

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

THIRD SECTION

DECISION

Application no. 42820/09
Remus TUDOR
against Romania

The European Court of Human Rights (Third Section), sitting on 3 June 2014 as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Ján Šikuta,
Dragoljub Popović,
Johannes Silvis,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges,*

and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 3 August 2009,

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 Remus Tudor, is a Romanian national who was born in 1966 and lives in Bucharest. He was represented before the Court by Ms I. M. Ciontu, a lawyer practising in Bucharest.

2. The Romanian Government ("the Government") were represented by their Agent, Mrs C. Brumar, of the Ministry of Foreign Affairs.

A. The circumstances of the case

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

4. In 1990 the applicant was convicted of manslaughter and sentenced to life imprisonment, serving his sentence in various Romanian prisons. He was detained in Rahova Prison for almost ten years, from June 1999 to February 2009. On 1 October 2012 the applicant was released on probation from Giurgiu Prison.

5. On 18 March 2003 an antenna of the type C-GUARD 19 was installed in Rahova Prison for the protection of telephone communications.

1. The applicant's complaint to the judge responsible for the execution of sentences

6. On 7 September 2008, while the applicant was serving his sentence in Rahova Prison, he lodged a complaint with the judge responsible for the execution of sentences (the "post-sentencing judge") attached to Rahova Prison alleging that the radio frequency electromagnetic radiation (RFR) emitted from an antenna in the prison had negatively affected his health. In his complaint the applicant stated that since 2003 the entire prison staff had received an extra salary allowance for working in dangerous conditions, namely exposure to electromagnetic fields in their working environment.

7. By a decision of 4 November 2008 the post-sentencing judge dismissed the complaint on all grounds. It was observed that the applicant had never complained of specific effects resulting from electromagnetic radiation, nor had he sought medical treatment. The judge also based his ruling on an expert study commissioned from the National Institute of Forensic Science (INEC) in order to analyse the electromagnetic field allegedly surrounding the prison's wireless communication base station. The report published on 3 October 2008 revealed that, although the levels of radiation were higher than those prescribed in the relevant safety guidelines in several areas of the prison, exposure was lower in areas to which the prisoners had access.

8. The applicant appealed against that decision. He submitted as evidence a 2007 report by Radiocom which revealed that, while radiation levels from the wireless communication device had varied between prison areas, they were nevertheless higher than the regulatory standards in place at that time.

9. His request to have evidence from the prison's doctor and a radiologist heard was refused on the ground that there was no link between his diseases (hepatitis, and after-effects of healed tuberculosis) as described in the medical file and the alleged harmful exposure to radiation. On 16 February 2009 the Bucharest District Court dismissed his appeal, upholding the decision of the post-sentencing judge for the same reasons.

2. The applicant's tort action in connection with exposure to radiation

10. The applicant also lodged a tort action against Rahova Prison on 12 October 2008. He claimed the sum of 200,000 EUR for the harmful effects allegedly caused by the electromagnetic radiation, arguing that the prison staff had been awarded a special allowance for the health risks associated with exposure to electromagnetic radiation during their working hours. The Bucharest District Court relinquished jurisdiction to the Bucharest County Court, which dismissed the applicant's claim on 7 January 2012.

11. The applicant appealed and the appeal proceedings are pending before the Bucharest Court of Appeal.

B. Relevant domestic law

12. Pursuant to two orders issued by the Minister of Justice, no. 945/C of 2 April 2003 and no. 399/C of 6 February 2007, staff in Rahova Prison were awarded a special allowance for health risks associated with exposure to electromagnetic radiation during their working hours.

13. The relevant safety guidelines are laid down in order no. 1193/2006 issued by the Ministry of Public Health on the general norms concerning limits on individuals' exposure to electromagnetic fields. The reference levels specified in the order range from 0 hertz (Hz) to 300 gigahertz (GHz). The order is based on European Union legislation, namely Council Recommendation no. 1999/519/EC of 12 July 1999 on the limitation of exposure of the general public to electronic fields (0Hz to 300 GHz).

COMPLAINTS

14. Relying on Article 3 of the Convention, the applicant complained that his exposure to 168 hours of radiation per week amounted to ill-treatment.

15. The applicant complained under Article 14 of the Convention that no compensation had been awarded to him for radiation exposure, in contrast to the allowance awarded to the prison staff.

16. He further complained under Article 6 § 3 (d) of the Convention that the court of first instance had refused to hear the witnesses proposed by him, thus infringing the guarantees of a fair trial as secured under that Article.

THE LAW

17. The applicant complained under Article 3 of the Convention of exposure to radiation. The Court reiterates that since it is the master of the characterisation to be given in law to the facts of the case, it does not consider itself bound by the characterisation given by an applicant or a government. A complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (see *Powell and Rayner v. the United Kingdom*, 21 February 1990, § 29, Series A no. 172, and *Guerra and Others v. Italy*, 19 February 1998, § 44, Reports of Judgments and Decisions 1998-I).

18. In this connection, the Court stresses that its case-law does not exclude the possibility that treatment which does not reach a sufficient level of severity to fall within the ambit of Article 3 may nonetheless breach Article 8 in its "private life" aspect where there are sufficiently adverse effects on an applicant's physical and moral integrity (see *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 36, Series A no. 247-C, and *Dolenec v. Croatia*, no. 25282/06, § 128, 26 November 2009). In the present case, the Court considers that the applicant's complaint alleging interference with his right to respect for his private life by way of long-term exposure to radiation during his imprisonment in Rahova Prison falls to be examined under Article 8 of the Convention, which provides:

> "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."

