



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

FOURTH SECTION

CASE OF MIHĂILESCU v. ROMANIA

(Application no. 72608/14)

JUDGMENT

STRASBOURG

24 September 2019

This judgment is final but it may be subject to editorial revision.

In the case of Mihăilescu v. Romania,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

Faris Vehabović, *President*,

Iulia Antoanella Motoc,

Péter Paczolay, *judges*,

and Andrea Tamietti, *Deputy Section Registrar*,

Having deliberated in private on 3 September 2019,

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

PROCEDURE

1. The case originated in an application (no. 72608/14) 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 Gabi-Ainăld Mihăilescu (“the applicant”), on 2 October 2014.

2. The Romanian Government (“the Government”) were represented by their Agent, Ms C. Brumar, from the Ministry of Foreign Affairs.

3. On 13 October 2015 notice of the application was given to the Government.

4. The Government objected to the examination of the application by a Committee. After having considered the Government’s objection, the Court rejects it.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1971.

6. In 2012 the Bacău County Court convicted the applicant of human trafficking and sentenced him to ten years’ imprisonment.

7. The applicant was released in November 2018 after he had served the prison sentence in Iași, Bacău and Vaslui Prison. He had transited through several other prisons in order to take part in judicial proceedings and for medical reasons.

A. The conditions of the applicant's detention in Jilava Prison

8. The applicant was held in a transit cell at Jilava Prison between 6 and 9 June 2014 and between 15 and 17 July 2014.

1. The applicant's account

9. The applicant complained that he had been held in a small, unventilated, smoking cell.

2. The Government's account

10. The Government submitted that the applicant had been held in a cell measuring up to 27.24 square meters, where smoking had been allowed. The cell had been fitted with eighteen beds but had been permanently occupied by four to sixteen detainees.

B. The conditions of the applicant's detention in Tulcea Prison

11. The applicant was held in a transit cell at Tulcea Prison between 10 and 26 June 2014 and between 17 and 21 July 2014.

1. The applicant's account

12. The applicant complained that he had been held in a small, unventilated, smoking cell with ten other detainees, in conditions of poor hygiene, while being forced to sleep on old and rotten mattresses.

13. He had lodged several complaints with the post-sentencing judge on the basis of Law no. 254/2013 on the execution of sentences, alleging that at Tulcea Prison he had been held in a cell in poor sanitary condition on the third floor, despite his permanent disability. He also added that he had not received food suited to his medical needs.

14. All his complaints had been dismissed by the post-sentencing judge as being out of time.

2. The Government's account

15. The Government submitted that the applicant had been held in two different cells measuring up to 25.39 square meters, where smoking had been allowed. The cells had been fitted with fifteen beds but had been permanently occupied by ten detainees.

16. Concerning the food the applicant had received, the standard established by an Order of the Ministry of Justice (OMJ) had been respected, with the detainees having been given a diversified menu. Moreover, the sanitation of the rooms had been taken care of, either periodically or at the inmates' request.

C. The conditions of the applicant's detention in Vaslui Prison

17. On 22 July 2014 the applicant was transferred to Vaslui Prison.

1. The applicant's account

18. The applicant had filed several complaints with the post-sentencing judge attached to Vaslui Prison complaining about the conditions of detention and that he had not been entitled to a personal assistant.

19. His first complaint had been dismissed as unsubstantiated. In relation to the right to a personal assistant, the applicant's complaint had been upheld by a decision of Vaslui County Court of 22 April 2015 and Vaslui Prison had been compelled to assign an inmate to provide the applicant with assistance. Nonetheless, as the court had limited territorial competence, such a measure could only be taken for the territory falling within its jurisdiction.

2. The Government's account

20. The Government submitted that between 22 July and 18 September 2014, the applicant had been held in a cell where smoking had been allowed, which had been fitted with ten beds and which had been occupied by inmates suffering from chronic diseases.

21. On 18 September 2014 the applicant had been transferred to another cell fitted with four beds because he had not got along with the other detainees. In that cell the inmates had constantly had cold running water available to them and hot water had been available twice a week, which had been sufficient for their sanitary needs. Furthermore, all furniture had been new, including the mattresses and bed accessories. The applicant had received food in accordance with his dietary requirements.

22. The Government also noted that the applicant had been held in cells where he had had over 3 square meters of personal space; the sole exception was the period between 12 June and 29 July 2015, when the cell where he had been held had afforded him only 2.2 square meters of personal space.

