

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

THIRD SECTION

DECISION

Application no. 47754/10
Laurenţiu Viorel URSA and Others
against Romania

The European Court of Human Rights (Third Section), sitting on 6 March 2012 as a Chamber composed of:

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

and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 26 July 2010,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Laurenţiu Viorel Ursa ("the first applicant"), Mr Paul Ovidiu Mureşan ("the second applicant") and Mr Cornel Rusu ("the third applicant") are Romanian national who were born in 1975, 1986 and 1985 respectively and live in Bistriţa Năsăud county.

A. The circumstances of the case

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

1. Criminal proceedings against the applicants

3. On 19 November 2004 the applicants were arrested by the police under suspicion of having falsified documents to obtain visas for the United States of America ("the USA") and of bank fraud. On the same date searches were conducted of the first and third applicants' flats in their absence. The police confiscated certain sums of money found in the two flats. Upon their arrest, the applicants were interrogated without a lawyer and confessed to having committed the crimes. Few hours later, the same day, they repeated their statements in the presence of counsel hired by the first applicant's wife and designated by police as legal-aid lawyer for the other applicants.

4. On 20 November 2004 the applicants were placed in pre-trial detention by order of the Bistriţa County Court. The measure was regularly extended, and the applicants were kept in detention until 25 January 2007 (the third applicant) and 9 February 2007 (the first and second applicants) when they were released under judicial supervision.

5. On 12 May 2005 the applicants were committed to trial on multiple charges. They were essentially accused of having forged official documents, which they used in order to assist different persons to obtain visas for the United States; and of belonged to an organised criminal group which printed fake bank cards, using data obtained from the internet or from different providers, and then used those fake cards to withdraw money. A computer forensic report was drawn up, listing all the bank data stored on the computer found during the searches.

6. During the criminal investigation, by order of a prosecutor, certain amounts of money were seized from the applicants.

7. The Bistriţa Năsăud County Court examined the merits of the case. It relied on a large body of evidence (such as reports of the flat searches and computer searches, notes from the banks whose ATM machines were used and from the exchange offices where the defendants changed money, a graphology report on the fake documents that the applicants were providing to persons who wanted to apply for US visas, accounting reports, statements by the defendants and witnesses, and records of confrontations between some of the defendants). The applicants were represented by elected counsels.

8. The court gave judgment on 10 October 2007, finding the applicants guilty of forgery and financial fraud. The first applicant was sentenced to five years' imprisonment and the second and third to four years' imprisonment each. The applicants were automatically deprived of their right to vote for the duration of the sentence. As an additional penalty, they were deprived of the right to vote and to stand for election for two years after serving their sentences.

9. Based on a forensic accounting report, the County Court determined that the applicants had used the forged bank cards to withdraw

1,113,490 Romanian lei. It ordered the confiscation of the money found on all of the defendants, including from the first applicant's bank locker and it ordered them to pay jointly the outstanding amount of 38,000 euros.

10. The County Court also annulled several forged documents, including a contract by virtue of which the third applicant allegedly bought an apartment from a third party. The court established that the parties to the contract gave false information to the notary in order to cover unlawful transactions between them.

11. The applicants appealed against that decision. The first applicant argued mainly that he had only been the driver for the two other defendants, that they had been the ones who put in place the fake bank cards scheme and that he had not been aware of what they were doing. The third applicants also argued that the searches conducted in flats had been illegal and that the evidence thus gathered was unlawful and considered that the district court had given an erroneous interpretation of the evidence in the file and had erred in convicting and sentencing them.

In a thoroughly reasoned decision of 10 October 2008, the Cluj Court of Appeal dismissed the appeals as unsubstantiated.

12. The applicants lodged an appeal on points of law reiterating their complaints concerning the legality of the evidence and contesting the interpretation of facts by the lower courts. They also complained that the bill of indictment had been unlawful and the criminal file incomplete, that the prosecutor and courts failed to determine properly all aspects o the case.

13. In a final decision of 5 March 2010, the High Court of Cassation and Justice upheld the first-instance judgment, confirming the reasoning of the lower courts. Answering to the pleas raised by the applicants, it ruled that there was no reason to refer the case back to the prosecutor and that the case had been lawfully referred to the judicial courts. It further held that the forensic accounting report determined the amounts that had been withdrawn using the fake cards, taking into account the bank account details found on one of the computers in the flat where the applicants lived. The court further confirmed the proportionality of the sentence applied to each of the accused and dismissed all the appeals on points of law.

2. Applicants' detention

14. From their arrest on 19 November 2004 until 17 May 2005, the applicants were detained at Bistriţa police station. On the latter date they were transferred to the pre-trial detention section in Bistriţa Prison, where they remained until their release pending trial, in 2007 (see paragraph 4 above).

