

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

THIRD SECTION

DECISION

Application no. 39756/07
Blenis SHYTI
against Romania

The European Court of Human Rights (Third Section), sitting on 27 May 2014 as a Chamber composed of:

Alvina Gyulumyan, *President,*
Ján Šikuta,
Dragoljub Popović,
Luis López Guerra,
Kristina Pardalos,
Johannes Silvis,
Iulia Antoanella Motoc, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 26 April 2007,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Blenis Shyti, is an Albanian national, who was born in 1983 and is currently detained in Poarta Albă Prison. He was represented before the Court by Ms A. Grigorescu, a lawyer practising in Bucharest.

The Romanian Government ("the Government") were represented by their Agent, Ms I. Cambrea, of the Ministry of Foreign Affairs. The Albanian Government, who had been informed of their right to intervene in the proceedings, under Article 36 § 1 of the Convention, gave no indication that they wished to do so.

A. The circumstances of the case

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

1. Background to the case

3. In December 2004 the applicant was placed in pre-trial detention on suspicion of aggravated theft, robbery, aggravated murder, human trafficking and unlawful possession of firearms.

4. On 5 April 2005 the applicant was indicted together with three other persons for human trafficking and unlawful possession of firearms. No information has been provided to the Court concerning the outcome of these proceedings before the courts.

5. On 6 June 2005 the applicant was indicted together with N.Ş., a Romanian citizen, for the crimes of aggravated theft and the robbery and aggravated murder of three persons, including an eight-year old girl.

6. In September 2005 the applicant's trial started before the Constanţa County Court.

7. By a decision of the prison administration, issued on 29 July 2005 following an attempt to escape, the applicant was classified as "dangerous prisoner". Between 13 October 2005 and 21 December 2010 this decision had been revised and maintained by the prison administration on twenty-three occasions, based on reasons such as the initial evasion attempt, the severity of the crimes for which the applicant was prosecuted and the fact that he had been also indicted for unlawful possession of firearms.

8. On 12 June 2008 the Constanţa County Court convicted both the applicant and N.Ş. for aggravated theft, aggravated homicide and robbery and sentenced them to life imprisonment. The court held that the applicant together with N.Ş. broke into the house of a family they were acquainted with, in order to rob and murder them. They strangled the woman and stabbed the man ten times and then buried their bodies in the woods. They also killed their eight-year old daughter by strangling her and then buried her while she was still alive. This judgment became final on 24 November 2009 when the High Court of Cassation and Justice rejected the appeals on points of law (*recurs*) submitted by the applicant and N.Ş.

2. The use of handcuffs against the applicant during the court hearings

9. According to the applicant he had to wear handcuffs during the public hearings throughout the entire criminal trial.

10. In a letter addressed to the Romanian Government's Agent before the Court on 2 November 2011, the president of the Constanţa County Court submitted that, following verification of the entire file concerning the applicant starting from the confirmation of his pre-trial detention on 16 December 2004 and until the delivery of the final judgment on

24 November 2009, the use of handcuffs was discussed on the occasion of five hearings as follows:

– at the hearing of 3 March 2006 the applicant's representative requested the court to allow that the applicant's handcuffs were taken off since they interfered with his freedom of expression. The court rejected this request based on the applicant's classification as dangerous prisoner by the prison authorities;

– at the hearing of 12 April 2006 the applicant's representative renewed the request which was allowed by the court;

– at the hearing of 15 December 2006 the request was again renewed and allowed by the court;

– at the hearing of 23 November 2007 the applicant's representative asked for the recusal of the trial judge alleging that he had submitted the applicant to ill-treatment by keeping him handcuffed during thirty-five hearings. This request was rejected as the reason invoked was not amongst the reasons provided by law for challenging the impartiality of a judge. The applicant was advised that a complaint of ill-treatment should be addressed to the competent authorities;

– at the hearing of 14 April 2008 the applicant's representative again requested that the applicant's handcuffs were taken off. The request was allowed by the court.

B. Relevant domestic law

11. An overview of the relevant provisions in force at the relevant time concerning the use of handcuffs during detention, including pending trial, is presented in *Costiniu v. Romania* ((dec.), no. 22016/10, §§ 14-17, 19 February 2013).

COMPLAINTS

12. The applicant complained under Article 3 of the Convention that he was forced to wear handcuffs during the hearings before the national courts all along the criminal trial against him.

