

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

THIRD SECTION

DECISION

Application no. 24082/03
Gheorghe Moşoi ZARAFIM
against Romania

The European Court of Human Rights (Third Section), sitting on 13 March 2012 as a Chamber composed of:

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

and Santiago Quesada, *Section Registrar,*

Having regard to the above application lodged on 15 July 2003,

Having regard to the decision taken by the President of the Chamber to appoint Mr Mihai Poalelungi to sit as *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court), as Mr Corneliu Bîrsan, the judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court),

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Gheorghe Moşoi Zarafim, is a Romanian national who was born in 1970 and before his arrest lived in Craiova. He was

represented before the Court by Ms Andreea Livia Troanţă-Rebeleş Turculeanu, a lawyer practising in Craiova. The Romanian Government ("the Government") were represented by their Agent, Ms Irina Cambrea, of the Ministry of Foreign Affaires.

A. The circumstances of the case

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

3. On 22 February 1999 the applicant was apprehended by police on suspicion of having committed several violent crimes. On the same date he was placed in pre-trial detention by order of the prosecutor.

4. During the early stages of the proceedings, the applicant lodged several complaints with the prosecutor concerning ill-treatment by the investigators. His complaints were dismissed as ill-founded or vexatious. In particular the prosecutor considered that the evidence in the file did not support the applicant's claims. The applicant was informed about the prosecutor's decisions in letters of 5 October 1999, 24 November 1999, 4 and 29 December 1999.

1. The criminal trial against the applicant

5. The proceedings were held before the Olt County Court. The applicant was represented at all hearings by a court-appointed lawyer. On 4 December 2001 the County Court convicted the applicant and sentenced him to twenty-five years' imprisonment for crimes of aggravated murder, attempted aggravated murder, causing bodily harm, and trespassing.

The judge who delivered the judgment had not heard the applicant and the witnesses at a previous hearing.

6. Both the applicant and the prosecutor appealed against the judgment. The applicant complained of breaches of his procedural rights by the first-instance court and about the outcome of the proceedings.

The prosecutor contested the court's legal classification of some of the crimes.

7. The Court of Appeal quashed the judgment of 4 December 2001 and decided to re-examine the case on the merits. It did not hear new evidence from the applicant or witnesses.

In a decision of 4 July 2002 it changed the legal classification of the crimes committed by the applicant. The sentence remained unchanged. The court further dismissed the applicant's appeal as ill-founded without giving any reasons.

8. Both the applicant and the prosecutor submitted appeals on points of law (*recurs*) against the judgment. The applicant pleaded his innocence and requested a less severe sentence.

In a final decision of 8 May 2003 the Supreme Court of Justice upheld the previous decision. It dismissed the applicant's appeal as it considered that the sentence handed down had been appropriate, taking into account his previous criminal activity and his inferior intellect.

2. The conditions of detention

9. The applicant has been incarcerated continuously from 22 February 1999, initially in pre-trail detention and subsequently while serving his sentence. He is currently held in Craiova Prison.

10. During his detention, the applicant has been transferred twenty-three times between the prisons in Iaşi, Bucharest, Jilava and Craiova. The Government submitted a detailed prison record describing the conditions of the applicant's detention to date.

11. The applicant has been reprimanded on several occasions for breaches of the prison rules (making or retaining prohibited objects or substances, maintaining an illegal alcohol processing device in the cell, insulting magistrates dealing with his case, violence towards prison personnel or inmates, and destroying prison property). The applicant exercised his right to appeal against the reprimands and his complaints were examined on the merits and rejected by the courts or the prosecutor.

3. Medical care in prison

12. The applicant was recorded as "clinically healthy" in the prison medical chart drafted upon his arrest.

On 7 May 1999 he was admitted to the Jilava Prison Hospital for a psychiatric examination. He was diagnosed with a personality disorder and exhibiting antisocial behaviour.

13. According to the prison medical record, the applicant was admitted on several occasions to prison hospitals, underwent expert examinations, was taken regularly for medical check-ups and received treatment. He was diagnosed with arterial hypertension, gallbladder dyskinesia, a duodenal ulcer and a fungal infection of the nail, type two obesity, an old fracture of the collarbone, superior brachial plexus paresis, a urinary infection, and respiratory diseases. According to the prison medical chart, he received treatment for his conditions.

