



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

THIRD SECTION

CASE OF ENĂȘOAIIE v. ROMANIA

(Application no. 36513/12)

JUDGMENT

STRASBOURG

4 November 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Enășoaie v. Romania,

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

Josep Casadevall, *President*,

Alvina Gyulumyan,

Dragoljub Popović,

Luis López Guerra,

Johannes Silvis,

Valeriu Grițco,

Iulia Antoanella Motoc, *judges*,

and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 14 October 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 36513/12) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian national, Mr Gheorghe Enășoaie (“the applicant”), on 18 May 2012.

2. The applicant was represented by Mr I. Popa, a lawyer practising in Bacău. The Romanian Government (“the Government”) were represented by their Agent, Ms C. Brumar, from the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the physical conditions of his detention, including the lack of separation between smokers and non-smokers in Bacău Police Department’s Arrest and Prison, the transport conditions to court, and the lack of separation from smokers in the courthouse cells, had breached his rights guaranteed by Article 3 of the Convention.

4. On 19 June 2013 his complaints under Article 3 of the Convention were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1960 and lives in Roman.

Physical conditions of detention and conditions of transport

6. On 29 September 2011 the applicant was arrested after criminal proceedings had been opened against him for bribe taking. On the same date he was detained in Bacău Police Department's detention facility.

7. On 29 November 2011 he was moved to Bacău Prison.

8. On 20 June 2012 he was released. The criminal proceedings opened against him are still pending before the domestic courts.

1. The applicant's account

9. In Bacău Police Department's detention facility and Bacău Prison the applicant had to share a cell with smokers, even though he was a non-smoker and was suffering from a heart condition. He was unable to rest because the other detainees would smoke continuously from 7 a.m. to 2 p.m., and the cell would be covered by thick smoke.

10. The cell did not have enough furniture, and lacked coat hangers, shelves and cupboards. Clothes had to be stored on the floor, under beds, where no cleaning was carried out. The bathrooms lacked shelves and privacy, as the washing area and toilet facilities were not separate. In addition, the cell was damp, measured 15 sq. m., had a volume of 50 cubic metres, contained six beds, and was occupied by ten detainees. Cleaning and dehumidification materials were provided by his family, and in the absence of any action on the part of the prison authorities, he and the other detainees had to clean the cell themselves. The cell was not heated during the cold season, and as a result of the extreme cold the applicant had to ask his family to provide him with warmer bed linen. Also, the cell was infested with fleas, lice, bed bugs and mosquitoes, but the detainees were not allowed to disinfect it, even at their own expense.

11. The detention facilities did not provide detainees with any areas for washing, drying or cleaning their clothes. He was forced to wear dirty clothes, or if he did wash them, he had to wear them damp.

12. The bed linen provided by the authorities was unusable, was not suitable for the time of year and was not changed during the entire time he was detained.

13. Warm water was available twice a week for two hours each time therefore not all detainees could wash. He was unable to shave on a daily basis. Detainees did not have access to a barber, toiletries were not provided by the authorities and he had to purchase shaving products at his own expense.

14. The food was poor, insufficient and served in unhygienic conditions by detainees not wearing the appropriate equipment for serving food. The cutlery and plates were rusty and dirty, and the cell did not have a table and chairs for detainees to be able to sit down and eat their meal.

15. He was taken out of his cell for a walk only twice a week for thirty minutes; between ten or twenty inmates would be in the prison courtyard at a time. The courtyard was covered by a metal mesh, measured 25 sq. m, had no bathroom facilities and did not receive any sunlight.

16. The applicant was transported to and from court and was held in the courthouse cells with smokers.

2. The Government's account

17. In Bacău Police Department's detention facility the applicant was detained in a cell which measured 12.82 sq. m and contained four beds. The cell had central heating and was ventilated. The sanitary facilities were outside the cell and were accessible to everyone twenty-four hours a day. Detainees had access to a shower, a sink, and a toilet that was separate from the rest of the bathroom. They were allowed to shower and do their laundry twice a week.

