

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

THIRD SECTION

DECISION

Application no. 27631/12
Ghennadii VARTIC
against Romania

The European Court of Human Rights (Third Section), sitting on 6 May 2014 as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Kristina Pardalos,
Johannes Silvis,
Iulia Antoanella Motoc, *judges,*
and Santiago Quesada, *Section Registar,*

Having regard to the above application lodged on 30 March 2005,

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

Having been informed of the right to intervene in the proceedings (Article 36 § 1 of the Convention and Rule 44 of the Rules of Court), the Moldovan Government did not wish to avail themselves of this right,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Ghennadii Vartic, is a Moldovan national, who was born in 1973 and lives in Jilava.

A. The circumstances of the case

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

3. In 1999 the applicant was sentenced to twenty-five years in prison. He served his sentence in various Romanian prisons. From 30 April to 12 May 1998 and from 9 February 1999 to 21 February 2009 he was detained in Rahova Prison.

4. While in prison the applicant was diagnosed with a behavioural disorder and was regularly prescribed sedatives, neuroleptics and antidepressants.

1. The incidents on 24 and 25 April 2002

(a) The applicant's account

5. On 24 April 2002 the applicant fell asleep during the evening roll-call because of the medication he was taking (Diazepam). As a result, he was taken to the doctor's office, where the nurse ordered him to swallow salt water. He refused to do so and the intervention squad was called in. Four men wearing balaclavas beat him up and forced him to drink six litres of salt water.

6. He was then taken to a room for dangerous detainees where his hands were handcuffed and his legs chained to the bed. He could not move, and as he was vomiting, he could not breathe.

7. He remained in this room all night and was seen in the morning of 25 April 2002 by a doctor, who ordered prison staff to remove his handcuffs.

8. During the same morning, the applicant noticed blood on his left ear and when he lit a cigarette he saw smoke coming out of his ear. He could not hear with that ear. He sought medical help and was given an appointment with Dr C.P., an ear, nose and throat specialist. He was then treated for a month but he did not fully recover hearing in the left ear.

(b) The Government's account

9. On 24 April 2002 the applicant fell asleep during the evening roll-call because he had taken an overdose of antidepressants in an attempted suicide. It was not his first suicide attempt.

10. Prison staff noted that the applicant was not responsive, informed their superiors and ordered that the applicant be taken to the doctor's office. The applicant was not able to move by himself and was helped by two cellmates.

11. The nurse on duty ordered the applicant to drink salt water to make him vomit up the pills he had taken. The applicant refused to drink the water and the intervention squad moved him to the detainees' arrival room (*punct primire deţinuţi*, "the PPD") for better supervision.

12. In the morning of 25 April 2002 the applicant was seen by Dr S.M., a psychiatrist, and was then taken back to his cell.

(c) Medical documents

13. According to an information note of 23 October 2012, the director of the National Prison Service acknowledged the following entries concerning the applicant in the Rahova Prison medical register: on 24 April 2002 the applicant had received treatment with a saline solution and medical charcoal because of an overdose of tablets, and was kept under supervision overnight. On 25 April 2002 Dr S.M., a psychiatrist, noted that the applicant had blood on his left ear. On 26 April 2002 the applicant was diagnosed with a perforated eardrum. On the same day he received medication and local treatment on his ear, which was repeated on 27, 29 and 30 April 2002.

14. In the same information note the cause of the applicant's perforated eardrum was indicated as unknown, and the possibility that he had self-harmed by inserting an object in his ear was suggested.

2. The criminal investigation of the incident

15. On 26 January 2007 the applicant lodged a complaint with the judge responsible for the execution of sentences in Rahova Prison. He complained that he had been beaten up by the intervention squad in Rahova Prison, and that he had been handcuffed and forced to drink salt water. On 20 March 2007, the judge referred the complaint to the Bucharest District Court for investigation. The judge's decision was upheld by the Bucharest District Court on 6 August 2007.

16. On 8 February and 13 March 2007 the applicant lodged similar complaints with the Prosecutor's Office attached to the Bucharest County Court ("the prosecutor's office"). He also alleged that due to that incident he had lost the hearing in his left ear as well as sight and smell.

17. On 31 March 2008 the prosecutor's office decided not to prosecute, on the ground that the matters alleged did not constitute criminal offences.