It also appears that on several occasions in April 2005 the applicant refused to be examined by the prison doctors.

14. The applicant alleges that his health problems were caused and subsequently aggravated by inhuman detention conditions and lack of adequate medical treatment at the Iaşi, Jilava and Craiova prisons. In 2005 and 2006 the applicant filed numerous complaints in that connection, with the National Administration of Prisons and other authorities. On 27 December 2005 and 8 February 2006 the National Administration of Prisons replied that, according to his prison medical file, the applicant was

receiving adequate medical treatment and therefore his complaints were not supported by evidence.

15. In 2006 the applicant also filed a criminal complaint for ill-treatment and abuse against O.C. and B.A., doctors at the Iaşi Prison. On 1 September 2006 the Prosecutor's Office of the Iaşi Court of Appeal rejected the complaint on the ground that there was no evidence of a crime. It appears from the file that the applicant did not appeal against that decision.

16. The applicant repeatedly got into fights with other inmates or the prison personnel. Each such incident was reported and investigated and the applicant was taken to the prison infirmary and to prison or civilian hospitals for further examinations and/or treatment. Expert reports were drafted concerning any injuries suffered and the number of days needed for recovery. On at least on one occasion the prison doctors informed the authorities of such an incident.

17. The applicant also complained once under Law no. 275/2006 on the execution of sentences ("Law no. 275") that he had been the victim of an attack by inmates and guards and the prison doctors had refused to give him medical assistance.

On 8 April 2008 the judge responsible for the execution of sentences dismissed that complaint. He found that the applicant had been taken to the infirmary and given assistance and from there had been taken to a civilian hospital for further tests. The prison infirmary had subsequently given him the treatment prescribed by the civilian doctors. Furthermore, the prison doctors had informed the applicant that he could request a further medical examination in a civilian hospital.

4. Other complaints

18. On several occasions the applicant requested envelopes and stamps to send letters, as well as photocopies of documents from his prison file. In most of the cases his requests were met by the prison authorities. When such requests were refused, the applicant filed complaints with the judge responsible for the execution of sentences and with the courts under Law no. 275.

His actions were examined on the merits and dismissed, with the exception of a complaint that an envelope addressed to him had been opened by the director of Iaşi Prison, which led a to a decision of 25 January 2008 acknowledging a violation of his right to correspondence.

On 3 July 2007, while he was incarcerated in Iaşi Prison, the applicant submitted a formal request to be given an envelope in order to send documents asked for by the Court. He alleged that this request had been denied with no reasons being given.

B. Relevant domestic law

19. The domestic legislation on the execution of sentences, in particular Law no. 23/1969, Emergency Ordinance no. 56/2003 ("Ordinance no. 56"), and Law no. 275/2006 on the execution of sentences, is described in *Petrea v. Romania*, no. 4792/03, §§ 21-23, 29 April 2008.

COMPLAINTS

20. The applicant complained in substance of a breach of Article 3 of the Convention due to the fact that while in detention he had contracted diseases allegedly caused and subsequently aggravated by inhuman conditions and a lack of adequate medical treatment in prison. He argued that the prison medical personnel had given him only a superficial examination.

21. The applicant also complained in substance of a breach of Article 3 of the Convention on account of ill-treatment by the prosecutor during the criminal investigation.

22. The applicant raised in substance a complaint under Article 6 § 1 of the Convention that the criminal proceedings against him had been unfair.

23. The applicant complained in substance that the State had failed to ensure his right of individual petition, guaranteed by Article 34 of the Convention, in that the Iaşi and Jilava prison authorities had refused to allow his requests for photocopies of documents from his prison file and for envelopes for correspondence.

24. In a letter of 11 July 2010, invoking Article 8 of the Convention in substance, the applicant complained that his right to correspondence had been violated in that an envelope addressed to him had been opened by the director of the Iaşi Prison on 25 January 2008.