18. In Bacău Prison the applicant was detained in six different cells. Five of them were in the infirmary.

19. From 29 November to 5 December 2011 the applicant was detained in a cell which measured 26.09 sq. m and contained twenty-three beds. From 23 February to 7 May 2012 he was detained in a cell which measured 33.05 sq. m and contained eight beds. From 8 to 14 May 2012 he was detained in a cell which measured 26.61 sq. m and contained nine beds. From 15 to 28 May 2012 he was detained in a cell which measured 32.09 sq. m and contained six beds.

20. All the detention cells had central heating, sanitary facilities, windows, electricity and were furnished. The beds had mattresses, pillows, bed linen and blankets provided by the detention facility. Detainees were also allowed to receive bed linen from their families.

21. Detainees had unlimited access to cold water. They also had access to warm water every day, based on a pre-approved rota.

22. The cells were heated daily during the cold season from 5 to 9.30 a.m. and 7 to 11 p.m.

23. They were disinfected three times a year or whenever needed, by specialist contractors. In addition, detainees were provided with cleaning materials and had a statutory duty to clean their cells. They were also provided with toiletries for their personal hygiene. Starting from December 2011 each individual had to sign for the toiletries they were given.

24. The detention facilities had cells assigned exclusively to non-smoking detainees.

25. Without providing supporting documents, the Government submitted to the Court that when the applicant had been transferred to Bacău Prison, he had declared that he was a smoker. In addition, on 6 and 16 December 2011 and 8 May 2012 he had purchased cigarettes, and on 13 December 2011 he had bought lighters.

26. The applicant was transferred only to courthouse cells and not to any other detention facilities. The vehicles had windows and heating.

27. As a general rule, detainees were forbidden from smoking during transfers. Smokers were separated from non-smokers in the courthouse cells.

28. Between 14 December 2011 and 20 June 2012 the applicant was transferred sixteen times to and from court, for distances of 2 and 62 kilometers.

II. RELEVANT DOMESTIC LAW

29. Excerpts from the relevant domestic legislation and international reports – namely Law no. 275/2006 on the serving of prison sentences; the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“CPT”); and Recommendation Rec(2006)2 of the Committee of Ministers of the Council of Europe to member States – on prison conditions are given in the cases of *Bragadireanu v. Romania* (no. 22088/04, §§ 73-75, 6 December 2007), *Artimenco v. Romania* (no. 12535/04, §§ 22-23, 30 June 2009), and *Iacov Stanciu v. Romania* (no. 35972/05, §§ 116-29, 24 July 2012).

30. In its report (CPT/Inf (2011) 31) published on 24 November 2011 following a visit from 5 to 16 September 2010 to a number of detention facilities in Romania, the CPT expressed concerns over the limited living space available to prisoners and the insufficient space provided for by the regulations in place at that time.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

31. The applicant complained about the physical conditions of his detention, including the lack of separation between smokers and non-smokers, in Bacău Police Department’s detention facility and Bacău Prison, the transport conditions between those facilities and court, and the conditions of detention in the courthouse cells. He relied 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.”

A. Physical conditions of detention, including the lack of separation between smokers and non-smokers

1. Admissibility

32. The Government submitted that the application could be dismissed as abusive because the applicant had attempted to mislead the Court. In particular, although he had complained of being detained with smokers, he had failed to inform the Court that when he had been transferred to Bacău Prison he had declared that he was a smoker and had purchased cigarettes and lighters.

33. The Government also contended that the complaint concerning the physical conditions of detention, including the lack of separation between smokers and non-smokers, was manifestly ill-founded, because the applicant had spent limited time in cells which afforded him less than 4 sq. m of living space. In addition, the prison authorities had provided him with adequate conditions of detention.

34. The applicant disagreed. He further argued that the Government had not submitted any document to the Court attesting that when he had been transferred to Bacău Prison he had declared that he was a smoker. He acknowledged that he had bought cigarettes and lighters on the dates indicated by the Government; however, he argued that he had used those items to pay the young detainees who would help him clean his room on account of his medical condition.

35. The applicant also submitted that he had never been informed that the detention facilities had cells for non-smokers. In any event, all the cells had had smokers in them.