18. On the basis of disciplinary reports on the applicant, his prison medical file, and statements by his cellmates, the prosecutor found that the applicant was dependent on Diazepam, a medication prescribed for his psychiatric condition. With regard to the 24 April 2002 incident, the prosecutor held that he had been somnolent because of a pill overdose, had not responded to the evening roll-call and had been taken to the medical wing, where:

> "... the nurse on duty requested the applicant to drink salt water to make him vomit and to facilitate the elimination of the pills. As the applicant refused, the intervention squad was called to the medical wing and they took the applicant to the PPD room [see paragraph 11 above] where they immobilised and handcuffed him and made him swallow salt water to eliminate the harmful substance."

19. The prosecutor also relied on an expert report issued by the National Institute for Forensic Science ("INML") on 29 October 2007. The report found that drinking a large quantity of salt water could not cause eardrum

perforation or sensory loss. The report also established that in cases of intoxication with tranquillisers and sedatives evacuation of the gastric matter by water ingestion and induced vomiting was necessary if the patient was conscious. The prosecutor also held that on 6 December 2007 the applicant refused to be examined by forensic experts.

20. The prosecutor concluded that the nurse on duty had acted in accordance with the usual medical procedures in cases of medicine intoxication. With regard to the members of the intervention squad, the prosecutor found that because of the applicant's refusal to be examined there was no clear evidence of a causal link between the 24 April 2002 incident and his sensory loss. The prosecutor held in particular that the members of the intervention squad had used force against the applicant and had forced him to drink salt water, but that their actions had been authorised by Law no. 275/2006, since they had been seeking to save his life and preserve his physical integrity.

21. On 27 June 2008 the general prosecutor confirmed the decision not to prosecute.

22. On 25 July 2008 the applicant lodged a complaint against this decision with the Bucharest County Court, arguing that the investigation had been unprofessional and partial. He claimed that medical procedures had not been followed during the 24 April 2002 incident, since he had not been intubated by a doctor but rather forced to drink salt water by masked members of the intervention squad. He also claimed that his handcuffing during the incident lacked a legal basis, since Law no. 275/2006 was not in force at the time of the events.

23. He described the 24 April 2002 incident as follows:

> "After I was handcuffed, two of the four masked men stood beside me holding on to my hands; the third pressed the bottom of my ears with his fingers so that I opened my mouth; the fourth bent my head back poured the contents of a two-litre bottle of water into my mouth, and held my mouth and nose closed with his hands ... this was repeated several times, for an hour and a half or two hours ..."

24. On 20 October 2008 the Bucharest County Court dismissed the applicant's complaint, on the grounds that the authorities had given plausible explanations of his injuries and in particular that it had been necessary to immobilise him with handcuffs for his own protection. Relying on the *Herczegfalvy v. Austria* case (24 September 1992, Series A no. 244), the County Court found that such a measure was authorised by the case-law of the European Court of Human Rights, which was directly applicable.

25. The applicant appealed. On 9 December 2008 the Bucharest Court of Appeal allowed his appeal and quashed the prosecutor's decision not to prosecute, on the grounds that the investigation had not clarified the circumstances of the case and that evidence had not been duly examined. The Court of Appeal referred the case back to the prosecutor's office for further investigation.

26. The Court of Appeal also held that the applicant had not refused to undergo a medical examination, and criticised the INML report of 2007 (see paragraph 19 above) on the ground that it had ignored the applicant's allegations that his eardrum had been perforated because he had been beaten up by members of the intervention squad.

27. On 24 March 2010 the prosecutor's office referred the case to the Bucharest General Police Headquarters, Homicide Department ("the police") and indicated that the applicant's cellmates, the members of the intervention squad involved and the medical staff concerned should be identified and statements taken from them, and that the applicant should undergo a medical examination.

28. On 3 October 2010, the prosecutor's office asked the INML to issue an expert report in the case. In particular, they asked the INML to determine whether ingestion of a large quantity of water could lead to loss of hearing, sight and smell, and what the standard procedures and treatments were in cases of ingestion of a large quantity of pills.

29. In May and July 2011 the police took a statement from the nurse in Rahova Prison, Dr S.M., members of the intervention squad, and other prison staff who had been on duty at the time of the events. The nurse acknowledged that the applicant had refused to drink the saline solution and denied that he had been forced to do so. Dr S.M. declared that she had noticed blood on the applicant's left ear on 25 April 2002 but that he had not complained at that time that he had been attacked. The members of the intervention squad and the prison staff denied that the applicant had been subjected to ill-treatment.

