

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

THIRD SECTION

DECISION

Application no. 70719/10
Adrian Richartt ZAMFIRACHI
against Romania

The European Court of Human Rights (Third Section), sitting on 9 October 2012 as a Chamber composed of:
Josep Casadevall, *President,*
Egbert Myjer,
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria,
Kristina Pardalos, *judges,*
and Santiago Quesada, *Section Registrar,*
Having regard to the above application lodged on 25 October 2010,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Adrian Richartt Zamfirachi, is a Romanian national who was born in 1973 and lives in Bucharest.

A. The circumstances of the case

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

1. Criminal proceedings opened against the applicant

3. On 22 April 2010 the Romanian Anticorruption Department ("the DNA") informed the applicant, in the presence of F.L., one of his two chosen legal representatives, of the reasons that led the DNA to initiate a criminal investigation against the applicant and other co-accused for organising a criminal group (*constituirea unui grup infrancţional*) and trading in influence (*complicitate la cumpărare de influenţă*). In addition, the applicant was informed of his procedural rights.

4. On the same date the DNA remanded the applicant in custody for twenty-four hours.

5. On 23 April 2010 the DNA requested the Bucharest Court of Appeal to place the applicant in pre-trial detention for twenty-nine days. At the next hearing held before that court the applicant was represented by seven chosen legal representatives. Three of those legal representatives, F.L., D.G. and L.T., submitted oral observations to the court contesting the applicant's detention pending trial. Also the applicant complained that he had been taken before the court handcuffed with a single pair of handcuffs to one of his co-accused.

6. By an interlocutory judgment delivered on the same date the Bucharest Court of Appeal allowed the DNA's action seeking the applicant's pre-trial detention on the basis of witness statements and transcripts of the applicant's conversations with third parties obtained as a result of a surveillance operation mounted by the authorities. It held that the evidence available to the file supported the suspicion that he and his co-accused had promised third parties that they would buy them more lenient sentences or acquittal decisions from judges in exchange for large sums of money, which amounted to the offences of organising a criminal group and trading in influence. In addition, the offences were punishable by more than four years' imprisonment, and he was a danger to public order because his ability to interact with the judicial system from his position as a lawyer could discredit and fuel public mistrust in the said system. Moreover, given the need to protect the public interest, the defence's arguments concerning his social status and organised family life were irrelevant. Lastly, it dismissed the applicant's preliminary objection, that his detention had lawfully ended, as ill-founded. The applicant appealed on points of law (*recurat*) against the interlocutory judgment. He argued, *inter alia,* that his detention had been unlawful, as there was no reasonable suspicion that he had committed the offences, and the first-instance court had also failed to examine all the arguments raised by the defence in respect of alternative measures and to provide reasons why his release was a danger to public order.

7. At the hearing of 26 April 2010 before the Court of Cassation the applicant was represented by L.T. and was heard by the court.

8. By a final interlocutory judgment delivered on the same date the Court of Cassation dismissed the applicant's appeal on points of law. It held that the evidence available to the file supported the suspicion that he had committed the offences. In addition, the offences were punishable by more than four years' imprisonment, and he was a danger to public order given the social impact of the offences and the fact that the applicant was a lawyer. Also, alternative measures could not be considered at that stage of the criminal proceedings, given the seriousness of the charges brought against him.

9. The applicant's pre-trial detention was extended repeatedly and his requests for alternative measures were dismissed by final interlocutory judgments in May, June, July and 3 September 2010 of the Court of Cassation. The court examined the applicant's individual situation and the circumstances of his case and held, *inter alia,* that the lawful reasons for conditional release were not met in his case, given that he could have interfered with the proper administration of justice or attempted to influence witnesses, and that he had tried to intimidate the parties present at one of the hearings.

10. On 8 June 2010 the DNA heard F.L., the applicant's former chosen legal representative, as a witness for the prosecution in his case.

11. On 14 July 2010 the DNA indicted the applicant for organising a criminal group and trading in influence, on the basis of witness statements, documents and the surveillance operation mounted by the authorities, and referred his case to the Bucharest Court of Appeal.