36. The Court notes that the applicant's complaints concern a wide range of physical conditions of detention and are not limited solely to a lack of separation between smokers and non-smokers. In addition, it has not been established with sufficient certainty that this part of the application was knowingly based on untrue facts or that the applicant intended to mislead the Court (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, 30 September 2014).

37. It therefore rejects the Government's plea that the application be dismissed as abusive.

38. That being so, the Court considers that the part of the applicant's complaint which concerns the lack of separation between smokers and non-smokers in both detention facilities is in any event inadmissible (see *Budaca v. Romania*, no. 57260/10, § 33, 17 July 2012).

39. In particular, the Court notes that the applicant did not lodge any complaint before the relevant non-judicial or judicial authorities concerning the lack of separation between smokers and non-smokers. In addition, he acknowledged that during his detention he had purchased cigarettes and lighters on more than one occasion (see paragraph 34 above). While the

Government failed to submit to the Court a copy of the document containing the applicant's statement that he was a smoker (see paragraph 25 above), the applicant did not submit any proof to support his claim that he had needed the cigarettes and lighters for purposes other than smoking.

40. This part of the complaint is therefore manifestly ill-founded and must be dismissed pursuant to Article 35 §§ 3 and 4 of the Convention.

41. Finally, the Court notes that according to the available evidence, the applicant had faced overcrowded conditions for substantial periods of his detention. In these circumstances, the Court cannot accept the Government's submission that the applicant's remaining part of the complaint about the physical conditions of his detention in Bacău Police Department's detention facility and Bacău Prison is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

42. The applicant submitted that his cell in Bacău Police Department's detention facility had contained six beds, and that he had had to share it with between five and nine other detainees. The communal sanitary facilities had been shared by all the detainees, even though there had only been one sink, one shower and a squat toilet. The curtain separating the toilet from the rest of the bathroom had been missing constantly.

43. The applicant contested the information submitted by the Government in respect of Bacău Prison (see paragraph 19 above) and submitted that in reality there had been more beds in the cells. In addition, the number of detainees had on occasion exceeded the number of available beds.

44. The applicant also submitted that warm water had been available only twice a week for two hours. Also, during his detention he had not seen any disinfection work carried out by specialist contractors. Moreover, the detainees had had to buy all the cleaning materials for the cells.

45. The Government, referring to their description of the detention conditions submitted to the Court (see paragraphs 17-28 above), contended that the applicant's conditions of detention had been adequate. Consequently, they did not meet the level of severity required by Article 3 of the Convention.

46. The Court reiterates that under Article 3 the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of execution of the measure of detention do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Valašinas v. Lithuania*, no. 44558/98, § 102,

ECHR 2001-VIII, and *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

47. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II).

48. A serious lack of space in a prison cell weighs heavily as a factor to be taken into account for the purpose of establishing whether the detention conditions described are “degrading” from the point of view of Article 3 (see *Karalevičius v. Lithuania*, no. 53254/99, § 39, 7 April 2005).

49. In the instant case, the applicant was detained from 29 September 2011 to 20 June 2012. Although the Government provided information to the Court concerning the periods of time the applicant was detained in Bacău Police Department’s detention facility and Bacău Prison, the size of some of the cells and the number of beds, they did not provide any details about the remaining cells or give precise information on the number of detainees the applicant shared them with on a daily basis. However, even at the occupancy rate put forward by the Government, the applicant’s living space during the periods he spent in detention seems to have been regularly below 4 sq. m and sometimes even as low as 1.13 sq. m, which falls short of the standards imposed by the Court’s case-law (see *Orchowski v. Poland*, no. 17885/04, § 122, ECHR 2009). The Court points out that these figures were even lower in reality, taking into account the space taken by beds and other items of furniture (see paragraphs 19 and 20 above).

50. Moreover, while it appears that on certain occasions the space available to the applicant was in excess of 4 sq. m, the Court is not convinced that the cells were properly heated, that detainees were provided with adequate cutlery or that they enjoyed sufficient outdoor exercise. In this connection, the Court notes that according to the available evidence, the Government failed to provide any information about the average temperature the heating system operated at or the cells. In addition, they did not clarify whether the applicant had been given adequate cutlery or whether he had enjoyed sufficient outdoor exercise (see paragraphs 14 and 15 above). Consequently, the Court can only conclude that during the applicant’s detention his cells were not properly heated, and that he did not receive adequate cutlery or sufficient outdoor exercise.

