

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

THIRD SECTION

DECISION

Application no. 51866/07
Vasile Cosmin ŢUŢURAŞ
against Romania

The European Court of Human Rights (Third Section), sitting on 19 February 2013 as a Committee composed of:

Luis López Guerra, *President,*
Nona Tsotsoria,
Valeriu Griţco, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 6 November 2007,

Having regard to the declaration submitted by the respondent Government on 12 September 2012 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Vasile Cosmin Ţuţuraş, is a Romanian national, who was born in 1975 and lives in Satu-Mare. He was represented before the Court by Ms Cristina Ionela Haiduc, a lawyer practising in Bucharest.

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

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

A. The criminal proceedings initiated against the applicant and the press coverage of the case

4. On 9 February 2005 the Anticorruption Prosecutor's Office brought criminal proceedings against the applicant for money laundering and intercession. On the same date he was placed in police custody for twenty-four hours at the Satu-Mare Police Station and was questioned for the first time in respect of the charges brought against him. He was allegedly not allowed to employ the services of a legal representative and he felt coerced to confess to committing the offence because he was told by the investigating prosecutor "to confess because you do not stand a chance".

5. By an interlocutory judgment of 10 February 2005 the Satu-Mare County Court extended the applicant's pre-trial detention for thirty days. He did not appeal against the decision.

6. On the same date the Anticorruption Prosecutor Office's website published a press release informing the public that the applicant, a public servant working for the Satu-Mare Mayor's Office, had been charged with money laundering and intercession and had been detained pending trial. According to the press release the investigators had noted that the applicant had, in exchange for large sums of money, promised to help G.C., a local businessman, achieve the discontinuance of a criminal investigation opened against him for fraud by talking to prosecutors and public servants working for the Satu-Mare Tax Office whom the applicant allegedly knew.

7. The information contained in the press release was broadcast by several television stations with national coverage and was published in several local and national newspapers. The applicant submitted copies of three national and local newspapers which repeated the information contained in the Anticorruption Prosecutor Office's press release. He also submitted copies of several other newspaper articles in which his name had been mentioned and which concerned G.C. and the various sets of criminal proceedings he had been involved in.

8. On 10 March 2005 the applicant was released from the Satu-Mare Police Station.

9. On an unspecified date in 2005 the applicant was indicted for money laundering and intercession and his case was referred to the Satu-Mare County Court.

10. On 4 April 2006 the applicant was heard by the Satu-Mare County Court in the presence of his chosen legal representative. He confessed to having committed the offences and he confirmed his statements made at the pre-trial stage of the proceedings.

11. By a judgment of 17 October 2006 the Satu-Mare County Court convicted the applicant of money laundering and intercession and sentenced him to three years' imprisonment on the basis of documentary and

testimonial evidence, as well as on the basis of his confession. The applicant appealed against the judgment.

12. By a final judgment of 5 July 2007 the Court of Cassation allowed the applicant's appeal in part and acquitted him of the offence of money laundering on the grounds that it had not been proven conclusively. At the same time it dismissed the remainder of the applicant's appeal as ill-founded and sentenced him to two years' imprisonment.

B. The conditions of the applicant's detention in Satu-Mare Police Station and Prison

13. On 11 July 2007 the applicant was detained in Satu-Mare Prison.

14. On 4 April 2008 the applicant informed the Court that in Satu-Mare Police Station, although the outside temperature was seventeen degrees below zero there was no heating in the rooms and he was forced to sleep fully clothed and wearing a hat. Moreover, the food and standard of hygiene were inadequate. Furthermore, he was forced to use a bucket for his toilet needs because there was no access to a bathroom. The smell in the room was unpleasant because the bucket was emptied only once a day, either in the evening or the morning.

15. On the same day, he also informed the Court that in Satu-Mare Prison after his sentencing he had been repeatedly hit by prison guards. Also, he had limited access to warm water and the cells, the food and the beds were infested with cockroaches. In addition, the cells were overcrowded and he had been obliged to sleep in the same bed as other detainees.