12. At a hearing on 23 August 2010 before the Bucharest Court of Appeal the applicant submitted oral observations in respect of the merits of the case, and contested the lawfulness of the proceedings opened against him. In addition, he complained before the court, *inter alia,* that he had been brought to the hearing and presented to the public and press handcuffed to one of the co-accused. He also contended that the conditions of his pre-trial detention were degrading, because they caused him to lose weight and to develop hypertension; in Jilava Prison Hospital he had contact with other inmates he stated were infected with various contagious diseases, and he was not provided with cutlery for eating, or with clean clothes. Lastly, he asked the court to examine the lawfulness of his detention and to release him under judicial monitoring.

13. By a final interlocutory judgment delivered on the same date the Bucharest Court of Appeal held in respect of his complaints concerning the conditions of his pre-trial detention that the applicant could lodge a complaint under Law no. 275/2006 on the serving of prison sentences with the judge charged with the execution of prison sentences, who was competent *ratione materiae* to examine his submissions. With regard to his request to be released under judicial monitoring it adjourned the proceedings to the following day for deliberations.

14. By an interlocutory judgment of 24 August 2010 the Bucharest Court of Appeal maintained the applicant's pre-trial detention once it had re-examined his individual situation and the particular circumstances of his case, and ruled out alternative measures, on account of the applicant's behaviour over the course of the proceedings. In respect of the merits of the case, it dismissed *inter alia* the applicant's request to be confronted (*confruntat*) with witnesses F.L. and N.F., on the ground that the measure was not necessary for the case, given that the court could examine and compare their witness statements. There is no evidence in the file that the applicant appealed against the interlocutory judgment.

15. At the hearing of 20 September 2010 before the Bucharest Court of Appeal the applicant challenged Judge F.V. on the grounds that she had breached his procedural rights and that there was a suspicion that she was friends with the prosecutor who indicted him.

16. By a final interlocutory judgment delivered on the same day, the Court of Appeal, sitting in a different composition, dismissed the applicant's challenge as ill-founded.

17. After the proceedings were reopened before the Court of Appeal, the applicant requested the court to adjourn the proceedings, on the ground that he had been unable to rest or eat for more than ten hours. In addition, he requested that sufficient time be allowed by the court for him to prepare his defence, and that his request for conditional release be examined at the next hearing.

18. By a final interlocutory judgment the Bucharest Court of Appeal adjourned the proceedings to 22 September 2010. It noted that on 24 August 2010 the applicant had been allowed almost a month to find and instruct a chosen legal representative and set up his defence strategy.

19. At hearings on 24, 27 and 29 September, as well as on 1, 4 and 6 October 2010, the Bucharest Court of Appeal examined the merits of the applicant's case. At the same hearings the applicant repeatedly requested the court to examine the lawfulness of his detention and his request for release under judicial monitoring. By final interlocutory judgments delivered on the same dates the Court of Appeal adjourned the examination of the lawfulness of his detention and his potential release under judicial control to 18 October 2010. The applicant appealed on points of law against the interlocutory judgment of 1 October 2010 and argued, *inter alia,* that the domestic legislation did not allow for a separate appeal against the said interlocutory judgment and that he could challenge it only at the same time as an appeal on the merits. Consequently, his right to an effective remedy guaranteed by the Convention had been breached.

20. By a final interlocutory judgment of 7 October 2010 the Court of Cassation dismissed the applicant's appeal on points of law against the interlocutory judgment of 1 October 2010 as inadmissible on the ground that he could challenge the said interlocutory judgment only jointly with an

appeal lodged in respect of the merits of the case and that the right to an effective remedy was not absolute and did not imply an opportunity to appeal against all interlocutory judgments individually.

21. The criminal proceedings against the applicant appear still to be pending before the domestic courts.

2. Criminal and disciplinary proceedings opened by the applicant

22. On 20 and 23 September 2010 the applicant lodged disciplinary and criminal proceedings, with no civil claims, for abuse of power against Judge F.V. before the Romanian Superior Council of Magistrates (*Consiliul Superior al Magistraturii*) and the Bucharest Prosecutor's Office. Both sets of proceedings appear to be pending before the domestic authorities.