51. The Court has frequently found a violation of Article 3 of the Convention on account of the lack of personal space afforded to detainees and other unsatisfactory conditions (see for example *Toma Barbu v. Romania*, no. 19730/10, § 66, 30 July 2013).

52. In the case at hand, the Government have failed to put forward any argument that would allow the Court to reach a different conclusion.

53. Moreover, the applicant's submissions concerning the overcrowded and poor detention conditions correspond to the general findings by the CPT in respect of Romanian prisons (see paragraph 30 above).

54. There has accordingly been a violation of Article 3 of the Convention in that respect.

B. Conditions of transport and conditions of detention in the courthouse cells

55. The Government contended that during detainee transfers smoking was forbidden, and that in the courthouse cells smokers had been separated from non-smokers.

56. The applicant contended in his written observations to the Court that the vehicles had not been heated and that the sunroof had been permanently open because it had been broken. In addition, when it had rained or snowed water would leak into the vehicle. Furthermore, during transfers and in the courthouse cells smokers had not been separated from non-smokers.

57. The Court notes that there is disagreement between the parties as to the conditions of transport and the conditions in the courthouse cells the applicant had to face. It appears, however, that he was transferred repeatedly to and from court, and that on occasion that had entailed long journeys (see paragraph 28 above).

58. In addition, the Court notes that except for the applicant's submissions, there is no evidence in the file that during transfers or in the courthouse cells detainees smoked or that there was no separation between smokers and non-smokers. In addition, it reiterates that the applicant acknowledged that he had purchased cigarettes and lighters on more than one occasion (see paragraph 34 above). Also, it notes that the applicant failed to raise any complaint with the relevant domestic authorities about the conditions of transport and the conditions of detention in the courthouse cells. While the Court doubts the efficiency of such a complaint, it would have served the applicant as evidence to substantiate his claims.

59. In these circumstances, the Court considers that the applicant's complaint concerning the lack of separation between smokers and non-smokers during his transfers to and from court and in the courthouse cells is manifestly ill-founded and must be dismissed pursuant to Article 35 §§ 3 and 4 of the Convention.

60. In respect of the applicant's other allegations concerning the conditions of transport, the Court notes that they were raised after the application was communicated to the Government, and did not therefore fall within the scope of the present application.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

62. The applicant claimed 1,081 euros (EUR) in respect of pecuniary damage and EUR 6,000 in respect of non-pecuniary damage. He argued that the amount claimed for pecuniary damage was to cover the cost of his medication, cigarettes and the cleaning materials used to clean his cells.

63. The Government argued that the applicant had not submitted any evidence in support of his claim for pecuniary damage and that it should therefore be dismissed. Further, they argued that the sum claimed by the applicant in respect of non-pecuniary damage was excessive.

64. The Court shares the Government’s view that the applicant had not submitted any documents to support the amount claimed for pecuniary damage. Consequently, it finds no reason to award the applicant any sum under that head.

65. The Court considers, however, that the applicant must have suffered distress as a result of the physical conditions of his detention. Consequently, making an assessment on an equitable basis, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

66. The applicant also claimed EUR 225 for the costs and expenses incurred in connection with his legal representation before the Court. He submitted an invoice of 1,000 Romanian lei (RON) (approximately EUR 225) for lawyer fees.

67. The Government considered that the applicant should be awarded costs and expenses incurred before the Court only in so far as they have been shown to have been necessary and linked to his case.

68. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant the amount claimed in full.

C. Default interest

69. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* part of the complaint under Article 3 of the Convention concerning the physical conditions of the applicant's detention in Bacău Police Department's detention facility and Bacău Prison admissible, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 225 (two hundred and twenty-five euros), plus any tax that may be chargeable, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 November 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Deputy Registrar

Josep Casadevall
President