THE LAW

A. On the alleged violation of Article 3 of the Convention on account of the conditions of detention

25. The applicant complained in substance of a breach of Article 3 of the Convention, alleging that while in detention he had contracted diseases allegedly caused and subsequently aggravated by the inhuman conditions and the lack of adequate medical treatment in prison. The applicant did not give any further details in his complaint. Article 3 reads as follows:

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

1. The parties' submissions

26. The Government contended that the applicant had failed to give any details about the conditions of his detention. He had only vaguely asserted that owing to the poor conditions of detention his health had deteriorated. He had not specified the diseases he claimed to be suffering from and had failed to put forward any evidence to support his evasive allegations.

In any case, should he have considered that because of the conditions of detention his health had deteriorated, he had had at his disposal an effective remedy, that is, an action under Ordinance no. 56 and subsequently under Law no. 275.

27. The applicant argued that the Acts referred to by the Government could not provide an effective remedy in his case.

2. The Court's assessment

28. The Court notes that the applicant's allegations refer strictly to a deterioration of his health, caused and aggravated by the inhuman conditions of detention and to a lack of adequate medical care in prison.

29. However the applicant failed to indicate or substantiate in any way what these inhuman prison conditions were. Nor has he given any concrete details on how the deterioration of his health was caused by the conditions of detention. It appears that he did not lodge any concrete complaints in this respect with the domestic authorities.

30. The Court has already found that before the entry into force of Ordinance no. 56, on 27 June 2003, there was no effective remedy for complaints concerning conditions of detention and lack of medical care in detention. However, after that date, persons in the applicant's situation had an effective remedy under that Ordinance or the subsequent laws, for complaining about an alleged lack of medical treatment (see *Petrea*, cited above, §§ 35-36).

(a) On the applicant's situation before the entry into force of Ordinance no. 56

31. As to the situation before the entry into force of Ordinance no. 56, the applicant failed to adduce any specific evidence that would allow the Court to assess his situation and establish how his health had evolved and in what way the conditions of detention might have affected it.

32. Based on the evidence at its disposal and given, in particular, the applicant's lack of precision in and substantiation of his complaint and his failure to raise his allegations with the domestic authorities, the Court does not entertain any suspicions in this case as to lack of accuracy in the prison medical records. It thus notes that according to those records the applicant was given periodic check-ups both in the prison hospitals and outside (see paragraphs 12, 13 and 17 above), and he underwent several expert

examinations and received adequate and prompt medical treatment for his conditions.

(b) On the applicant's situation after the entry into force of Ordinance no. 56

33. As the Court has ruled in *Petrea*, after the entry into force of Ordinance no. 56, the applicant should have lodged a complaint with the domestic courts about the alleged lack of medical treatment.

34. In this respect, the applicant did avail himself on several occasions of the mechanism for complaints at his disposal. One such complaint concerned the alleged lack of medical care and was dismissed by the courts on 8 April 2008, after an examination of the evidence in the file.

The Court is satisfied that the domestic authorities base their decision both on the prison medical record and on the medical examination performed in the civilian hospital (see paragraph 17 above).

35. The Court also notes that the applicant was informed by the prison doctors that he could seek further medical advice in civilian hospitals, which would have allowed him to adduce objective evidence in support of his allegations. There is no indication in the file that such a request by the applicant would have been refused by the prison authorities. There is nevertheless evidence that he was taken for medical examinations in civilian hospitals and that the prison doctors followed the recommendations for treatment of their civilian colleagues (see paragraph 17 above). It also appears that the applicant refused, at least in April 2005, to be taken for medical examinations and in this case the state authorities could not be held responsible as such for a subsequent deterioration of his health.

The Court also considers that the mere fact that the judge responsible for the execution of sentences rejected the applicant's complaint does not render the remedy under Ordinance no. 56 and Law no. 275 ineffective, nor does it justify the applicant's omission to make use of such an action in order to bring to the authorities' attention any other concrete and substantiated claims of an alteration in his health due to the conditions of detention.