13. Under the same Article the applicant complained about his classification as dangerous prisoner and the security measures taken against him as a result of this classification.

14. The applicant also complained under Articles 6 § 1 and 7 of the Convention of his unlawful conviction for evasion.

15. Finally, the applicant complained under Article 14 of the Convention that all the above-mentioned breaches of his rights were due to his Albanian

nationality and that he had been discriminated on this ground compared to his Romanian co-defendant, N.Ş.

THE LAW

A. On the complaint raised under Article 3 of the Convention concerning the use of handcuffs against the applicant during court hearings

16. The applicant complained that he had been forced to wear handcuffs during the hearings before the courts throughout the entire criminal trial and that this had negative effects on his mental state, amounting to inhuman and degrading treatment under Article 3 of the Convention which reads as follows:

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

17. The Government raised three preliminary exceptions, namely that the applicant had not exhausted all available domestic remedies, that he did not comply with the six-month time limit and that he lacked victim status.

18. With respect to these preliminary objections, the Court finds that it is not necessary to examine them as the complaint is in any event inadmissible for the following reasons.

19. The Court reiterates that Article 3 of the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct. In order to fall within the scope of Article 3, the ill-treatment must attain a minimum level of severity, the assessment of which depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc. Furthermore, in considering whether a punishment or treatment is "degrading" within the meaning of Article 3, the Court will have regard to whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. In this connection, the public nature of the punishment or treatment may be a relevant factor (see *Raninen v. Finland*, 16 December 1997, § 55, *Reports of Judgments and Decisions* 1997 VIII).

20. Moreover, allegations of ill-treatment must be supported before the Court by appropriate evidence (see, *mutatis mutandis*, *Klaas v. Germany*, 22 September 1993, § 30, Series A no. 269).

21. Lastly, the Court has held that handcuffing does not normally give rise to an issue under Article 3 of the Convention where the measure has

been imposed in connection with lawful arrest or detention and does not entail use of force, or public exposure, exceeding what is reasonably considered necessary in the circumstances. In this regard, it is of importance for instance whether there is reason to believe that the person concerned would resist arrest or abscond, cause injury or damage or suppress evidence (see *Raninen*, cited above, § 56).

22. Turning to the facts of the instant case, the Court observes that the measure to wear handcuffs was imposed on the applicant as a result of his classification as "dangerous prisoner" by the authorities of the prison in which he was detained. This classification had been lawful, based on relevant reasons such as the applicant's evasion attempt, the crimes he was suspected of and the manner in which they had been committed, as well as the suspicion of unlawful possession of firearms. Moreover, the decision was subject to regular revision.

23. The Court also notes that, with the exception of the information provided by the Government concerning the five occasions during the trial when the issue of handcuffs was discussed, no other additional information has been submitted by the applicant in support of his allegations. Furthermore, from the information provided by the Government it follows that all requests that the applicant's handcuffs be taken off were granted by the courts, with one exception. Therefore, the Court does not find it established on the basis of the documents provided that the applicant was obliged to wear handcuffs in public on other additional occasions during his trial. Nor that, when he was indeed obliged to wear handcuffs, he actually requested their removal and that the courts rejected his requests.

24. With respect to the impact that this measure may have had on the applicant's personality, the Court notes that the applicant did not submit any expert or medical opinion, or any other medical document to show whether he had sustained physical or mental damage and that there was a connection between such damage and the treatment complained about (see, *a contrario*, *Erdoğan Yağız v. Turkey*, no. 27473/02, §§ 44-45, 6 March 2007).

25. In the light of the foregoing, the Court does not find it established that the treatment in issue attained the minimum level of severity required by Article 3 of the Convention.

It follows that this part of the application is manifestly ill-founded and must, as such, be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Other complaints raised by the applicant

26. The applicant also complained under Article 3 of the Convention about his classification as dangerous prisoner and the security measures taken against him as a result of this classification. He further alleged that he was unlawfully convicted of evasion in breach of Articles 6 § 1 and 7 of the

Convention. Finally, he complained that he had been discriminated against on the ground of his Albanian nationality in breach of Article 14 of the Convention.

27. The Court has examined these complaints 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 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 this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Marialena Tsirli
Deputy Registrar

Alvina Gyulumyan
President