

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

THIRD SECTION

DECISION

Application no. 27117/08
by Aristotel SZEMKOVICS
against Romania

The European Court of Human Rights (Third Section), sitting on 6 December 2011 as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Luis López Guerra,
Mihai Poalelungi,
Kristina Pardalos, *judges,*

and Marialena Tsirli, *Deputy Section Registrar*,

Having regard to the above application lodged on 21 May 2008,

Having regard to the decision taken by the President of the Chamber to appoint Mr Mihai Poalelungi to sit as *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court), as Mr Corneliu Bîrsan, the judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court),

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Aristotel Szemkovics, is a Romanian and Hungarian national who was born in 1958 and is currently detained in Giurgiu Prison.

A. The circumstances of the case

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

1. The applicant's conviction

3. The applicant alleged that he was persecuted during the Ceausescu regime, that he was taken into custody and beaten on a number of occasions by secret police (*Securitatea*) officers and that he was ordered to undergo a psychiatric examination. He alleged that after 1989 he was invited to participate in an armed plot against the Government.

4. In 1992 he fled to Hungary to a refugee camp. He returned to Romania on an unspecified date.

5. On 5 November 1999 the Bucharest County Court convicted the applicant of murder and sentenced him to twenty-five years' imprisonment.

6. On an unknown date the applicant lodged an application with the Romanian authorities seeking access to his psychiatric medical file. The applicant alleged that his application was declared null and void and that the prison authorities refused to provide him with a copy of the documents.

2. Detention conditions and alleged interference with the applicant's right of petition in Aiud Prison

7. The applicant was transferred some time around April 2009 from Rahova Prison to Aiud Prison. He alleged that after being transferred he was constantly refused envelopes and stamps for his correspondence with the Court, the prison authorities informing him that he was not entitled to envelopes and stamps and that they had no duty to provide them.

8. The applicant also alleged that he suffers from chronic hepatitis and chronic constipation. He alleged that the prison doctors refused to provide him with the medication that helps alleviate his constipation. He stated that he feels humiliated by this refusal.

3. Detention conditions and alleged interference with the applicant's right of petition in Giurgiu Prison

9. On 6 April 2010 the applicant was transferred to Giurgiu Prison. He alleged that the authorities again refused to provide him with envelopes and stamps for his correspondence with the Court.

10. He also alleged that on one occasion it was only when he threatened to stop eating that he received an envelope and a stamp. As appears from the case file, the applicant in fact received three stamps from various religious groups. The applicant attached a ticket dated 3 March 2010 which confirmed the registration of his request for envelopes and stamps to be

provided by the prison authorities – which request, he alleged, remained unanswered.

11. It appears that in 2010 he went on hunger strike on two occasions – each time for a duration of one week – in order to receive treatment for his chronic constipation.

12. In the summer of 2010 the applicant requested a hearing with a post-sentencing judge in order to complain of the lack of any medical treatment for his chronic constipation since he had been transferred to Giurgiu Prison. Following communications between the judge and the prison authorities in the summer of 2010, the applicant received the treatment. However, he was subsequently again refused the treatment.

13. The applicant alleged that he lodged numerous complaints with the prison authorities concerning the conditions of his detention. However, he alleged that his complaints were repeatedly not even registered and that he was not taken before a post-sentencing judge for a hearing.

14. Lastly, the applicant alleged that he was repeatedly refused copies of his medical file on the grounds that the prison lacked the funds necessary to this end.

B. Relevant domestic law and practice

15. Law no. 275/2006 on the execution of sentences reads, insofar as relevant, as follows:

Article 3

"The execution of sentences should ensure respect for human dignity."

Article 46 – Measures seeking to ensure a detained person's right to petition

"1. In order to ensure a detained person's right to petition and to correspondence, the prison governor is obliged to take the measures necessary to ensure the convicted person [can access] all materials and to install letter boxes inside the prison."

Article 50 – The right to medical assistance

"1. The right of detained persons to medical assistance is guaranteed.

2. Medical assistance is provided free of charge, whenever necessary or upon request, by qualified personnel, as provided by law.

3. Detained persons benefit from free medical assistance and medicine."

COMPLAINTS

16. The applicant complained in substance under Article 3 of the Convention of a lack of medical treatment in Giurgiu and Aiud Prisons.

17. The applicant complained in substance under Article 34 of the Convention about interference with his right to individual petition with respect to the prison authorities' refusal to provide him with envelopes, stamps and a copy of his medical records.

18. The applicant complained in substance under Article 8 of the Convention of a lack of access to his psychiatric medical file.

THE LAW

A. Complaint under Article 3 of the Convention

19. The applicant complained of a lack of proper medical assistance during his detention. 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."

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

B. Complaint under Article 34 of the Convention

The applicant complained of interference with his right to individual petition. He relied in substance 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."

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

C. Complaint under Article 8 of the Convention

22. The applicant complained in substance under Article 8 of a lack of access to his psychiatric medical records created during the Ceausescu regime. This provision reads as follows:

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

23. The Court notes that the applicant claims to have initiated administrative proceedings seeking access to his psychiatric medical file. However, he failed to provide detailed information in support of his allegations concerning the development or the outcome of the proceedings at issue, making it impossible for the Court to assess the complaint properly.

24. It follows that this part of the application is inadmissible for lack of substantiation and must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints concerning Articles 3 and 34 of the Convention;

Declares the remainder of the application inadmissible.

Marialena Tsirli	Josep Casadevall
Deputy Registrar	President