

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

THIRD SECTION

DECISION

Application no. 35053/08
Mihai VLĂDUŢ
against Romania

The European Court of Human Rights (Third Section), sitting on 19 June 2012 as a Committee composed of:

Alvina Gyulumyan, *President,*
Ineta Ziemele,
Kristina Pardalos, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above application lodged on 5 July 2008,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Mihai Vlăduţ, is a Romanian national, who was born in 1973 and lives in Bucharest. He is represented before the Court by Ms I. M. Peter, a lawyer practising in Bucharest.

The Romanian Government ("the Government") are represented by their Agent, Ms I. Cambrea.

A. The circumstances of the case

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

3. The applicant was arrested on 27 January 2003 and charged with murder, together with three other persons.

4. He was accused that on the night of 25 January 2003 he and the other three persons had repeatedly punched and kicked the victim in a public place, causing his death. They were also accused that they had beaten up the victim's brother, causing him injuries that required two weeks' medical treatment.

5. The autopsy report noted that the victim had died a violent death caused by "serious cranial and facial trauma sustained in an attack". Numerous injuries and bruising all over his body were also recorded.

6. The applicant started his detention in the custody suite of the Bucharest Tribunal on 27 January 2003. After six months, on 6 August 2003 he was transferred to Jilava Prison. He complained of overcrowding and unsatisfactory sanitary conditions in both detention facilities.

7. By a judgment of the Bucharest County Court of 22 March 2005 the applicant was sentenced to five years and six months' imprisonment. The County Court changed the legal classification of the offence from aggravated murder to inflicting injuries causing death (Article 183 of the Criminal Code).

8. The appeals lodged by the prosecutor's office, the defendants and the civil parties were allowed by a decision of the Bucharest Court of Appeal rendered on 12 August 2005. It held that the details of the events had not been totally clarified, namely the extent to which each defendant had contributed to the death of the victim had not been established. It also held, *inter alia*, that the first-instance court had left undecided the criminal complaint lodged by the victim's brother related to the injuries he had sustained. The judgment of the first-instance court was quashed and the case sent back for fresh consideration.

9. On 11 September 2003 the applicant was transferred from Jilava Prison to Rahova Prison. On 16 November 2005 the applicant was released from prison as the Bucharest Court of Appeal replaced his pre-trial detention with the prohibition to leave the city.

10. On 12 May 2006 the Bucharest County Court changing the legal classification of the offence in the applicant's charge convicted him of aggravated murder and sentenced him to twenty-two years' imprisonment. The other three co-defendants were sentenced to twenty years' imprisonment.

11. By a decision of 16 November 2006 the Bucharest Court of Appeal allowed the appeals lodged by the defendants, reducing the duration of the applicant's imprisonment to seventeen years, and to fifteen years for the other defendants.

12. The defendants lodged an appeal on points of law with the High Court of Cassation and Justice claiming that they had not had a fair

trial. They maintained that their request for another forensic report had been denied and that the legal classification of the offence should have been inflicting injuries causing death instead of aggravated murder.

13. On 13 February 2008 the High Court of Cassation and Justice dismissed the appeals as unfounded. It held that a new forensic report had not been necessary taking into account that the existing forensic report had been clear and in agreement with the other pieces of evidence. With regard to the legal classification of the offence, it held that this had been correctly established by the first-instance court.

14. On 15 February 2008 the applicant was again placed in detention in order to serve his imprisonment sentence. He was detained in several prisons (Rahova, Giurgiu and Mărgineni), but he did not complain about his conditions of detention.

15. The applicant is currently serving his sentence in Giurgiu Prison.

B. Relevant domestic law

16. Excerpts from the relevant legal provisions concerning the rights of detainees, namely Law no. 275/2006, are given in the cases of *Petrea v. Romania* (no. 4792/03, §§ 21-23, 29 April 2008); *Gagiu v. Romania* (no. 63258/00, § 42, 24 February 2009); and *Măciucă v. Romania* (no. 25763/03, § 14, 26 May 2009).

17. Excerpts from the relevant parts of the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT") on prison conditions are given in the case of *Bragadireanu v. Romania* (no. 22088/04, §§ 73-75, 6 December 2007).

COMPLAINTS

18. The applicant complained under Article 3 of the Convention about the conditions of detention in the custody suite of the Bucharest Tribunal and in Jilava Prison, especially about overcrowding and improper conditions of hygiene.

19. Relying on Article 5 § 3 of the Convention he claims that his arrest was ordered by a prosecutor who cannot be considered "a magistrate" within the meaning of the Convention. He further claims that he was not immediately brought before a judge.

20. Under Article 6 §§ 1 and 3 he complains that his request for another forensic report proposed in his defence was not allowed. He claims that he did not have the opportunity to challenge the testimony of the witnesses heard.

THE LAW

A. Article 3 of the Convention

21. The applicant complained of the material conditions of his detention in the custody suite of the Bucharest Tribunal and in Jilava Prison. 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."

22. The Government contended that the applicant had not complied with the six-month rule in so far as his complaint referred to the conditions of his detention. They alleged that the applicant had lodged his application with the Court on 5 July 2008 complaining exclusively about the conditions of detention in the custody suite of the Bucharest Tribunal and in Jilava Prison. They further submitted that the applicant had been detained in the custody suite of the Bucharest Tribunal between 27 January and 6 August 2003 and in Jilava Prison between 6 August and 11 September 2003. They also pointed out that the applicant had been released from prison on 16 November 2005 and although he had started to serve his imprisonment sentence on 15 February 2008 he had not been detained either in the custody suite of the Bucharest Tribunal or Jilava Prison.

23. The applicant asked the dismissal of the Government's objection on the ground that the Court had already found that there was no effective remedy in respect of the conditions of detention, in particular with overcrowding.

24. The Court reiterates that the object of the six-month time-limit under Article 35 is to promote legal certainty, by ensuring that cases raising issues under the Convention are dealt with within a reasonable time and that past decisions are not continually open to challenge. The rule also affords the prospective applicant time to consider whether to lodge an application and, if so, to decide on the specific complaints and arguments to be raised (see, for example, *Worm v. Austria*, 29 August 1997, §§ 32-33, *Reports of Judgments and Decisions* 1997-V).

25. The Court observes that the applicant only complained about the conditions of his detention with reference to the custody suite of the Bucharest Tribunal and Jilava Prison. He was detained in the custody suite of the Bucharest Tribunal between 27 January and 6 August 2003 and in Jilava Prison between 6 August and 11 September 2003.

26. The Court notes that the applicant complained about the conditions of detention in the two detention facilities in his initial letter of 5 July 2008, more than six months after his transfer from Jilava Prison to Rahova Prison

on 9 September 2003 and his subsequent release from prison on 16 November 2005.

27. Even assuming that there was no effective remedy at the applicant's disposal by which he could complain about his conditions of detention, according to the well-established case-law in the matter, the six-month time-limit for lodging complaints with the Court starts running from the moment the continuous situation complained of ends, in this case, from the date when the applicant was transferred to Rahova Prison. More than six months have elapsed between 9 September 2003 and the lodging of these complaints with the Court.

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

B. Other complaints

28. The Court notes that the complaints raised under Article 5 § 3 of the Convention were never raised before the domestic courts.

It follows that these complaints must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

29. With regard to the complaints raised by the applicant under Article 6 § 3 of the Convention, 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 these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Marialena Tsirli	Alvina Gyulumyan
Deputy Registrar	President