, the applicant underwent several examinations by medical commissions of the Braşov Forensic Institute. He was diagnosed with various conditions which were deemed to be treatable within the penitentiary system (expert reports of 18 March 2003 and 19 May 2005).

He also lodged several complaints with the court concerning the conditions of his detention and medical care in prison, under Law no. 275/2006 on the execution of sentences ("Law no. 275/2006"). In particular on 28 July 2010 he complained that although he shared his cell with eight other inmates and they ate their meals in the cell, they only had at their disposal one table and four chairs, which did not allow for all the cellmates to eat their warm meal in decent conditions; he also complained that there was only one television set available in the cell. On 22 December 2010 the Braşov District Court found a violation of the applicant's right to respect for his dignity in respect of the lack of adequate number of places for the inmates to have their meals at the table.

On 1 November 2011 the District Court found again in favour of the applicant in an identical complaint concerning the table in the applicant's cell. In the same decision the District Court dismissed the applicant's allegations of overcrowding, concluding that a 29.95 sq. m cell for 12 inmates was in conformity with the relevant national provisions.

On 5 October 2011 the District Court noted that according to the expert medical opinions he could be treated within the penitentiary system and that the meals received by the applicant corresponded to those prescribed by his doctors; it held that the evidence at its disposal did not show that the applicant's health had been negatively affected by the conditions of his detention.

In the last few months of his detention, the applicant claimed to have shared an 18 sq. m cell with eleven other inmates.

C. *Căpăţînă v. Romania*, no. 56525/11

The applicant, a border police officer, was accused of corruption. At 6 am on 3 February 2011 police officers came to her home in Rădăuţi, informed her that she was under investigation, searched her apartment and took her by bus to the Anti-Corruption Prosecutor's Office in Bucharest. During the eight-hour drive to Bucharest, the applicant was not offered any food or drink and the bus was followed by reporters who transmitted the events live for various television channels and on-line editions of newspapers.

At 4 am on 4 February 2011 the applicant was informed of the accusations brought against her and placed under arrest. On the same day, at the prosecutor's request, the Bucharest Court of Appeal ordered her pre-trial detention for 29 days, after a thorough examination of the arguments raised by the parties on the issue. She was released from detention on 4 March 2011, when the Court of Appeal replaced that measure with an obligation not to leave country.

The merits of the criminal proceedings against the applicant are currently pending with the domestic courts.

During her detention the applicant was held in the Bucharest Police detention facility.

The applicant describes as follows the conditions of her detention: she shared a cell with ten other persons each having a personal space of 2 sq. m. The light was constantly on in the cell and there was no adequate ventilation. The inmates were allowed to smoke in the cell and were not taken for outdoor exercise. During her detention the applicant was not allowed to receive visits from her family, not even from her children.

COMPLAINTS

The applicants complained under Article 3 of the Convention about the conditions of their detention (all applicants) and lack of adequate medical

care (except for Mrs Căpăţînă) in the various detention facilities they were held in.

In addition Mrs Căpăţînă complained that in ordering her pre-trial detention based exclusively on the prosecution file and without allowing her to defend her case, the court had disregarded her right to be presumed innocent, her right to be promptly and exhaustively informed about the accusations brought against her and her right to prepare her defence. She relied on Articles 5 § 1 (c) and 6 §§ 1, 2 and 3 (a) and (b).

She lastly alleged, under Article 5 of the Convention, that there had been no real reason to justify her detention and the courts had failed to give proper justification for her detention.

Mr Magaletto also complained, under Article 6 of the Convention, of an alleged lack of fairness in the criminal proceedings against him.

THE LAW

A. Complaints raised under Article 3 of the Convention

1. On the conditions of detention

The applicants complained of the conditions of their detention in various Romanian detention facilities.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of them to the respondent Government.

2. On the medical care in prison

Mr Magaletto and Mr Racoltea complained about the medical care they had received in prison, alleging that they had contracted various diseases due to the precarious conditions of their detention and that they had not been adequately treated.

However, based on the information at its disposal, the Court must conclude that Mr Magaletto failed to raise his complaints with the domestic courts under Law no. 275/2006. The Court has already established in the case of *Petrea v. Romania* that such a complaint, at that time provided for by Ordinance no. 56/2003 on the rights of prisoners but restated in Article 38 of Law no. 275/2006, constituted an effective remedy for any alleged infringement of the right to receive adequate medical care in detention (*Petrea v. Romania* no. 4792/03, §§ 21-23 and 36, 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.

Lastly, the complaint raised by Mr Racoltea concerning the alleged lack of adequate medical care in detention was thoroughly examined by the domestic courts, which based their decision on expert medical reports. In the absence of any sign of arbitrariness in the domestic proceedings, the Court has no reason to depart from the conclusions reached by the national courts. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Other complaints

Mr Racoltea and Mrs Căpăţînă raised complaints under Articles 5 and 6 of the Convention (see above).

However, 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 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicants' complaint concerning the conditions of detention;

Declares inadmissible the remainder of the applications.

Marialena Tsirli
Deputy Registrar

Egbert Myjer
President

APPENDIX

No.	Application No.	Lodged on	Applicant Date of birth Place of residence Nationality	Represented by
1.	5251/11	06/01/2011	**Gianni MAGALETTO** 14/07/1978 Aprilia Italian	
2.	42384/11	29/06/2011	**Manix Mihai RACOLTEA** 30/09/1972 Săcele Romanian	
3.	56525/11	09/08/2011	**Daniela CĂPĂŢÎNĂ** 20/01/1968 Rădăuţi Romanian	Angelica ENACHE