30. On 28 September 2011 the applicant was examined by experts from the INML.

31. On 25 June 2012 INML issued their expert report based on their first report of October 2007 (see paragraph 19 above), the applicant's medical file, various other medical documents and the applicant's examination. They found that the applicant's loss of hearing and smell had not been documented by objective medical tests. With regard to the perforation of the eardrum, they dismissed that possibility on the ground that the applicant had not remained scarred. They also held that ingestion of warm salt water was a traditional treatment that was recommended during the first hours following ingestion of toxic substances.

32. On 10 July 2012 the police referred the case back to the prosecutor's office and advised against prosecution. The police assessed the circumstances as the same as those in the prosecutor's decision of 31 March 2008 (see paragraph 17 above).

33. Relying further on Law no. 275/2006, the police found that the intervention squad had handcuffed the applicant and forced him to drink salt water, but had done so in order to save his life. The police also found that the applicant had abused his petition rights, that he had made numerous

complaints with the purpose of "having fun and keeping busy" ("*recreere şi ocupare a timpului liber*") and "spending time elsewhere ... than in prison" ("*să-şi petreacă timpul şi în alte locuri ... decât în interiorul penitenciarului*"). The police concluded that he had shown a provocative attitude, that he had delayed the investigation by his actions, and that his intention was to create arguments for a possible case against the Romanian State before the European Court of Human Rights.

34. During the domestic proceedings, the applicant applied to various authorities seeking a speedy resolution of his case. In letters addressed to the prosecutor's office on 15 May and 18 June 2009 the applicant particularly drew the prosecutor's attention to the fact that due to its excessive duration the prosecution could become statute-barred.

35. The domestic proceedings are still pending.

B. Relevant domestic law and international practice

36. The relevant provisions of the Criminal Code concerning ill-treatment by agents of the State are described in *Velcea v. Romania* ((dec.), no. 60957/00, 23 June 2005).

37. The Criminal Code sets out in Article 122 the time-limits by which criminal responsibility for various offences becomes statute-barred. These time-limits vary: eight years for torture and similar offences, and five years for offences such as abusive conduct, negligence at work or ill-treatment.

38. The Criminal Procedures Code does not set up a time limit for lodging a criminal complaint (*plângere penală*) before the domestic authorities (Article 222).

39. The findings of the Committee for the Prevention of Torture ("the CPT") with regard to the Romanian prison authorities' practice of employing special intervention units are described in *Cucu v. Romania* (no. 22362/06, § 65, 13 November 2012). The CPT particularly found during its visits to several Romanian prisons in June 2006 that special intervention units wearing masks were dispatched to surveillance departments in order to control violent and/or unmanageable and rebellious detainees. The CPT recommended that the Romanian authorities remind the members of the special intervention units that all forms of ill-treatment against detainees are unacceptable and are to be severely sanctioned, and that the use of force to control violent and/or recalcitrant prisoners must be limited to occasions when it is strictly necessary.

COMPLAINT

40. The applicant complained under Article 3 of the Convention that he had been subjected to ill-treatment by agents of the State while imprisoned in Rahova Prison, and that the authorities had not conducted an effective investigation of those allegations.

THE LAW

41. The applicant alleged that he had been subjected to ill-treatment by agents of the State while imprisoned in Rahova Prison, and that the authorities had not conducted an effective investigation of those allegations. He relied on Article 3 of the Convention, which reads:

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

42. The Government raised three preliminary objections, asserting that the present application was redundant, vexatious and premature. First, they claimed that the Court had already found that the applicant's complaint under Article 3 was manifestly ill-founded, since it was part of the case of *Vartic v. Romania* (no. 12152/05, 10 July 2012). Second, they claimed that the application had abused his right of petition, given that he had lodged several cases before the Court. Third, they claimed that the domestic procedure was still pending and therefore the applicant had not exhausted domestic remedies.

43. The applicant did not present observations on the admissibility of his application.

44. However, the Court finds that it is not necessary to examine these preliminary objections, since the complaint is in any event inadmissible for the following reasons.