A. The parties' submissions

19. The Government raised a preliminary objection of non-exhaustion of domestic remedies. They contended that a civil action based on Articles 998-999 of the previous Civil Code, as in force at the material time, had represented an effective remedy.

20. As regards the merits of the applicant's complaint, the Government acknowledged that Article 8 of the Convention was applicable in the instant case. They maintained that the Romanian State had complied with the standards deriving from the Court's case-law in this matter, having regard to both the substantive and the procedural limbs of Article 8.

21. On the one hand, they stated that the authorities had checked the level of radiation in Rahova Prison regularly and that the legal limits had

been complied with in the areas to which the applicant had had access. They also argued that the applicant had not proved a link between his medical condition and exposure to radiation and, relying on the case of *Tătar v. Romania* (no. 67021/01, § 106, 27 January 2009), they contended that there was no scientific certainty as to the relationship between human health and radiation exposure.

22. On the other hand, the Government argued that the domestic courts had dealt with the applicant's claims carefully and had examined all the necessary evidence. They concluded that the applicant's complaint was unsubstantiated and asked the Court to dismiss it.

23. The applicant argued that the fact that the prison staff had been granted an allowance on account of health risks associated with radiation exposure was itself proof that there was a link between exposure to such radiation and health problems. He maintained that he had been exposed to a higher frequency of radiation than that allowed by the regulations.

B. The Court's assessment

24. The Court notes, at the outset, that the Government raised a preliminary objection of non-exhaustion of domestic remedies in respect of the applicants' complaint. However, it finds that it is not necessary to examine the said objection as the complaint is in any event inadmissible for the following reasons.

25. The Court reiterates that an interference with the physical integrity of an individual can be regarded as an interference with the right to respect for private life (see *Glass v. the United Kingdom*, no. 61827/00, § 70, ECHR 2004-II, and *Storck v. Germany*, no. 61603/00, § 143, ECHR 2005-V). Breaches of the right to respect for private life also include those that are not concrete or physical, such as noise, emissions, smells or other forms of interference (see, among many other authorities, *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 96, ECHR 2003-VIII, and *Băcilă v. Romania*, no. 19234/04, § 59, 30 March 2010). These principles also apply in the prison context (see *Brânduşe v. Romania*, no. 6586/03, §§ 64-67, 7 April 2009).

26. In the instant case, the Court finds that the applicant's exposure to electromagnetic radiation emitted by the antenna installed in Rahova Prison represents an interference with his right to respect for his private life that is directly attributable to the State authorities. It takes the view that such interference was "in accordance with the law", namely the Ministry of Public Health's order on the general norms concerning limits on individuals' exposure to electromagnetic fields. Since the antenna had the purpose of protecting Rahova Prison's telephone communications, the Court also finds that the interference had "a legitimate aim", specifically the

prevention of disorder or crime (see, *mutatis mutandis*, *Aliev v. Ukraine*, no. 41220/98, § 180, 29 April 2003).

27. The Court must therefore examine whether the interference was "necessary in a democratic society" as required by the second paragraph of Article 8.

28. The Court reiterates that the notion of necessity implies that the interference must be based on a pressing social need and must be proportionate to the legitimate aim pursued. With this in mind, the Court takes into consideration that a margin of appreciation is left to the Contracting States. The scope of the margin of appreciation will depend not only on the nature of the legitimate aim pursued but also on the particular nature of the interference involved (see, *mutatis mutandis*, *Leander v. Sweden*, 26 March 1987, § 59, Series A no. 116). In exercising its supervisory jurisdiction, the Court cannot confine itself to considering impugned court decisions in isolation; it must look at them in the light of the case as a whole and determine whether the reasons adduced by the domestic courts to justify the interference were "relevant and sufficient" (see, *mutatis mutandis*, *Lingens v. Austria*, 8 July 1986, § 40, Series A no. 103).

29. In the instant case, the Court notes that the applicant has not argued that the antenna in Rahova Prison was not duly authorised or that he was not informed of the decision-making process that preceded its installation (see by contrast *Brânduşe*, cited above, §§ 71-72, and *Tătar*, cited above, § 74). His complaints related only to long-term exposure to radiation and its effects on his health.

30. The Court has examined similar cases and found that there is no agreement amongst the scientific community as to the possible harmful effects of electromagnetic radiation on human health (see *Ruano Morcuende v. Spain* (dec.), no. 75287/01, 6 September 2005, and *Luginbühl v. Switzerland* (dec.), no. 42756/02, 17 January 2006). Nothing in the present case file suggests that there have been major scientific developments in this matter since the Court adopted these decisions in 2005 and 2006. Moreover, the Court has recently dismissed a similar complaint raised by another detainee in Rahova Prison (see *Vartic v. Romania* (dec.), no. 37952/09, 26 November 2013).

31. The domestic courts examined the applicant's complaints and found, through non-arbitrary and well-reasoned decisions, that the level of electromagnetic radiation was within the limits prescribed by the relevant domestic legislation in all the areas to which the applicant had access in Rahova Prison. In reaching these decisions, the domestic courts relied on an expert report delivered by the National Institute of Forensic Science.

32. It follows that this part of the complaint is manifestly ill-founded and should be dismissed as inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

II. OTHER ALLEGED VIOLATIONS

33. The applicant alleged several other violations of rights guaranteed by Article 6 § 3 (d) and Article 14 of the Convention on account of the refusal of the court of first instance to hear the witnesses proposed by him and the fact that no compensation was awarded to him for radiation exposure, in contrast to the allowance awarded to the prison staff.

34. 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 this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President