16. On 25 July 2008 the applicant was released from Satu-Mare Prison.

COMPLAINTS

17. Relying in substance on Article 3 of the Convention, the applicant alleged that the conditions of his detention in Satu-Mare Police Station and Satu-Mare Prison were inappropriate and amounted to inhuman and degrading treatment owing to ill-treatment by prison guards, lack of heating, lack of access to bathroom facilities, poor hygiene conditions, poor food, cockroach infestations, limited access to warm water, overcrowding and the obligation to sleep in the same bed as other detainees.

18. Invoking Article 5 of the Convention, the applicant complained of the unlawfulness of his placement in police custody and detention pending trial.

19. Relying on Article 6 §§ 1 and 3 (d) of the Convention, the applicant complained that the criminal proceedings brought against him were unfair

insofar as he was unable to employ a legal representative at the time of his first statement before the prosecutor; the domestic courts misinterpreted the applicable legal provisions; he was unable to call witness D.L.; he felt pressured to confess following the prosecutor telling him "confess because you do not stand a chance" and his confession was used for his conviction.

20. Invoking Article 6 § 2 of the Convention, the applicant complained of a breach of his right to be presumed innocent insofar as he was called a "public servant" in an Anticorruption Prosecutor Office's press release and the press release caused a media campaign against him which allegedly influenced the domestic courts.

THE LAW

A. Conditions of detention in Satu-Mare Prison

21. The applicant complained about the conditions of his detention in Satu-Mare Prison. He relied on Article 3 of the Convention which provides as follows:

Article 3

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

22. After the failure of an attempt to reach a friendly settlement, by a letter of 12 September 2012 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by this part of the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

23. The declaration provided as follows:

"The Government declare – by way of the unilateral declaration – their acknowledgement of a violation of Article 3 of the Convention resulting from the conditions of the applicant's detention, in particular overcrowding in Satu-Mare Prison.

The Government declare that they are prepared to pay to the applicant as just satisfaction the sum of EUR 2,700 (two thousand seven hundred euros) which they consider to be reasonable in the light of the Court's case law. This sum which will cover all pecuniary and non-pecuniary damage as well as costs and expenses, will not be subject to any tax that may be chargeable to the applicant. It will be converted into Romanian lei at the rate applicable on the date of payment, and will be payable, into a bank account indicated by the applicant, within three months from the date of notification of the decision by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-moth period, the Government undertake to pay simple interest on it, from expiry

> of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
>
> The Government respectfully ask the Court to decide that the examination of the case is no longer justified and to strike it out of the Court's list of cases, according to Article 37 § 1 (c) of the Convention."

24. In a letter of 13 November 2012 the applicant objected to the striking out of this part of the application.

25. The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

26. It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1(c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

27. To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03, 18 September 2007).

28. The Court has established in a number of cases, including those brought against Romania, its practice concerning complaints about the violation of Article 3 of the Convention on account of overcrowding and inadequate detention conditions (see, for example, *Lăutaru v. Romania*, no. 13099/04, 18 October 2011, *Flămînzeanu v. Romania*, no. 56664/08, § 98, 12 April 2011, *Iamandi v. Romania*, no. 25867/03, 1 June 2010, and *Brânduşe v. Romania*, no. 6586/03, ECHR-2009 (extracts)).

29. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the part of the application concerning the applicant's conditions of detention in Satu-Mare Prison (Article 37 § 1(c)).

30. Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of this part of the application (Article 37 § 1 *in fine*).

31. In any event, the Court's decision is without prejudice to any decision it might take to restore, pursuant to Article 37 § 2 of the Convention, this part of the application to its list of cases, should the Government fail to comply with the terms of their unilateral declaration (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008, and *Aleksentseva and 28 Others v. Russia* (dec.), nos. 75025/01 et al., 23 March 2006).

32. In view of the above, it is appropriate to strike the case out of the list in respect of the applicant's complaint concerning the inhuman and degrading conditions of detention in Satu-Mare Prison.

B. Remaining complaints

33. Insofar as the applicant's remaining complaints are concerned (see paragraphs 17-20, above), the Court considers that there is nothing in the file to suggest that the provisions invoked by the applicant have been violated. Accordingly, this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration in respect of the complaint under Article 3 of the Convention concerning the conditions of detention in Satu-Mare Prison and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike this part of the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the application inadmissible.

Marialena Tsirli	Luis López Guerra
Deputy Registrar	President