15. On 17 March 2010 (in the case of the first and second applicants) and 6 April 2010 (in the case of the third applicant) the applicants were returned to Bistriţa Prison, where they served the remainder of their prison sentences. According to their statements to the Court, they were held in cells

measuring 28 sq. m together with seven other inmates. In the cell, a light was permanently on, even at night, preventing them from having proper rest. They developed eyesight problems because of this lighting system. They were allowed to take only a shower a week from September to May and twice a week from June to August. The shower room measured 30 sq. m and contained approximately 35-40 showers. There were no shower screens, and therefore no privacy. The shower room was poorly ventilated and the hygiene conditions were very poor. In addition, the third applicant who is non-smoker was held from April to May 2010 in a cell with smokers.

16. The first applicant was released from prison on 22 March 2011, whereas the second and third applicants were released on 26 October 2010.

B. Relevant domestic law and practice

17. The relevant articles of the Romanian Criminal Code concerning the ban on voting and legislative amendments made to these provisions can be found in the judgment of *Calmanovici v. Romania*, (no. 42250/02, § 49, 1 July 2008).

COMPLAINTS

18. The applicants complained under Article 3 of the Convention that they had been detained in inhuman and degrading conditions at Bistriţa police station and in Bistriţa Prison. They also submitted that they had developed eye problems because of the permanent light in the cells. The third applicant also complained about being held in cells with smokers despite him being a non-smoker.

19. Relying on Article 5 of the Convention, the applicants complained that they had been unlawfully deprived of their liberty on 19 November 2004, that the duration of the pre-trial detention had been unreasonable and that there had been no sufficient reasons justifying it.

20. Relying on Article 6 §§ 1 and 3 of the Convention the applicants complained that they had not been assisted by a lawyer during the first questioning and that during most of the criminal investigation they had been represented by the same lawyer, even though they had had conflicting interests in the case.

Under the same Article, they reiterated some of the arguments raised before the domestic courts, in particular the alleged unlawfulness of the bill of indictment; the failure by prosecutor and courts to properly establish all aspects of the case; and the unlawfulness of the searches in their apartments and of their computers. They also complained that the domestic courts had not responded to all the arguments raised by the defence.

Furthermore, the applicants argued that one of the judges on the first-instance panel and one of the judges on the appeal panel should not have ruled on the case, as they had loans with the banks whose ATM machines had been used for money withdrawals.

Lastly, they complained that the duration of the criminal proceedings had been unreasonably lengthy.

21. Under Article 6 § 2 of the Convention, the applicants considered that their right to be presumed innocent had been breached as during the criminal investigation, a press release had been issued by the State authorities in which they had been identified and presented as members of a criminal organisation.

22. Relying on Article 8 of the Convention, the fist and third applicants complained that the searches conducted in their flats and of their computers had been unlawful.

23. They complained under Article 1 of Protocol No. 1 to the Convention about the fact that money found on them and on the first applicant's bank locker had been confiscated and that they had been ordered to pay damages in addition to the confiscated amounts. The third applicant also complained about the fact that the courts annulled the contract by means of which he purchased an apartment.

24. Lastly, the applicants complained under Article 3 of Protocol No. 1 to the Convention that by virtue of their criminal conviction they had been automatically deprived of the right to vote and to stand for election.

THE LAW

A. Complaint under Article 3 of the Convention

25. The applicants complained under Article 3 of the Convention that they had been detained in inhuman and degrading conditions at Bistriţa police station and in Bistriţa Prison. They also submitted that they had developed eye problems because of the permanent light in the cells.

26. The Court notes that the applicants were detained at Bistriţa police station from 19 November 2004 until 17 May 2005. Furthermore, the detention in Bistriţa Prison was divided into two distinct periods: one which started on 14 May 2005 and ended in 2007, when they were released, and one which started on 17 March 2010 for the first and second applicants and on 6 April 2010 for the third applicant and ended on 22 March 2011 for the first applicant and on 26 October 2010 for the second and third applicants.

Taking into account that the application with the Court was lodged on 26 July 2010, the Court finds that the complaints concerning the applicants' detention at Bistriţa police station and the first period of detention in Bistriţa

Prison were lodged outside the six-month time-limit and should be declared inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention.

27. As regards the complaint raised concerning the material conditions of detention during the applicants' second period of detention in Bistriţa Prison, the Court considers that it cannot, on the basis of the case file, determine its admissibility 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 3 of Protocol No. 1 to the Convention

28. The applicants complained that the voting ban imposed on them by the final decision of 5 March 2010 violated Article 3 of Protocol No. 1 to the Convention.

29. 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. Remaining complaints

30. 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 all the other complaints raised by the applicant do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

31. It follows that these complaints must be rejected in accordance with Article 35 §§ 1, 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicants' complaints under Article 3 of the Convention concerning the material conditions of detention in Bistriţa Prison from 17 March 2010 (the first and second applicants) and 6 April 2010 (the third applicant) to 22 March 2011 (the first applicant) and 26 October 2010 (the second and third applicants); and under Article 3 of Protocol No. 1 to the Convention concerning the voting ban imposed on them by the final decision of 5 March 2010;

Declares the remainder of the application inadmissible.

Marialena Tsirli
Deputy Registrar

Josep Casadevall
President