23. On 2 October 2010 the applicant brought criminal proceedings, with no civil claims, for abuse of power and forgery against the prosecutors leading the criminal investigation against him.

24. By a final order of 29 March 2011 the Bucharest Prosecutor's Office dismissed the applicant's criminal complaint of 2 October 2010 on the ground that no unlawful act had been committed by the prosecutors. The applicant appealed against the order before the domestic courts.

25. By a final judgment of 4 October 2011 the Court of Cassation dismissed the applicant's appeal against the Bucharest Prosecutor's Office order of 16 February 2011 as ill-founded.

3. Conditions of detention and access to medical treatment

26. On 25 October 2010 the applicant informed the Court that between 23 April and 27 July 2010 he was detained in the Bucharest Police Department's cells (*Arestul Direcţiei Generale a Penitenciarelor Municipiului Bucureşti*) in a 14 sq. m cell together with five other inmates. The cell was fitted with a squat toilet which the applicant could not use properly because of recent Achilles tendon reconstructive surgery that prevented him from squatting without pain shooting through his leg. The cell was also missing a sink, and he was able to wash himself and his cutlery only by using the water from a pipe designed to flush the toilet. For the first five days he was unable to sleep or eat and when he started feeling unwell the detention facility's doctor failed to prescribe him any adequate medical treatment except for juice. In addition, on 31 May 2010 his cell was disinfected with a chemical substance sprayed by several individuals wearing protective suits and breathing masks in his and the other inmates' presence. All the six prisoners occupying the cell started feeling unwell afterwards.

27. On the same date the applicant informed the Court that he was transferred to Jilava Prison Hospital on 6 August 2010 and remained there until 13 August. At the time of his admission and discharge he was kept for

a total of five hours in a 30 sq. m room with thirty other inmates, including some infected with hepatitis C, syphilis and tuberculosis. Most of the other inmates were convicts and knew that he was a lawyer. He was placed in ward 216 with four other inmates convicted of violent crimes. One of them was infected with hepatitis C and threatened to infect him as well. He complained to the prison hospital authorities about his situation and was transferred to a private room, where he remained until he was discharged. However, for five days he received no food, clothes or cutlery from his family and could not buy them from the prison shop. Consequently, he was forced to eat prison food without any cutlery and was unable to change his clothes. He complained about this to the warden of Jilava Prison Hospital. His complaint was upheld and he was provided with the requested items.

28. He also informed the Court that on 6 and 13 September 2010 the Rahova Prison dentist refused to repair his dental prosthesis, which was broken, on the ground that it did not need to be repaired. In addition, the Rahova Prison authorities did not allow him family visits, in particular visits from his three-year-old son, in a separate location from the main area used by all detainees, included convicted ones.

29. Lastly, the authorities from all the detention facilities he was held in presented him, in public, to the press, and brought him before the courts in handcuffs and chained to other co-accused; he had to travel in unheated and unventilated cars and was forced to attend court proceedings for up to twelve hours in spite of his physical and mental exhaustion. The court-house cells he was locked in whilst he was present in the court building lacked any windows, running water or functioning sanitary facilities.

30. On 4 November 2010 the Codlea Prison Disciplinary Commission issued the applicant with a warning following his behaviour towards the prison's dentist. The applicant contested the Codlea Prison Disciplinary Commission's decision before domestic courts.

31. By a final judgment of 23 February 2011 the Braşov District Court dismissed the applicant's action on the basis of testimonial evidence and documents. It noted that following a visit to the prison's dentist the applicant had an intimidating verbal argument with the doctor who informed the applicant that his dental prosthesis did not require fixing at that time.

B. Relevant domestic law

32. The relevant provisions of domestic law concerning the use of handcuffs are described in *Ali v. Romania*, no. 20307/02, § 46, 9 November 2010.

33. Excerpts from the relevant legal provisions concerning the rights of detainees, namely Law no. 275/2006 and reports of the European Committee for the Prevention of Torture, are given in the cases of *Petrea*

v. Romania (no. 4792/03, §§ 22-23, 29 April 2008), and *Bragadireanu v. Romania* (no. 22088/04, §§ 73-75, 6 December 2007).