45. The Court reiterates that the purpose of the six-month rule is to promote security of law and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore, it ought also to protect the authorities and others concerned from being in a position of uncertainty for a prolonged period of time (see *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002). If no remedies are available or if they are judged to be ineffective, the six-month time-limit in principle runs from the date of the act complained of (see *Hazar and Others v. Turkey* (dec.), no. 62566/00, 10 January 2002). However, special considerations may apply in exceptional cases, where an applicant avails himself of or relies on an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective: it is therefore appropriate to take as the start of the six-month period the date when he first

became aware or ought to have become aware of those circumstances (see *Paul and Audrey Edwards v. the United Kingdom* (dec.), no. 46477/99, 7 June 2001).

46. The determination of whether the applicant in a given case has complied with the admissibility criteria will depend on the circumstances of the case and other factors such as the diligence and interest displayed by the applicant as well as the adequacy of the investigation in question (see *Narin v. Turkey*, no. 18907/02, § 43, 15 December 2009). The Court reiterates in this connection that where there has been an action allegedly in contravention of Articles 2 or 3 of the Convention, the victim is expected to take steps to keep track of the investigation's progress or lack thereof, and to lodge his or her application with due expedition once he or she is or should have become aware of the lack of any effective criminal investigation (see, *mutatis mutandis*, *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 158, ECHR 2009; see also, *Ekrem Baytap v. Turkey* (dec.), no. 17579/05, 29 April 2010, *Mađer v. Croatia*, no. 56185/07, § 84, 21 June 2011, *Stanimirović v. Serbia*, no. 26088/06, § 29, 18 October 2011, *Nasirkhaeva v. Russia* (dec.), no. 1721/07, 31 May 2011, and *Finozhenok v. Russia* (dec.), 3025/06, 31 May 2011).

47. Where time is of essence for resolving an issue in a case, there is a burden on the applicant to ensure that his or her claims are raised before both the relevant domestic authorities and the Court with the necessary expedition to ensure that they may be properly and fairly resolved (see amongst others, *Bayram and Yıldırım v. Turkey* (dec.), no. 38587/97, ECHR 2002-III and *Aydin and Others v. Turkey* (dec.), no. 46231/99, 26 May 2005). Indeed, with the lapse of time, memories of witnesses fade, witnesses may die or become untraceable, evidence deteriorates or ceases to exist, and the prospects that any effective investigation can be undertaken will increasingly diminish, and the Court's own examination and judgment may be deprived of meaningfulness and effectiveness (see *Varnava and Others*, cited above, § 161).

48. In the instant case, the applicant complained before the Court on 30 March 2005 of having been subjected to ill-treatment on 24 and 25 April 2002 as well as of the ineffectiveness of the criminal investigation into that incident. However, at the material time when he lodged his application, he had not yet formally lodged a criminal complaint before the competent domestic authorities. He only did so on 26 January 2007, almost five years after the alleged ill-treatment and almost two years after he lodged his application before the Court.

49. In the proceedings before the Court the applicant failed to provide any explanation as to why he had not lodged a criminal complaint of his own motion with due expedition. The unexplained inactivity of the applicant and indifference on his part towards the possible investigation for

over five years rendered, from the Court's own perspective, his complaint of 26 January 2007 negligent (see *Manukyan v. Georgia* (dec.), no. 53073/07, § 33, 9 October 2012 and *Akhvlediani and Others v. Georgia* (dec.), nos. 22026/10, 22043/10, 22078/10, 22097/10, 22128/10, 27480/10, 27534/10, 27551/10, 27572/10 and 27583/10, § 27, 9 April 2013).

50. Assuming that the applicant had considered the available domestic remedies to be ineffective, he should have then applied within six months of the alleged incident that is on 25 July 2002 at the latest (see *Hazar and others* (dec.), cited above).

51. Also, even assuming that the authorities had an obligation to launch of their own motion a criminal probe into the incident on 24 and 25 April 2002, this fact could not have relieved the applicant of his own individual obligation to undertake elementary steps and seek information from the relevant authorities about the investigation's progress or the lack thereof (see *Manukyan*, cited above, § 30, *Bayram and Yıldırım*, cited above and *Gasyak and Others v. Turkey*, no. 27872/03, § 58, 13 October 2009).

52. In view of all the above, the Court considers, that irrespective of any time-limits that might be envisaged by the relevant national law for bringing criminal complaints about law enforcement abuses, the unexplained inactivity of the applicant and indifference on his part towards the possible investigation for over five years fell foul of a major purpose of the six-month rule under Article 35 § 1 of the Convention (see *Manukyan*, cited above, § 33 and *Baybora and Others v. Cyprus* (dec.), no. 77116/01, 22 October 2002).

29. It follows that the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President