(c) Conclusion

36. Making an overall assessment of the situation in the light of the parties' submissions and of its own findings above, the Court concludes that the applicant could not satisfactorily substantiate that the deterioration of this health in prison was caused by facts attributable to the authorities to a level that would raise an issue under Article 3 of the Convention.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. On the alleged violation of Article 6 of the Convention

37. The applicant complained that before the first-instance court he and the witnesses had been heard by one judge, while the judgment had been given by another judge, and that the Craiova Court of Appeal had issued its judgment on the merits without hearing him and without re-examining the evidence produced before the first-instance court. He also complained that the Court of Appeal had dismissed his appeal without giving any reasoning for its decision.

38. The Court reiterates that the purpose of the exhaustion rule is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, §§ 74-75, ECHR 1999-IV).

39. However, it appears that the applicant did not raise these complaints in his appeals lodged with the domestic courts, and thus precluded the courts from addressing the issue.

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

40. Under the same Article, the applicant complained that the Supreme Court of Justice had decided the case on the merits without hearing evidence from him and without re-examining the evidence adduced before the first-instance court.

41. The Court reiterates that the manner of application of Article 6 to proceedings before courts of appeal depends on the special features of the proceedings involved; account must be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court therein. Where a public hearing has been held at first instance, the absence of such a hearing may be justified at the appeal stage by the special features of the proceedings at issue, having regard to the nature of the domestic appeal system, the scope of the appellate court's powers and to the manner in which the applicant's interests were actually presented and protected before the court of appeal, particularly in the light of the nature of the issues to be decided by it (see *Constantinescu v. Romania*, no. 28871/95, § 53, ECHR 2000-VIII).

42. Unlike in the series of cases in which the Court found a violation of Article 6, where an appellate court called upon to examine a case as to the facts and the law and to make a full assessment of the question of the applicant's guilt or innocence failed to hear the interested person, in the case currently under examination the Supreme Court did not re-try the case on the merits but only on points of law and, under the Criminal Procedure Code, it was not obliged to hear the applicant or to re-examine the evidence (contrast, among many other cases, *Ieremeiov v. Romania (no. 1)*, no. 75300/01, § 28, 24 November 2009; *Sinichkin v. Russia*, no. 20508/03, § 32, 8 April 2010; *Dănilă v. Romania*, no. 53897/00, § 35, 8 March 2007;

Constantin and Stoian v. Romania, nos. 23782/06 and 46629/06, § 60, 29 September 2009; and *Sándor Lajos Kiss v. Hungary*, no. 26958/05, § 22, 29 September 2009).

Therefore, no issue arises under Article 6 § 1 of the Convention.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. On the alleged violation of Article 34 of the Convention

43. The applicant complained in substance that the State had failed to ensure his right of individual petition, guaranteed by Article 34 of the Convention, in that the Iaşi and Jilava prison authorities had refused to allow his requests for photocopies of documents from his prison file and for envelopes for correspondence.

44. The Court notes that the applicant's repeated requests to receive envelopes and stamps were answered positively by the authorities more often than not. On the few occasions when he had to raise the issue with the courts, under Law no. 275, his complains were examined on the merits, in the light of the evidence in the file. The Court noted only one occasion, on 3 July 2007, when the applicant's request for envelopes was allegedly not responded to by the authorities; moreover, the Court fails to discern any negative consequences suffered by the applicant as a result of the alleged interference with his right of petition. In fact, the applicant was able to adduce before the Court the necessary evidence to enable it to thoroughly examine all the complaints raised.

45. In the light of all the material in its possession, the Court finds that the facts of the case do not disclose any appearance of a violation of the rights and freedoms guaranteed by Article 34 of the Convention.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

D. On the other alleged violations

46. The applicant complained about ill-treatment by the prosecutor during the criminal investigation. However, the applicant became aware of the outcome of the domestic proceedings on 4 December 1999 but only brought the complaint to the Court's attention 15 July 2005, that is, more than six months after the date of the final domestic decision (see *Andrita v. Romania* (dec.), no. 67708/01, §§ 39, 40, 27 January 2009).

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

47. Lastly, the applicant complained under Article 8 of the Convention of an infringement of his right to correspondence due to the fact that an envelope addressed to him had been opened by the director of the Iaşi

Prison on 25 January 2008. He lodged this complaint with the Court on 11 July 2010, thus failing to observe the six-month rule.

It follows that this complaint has also 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