COMPLAINTS

34. The applicant complained under Article 3 of the Convention that he was subjected to inhuman and degrading treatment by the authorities in the Bucharest Police Department's cells, in that his cell was overcrowded and lacked the required sanitary and hygiene facilities for his health; failed to evacuate his cell during the disinfection carried out on 31 May 2010 although the substance used was hazardous to human health, and failed to provide him with prompt and adequate medical treatment when he was feeling unwell. In addition, in Jilava Prison Hospital he was exposed to potential infection with various transmissible diseases; he shared his room with dangerous convicts who were a potential threat to his safety, and for five days he did not have access to clean clothes, and was provided only with prison food which he was forced to eat with his hands in the absence of cutlery. Also in Rahova Prison he did not have access to adequate dental treatment. Moreover, the authorities in all the detention facilities he was held in presented the applicant publicly and before domestic courts in handcuffs and chained to another inmate. Lastly, the authorities transported him in insufficiently heated or ventilated cars to domestic courts, where he was forced to attend hearings for up to twelve hours with no rest or food and was locked up in court-house cells which had no windows, running water or functioning sanitary facilities.

35. Relying on Articles 5 of the Convention the applicant complained of a breach of his right to liberty because he did not have effective legal representation on 23 and 26 April 2010, as his chosen legal representatives, in particular F.L. and L.T., had an opposing interest to him in the case and were not allowed sufficient time for the preparation of his defence, respectively. In addition, the domestic courts repeatedly failed to examine or provide sufficient reasons for dismissing his repeated requests for release, and he could not lodge an appeal on points of law against the interlocutory judgment of 1 October 2010.

36. Relying on Article 6 of the Convention, the applicant reiterated his complaints raised under Article 5 (see above). In addition, he alleged that the statements of the judicial authorities at the time he was detained pending trial breached his right to be presumed innocent. Lastly, he contended that the judge examining the criminal proceedings brought against him, in particular F.V., lacked impartiality and that the criminal proceedings opened by him against the prosecutors investigating his case were unfair in so far as

the domestic courts failed to examine his submissions or to allow him to submit evidence.

37. Relying expressly on Article 3 and in substance on Article 8 of the Convention the applicant complained that in Rahova Prison he could not receive family visits, in particular visits from his son, in a separate location from the main area used by all detainees. In addition, he alleged that he suffered unjust prejudice as several press articles, quoting judicial sources, portrayed him as having committed the offences he was charged with.

38. The applicant complained under Article 13 of the Convention that his right to an effective remedy had been breached because the domestic courts failed to examine his appeal on points of law against the interlocutory judgment of 1 October 2010 and declared it inadmissible. In addition, during the criminal proceedings opened by him against the prosecutors investigating his case the domestic courts failed to examine his submissions or to allow him to submit evidence.

39. The applicant complained under Article 14 of the Convention that he had been discriminated against by the domestic authorities on account of his social status because he was detained only on account of the fact that he was a practising legal professional.

THE LAW

A. Complaints under Article 3 of the Convention

40. The applicant complained that he had been subjected to inhuman and degrading treatment because he was constantly presented before the public press and domestic courts in handcuffs and chained to another inmate; he was transported to the domestic courts in inappropriate conditions (see paragraph 34 above) and also about the material conditions of detention and exposure to substances hazardous to his health in the Bucharest Police Department's cells and/or in the court-house cells (see paragraph 34 above). He relied on Article 3 of the Convention which, in so far as relevant, reads as follows:

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

41. The Court considers that it cannot, on the basis of the case file, determine the admissibility of this part of the applicant's complaints under Article 3 of the Convention and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

B. Remainder of the applicant's complaints

42. The Court has examined the remaining complaints as submitted by the applicant (see paragraphs 34-39 above). However, having regard to all the material in its possession, and in so far as they fall within its jurisdiction, the Court finds that these complaints 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 must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the part of the applicant's complaints under Articles 3 of the Convention concerning his being publicly displayed when taken to domestic courts in handcuffs and chained to other inmates; being transported to the domestic courts in inappropriate conditions; and about the material conditions of detention and/or exposure to substances hazardous to his health in the Bucharest Police Department's cells and/or in the court-house cells (see paragraph 34 above);

Declares the remainder of the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President