23. As regards his complaints concerning passive smoking, the Government indicated that according to documents that had been submitted by the National Prison Administration (*Administrația Națională a Penitenciarelor* – “ANP”), the applicant had declared himself to be either a smoker or a non-smoker, depending on the type of cell in which he had been placed. He had not complained to the prison staff of any potential for passive smoking and had even bought cigarettes from the prison store. Nonetheless, in October 2015, once he had been moved to a cell where smoking was forbidden, he had ceased buying tobacco products.

D. The conditions of the applicant's detention in Bacău Prison

24. The applicant was held in a transit cell at Bacău Prison from 24 to 26 September 2014.

1. The applicant's account

25. The applicant claimed to have been held in an overly crowded cell without adequate sanitary facilities.

26. He had lodged a complaint with the post-sentencing judge attached to Bacău Prison, protesting about the conditions in which he had been detained. His complaint had been rejected by the judge as unsubstantiated.

2. The Government's account

27. The Government submitted that the material conditions of the applicant's detention in Bacău Prison were the same as those described in the application no. 46546/12 which had been lodged by the applicant (see *Mihăilescu v. Romania*, no. 46546/12, §§ 13-21, 1 July 2014).

E. Assistance for the applicant while in transit prisons

28. On 29 October 2013 a medical commission, set up under Law no. 448/2006 regarding the protection and the promotion of the rights of disabled persons, issued a certificate attesting that the applicant had been classified as a person with a permanent severe physical disability on account of his severe visual impairment. The medical panel which had examined the applicant had granted him the right to have a personal care assistant.

1. The applicant's account

29. The applicant submitted that while in transit in Slobozia, Jilava and Iași Prisons he had had no personal assistant. He claimed that he had been dependent on other inmates for assistance with his daily activities, often suffering from degrading and dehumanising treatment.

30. The applicant had lodged a complaint with the post-sentencing judge attached to Jilava Prison, protesting that he had not had the help of a personal assistant, that he had been forced to share an overcrowded cell with smokers and that the conditions in which he had been transported had been inadequate.

31. His complaint had been dismissed as unsubstantiated, the judge having considered that the short period of time that he had spent at Jilava Prison had not been long enough to justify his claims of mistreatment.

2. *The Government's account*

32. The Government admitted that in June and July 2014, while the applicant had been held in transit in Slobozia and Jilava Prisons for periods of time lasting between two and four days on each occasion, he had had no personal assistant, as another inmate (who had been appointed to assist the applicant) could not be transferred with him.

33. Concerning Iași Prison, the Government submitted that the applicant had not been held in transit but he had served there a part of the sentence which had been covered by the judgment given in application no. 11220/14 (see *Mihăilescu v. Romania*, no. 11220/14, 14 February 2017).

F. The conditions of the applicant's transportation between prisons

1. *The applicant's account*

34. The applicant claimed that the conditions of his transportation between prison facilities had been inhuman and degrading. The vans had been severely overcrowded and without ventilation. Moreover, some of the detainees had smoked in the vans.

35. He had lodged a complaint with the post-sentencing judge. The judge had rejected his claim as unsubstantiated, arguing that the applicant had not submitted a medical certificate to support his claim.

2. *The Government's account*

36. The Government noted that the vehicles used for transport had supported the number of detainees without exceeding their capacity, and had had proper ventilation and anatomical chairs. Additionally, smoking had been forbidden in the vans.

II. RELEVANT DOMESTIC LAW

37. Relevant excerpts from Law no. 254/2013 on the rights of detainees and Ministry of Justice Order no. 433/2010 on mandatory rules for serving of prison sentences are set out in *Rezmiveș and Others v. Romania*, (nos. 61467/12 and 3 others, §§ 27 and 34, 25 April 2017).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

38. The applicant complained about the conditions of his detention in Vaslui, Jilava, Tulcea and Bacău Prisons. He complained of overcrowding, poor quality of food and the non-segregation of smokers from non-smokers.

39. He also complained that despite the fact that his medical condition required direct and constant assistance from another person in his daily activities, he had not had the help of a personal care assistant while in transit in Slobozia and Jilava Prisons.

40. He finally complained about the conditions of his transportation between detention facilities.

41. 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. Admissibility

1. *On the repetitive nature of the claims regarding Bacău Prison*

42. The Government submitted that the case should be declared partially inadmissible, considering that the time-frame in which the events had allegedly taken place had been the same as that which had been covered by the judgment given on 1 July 2014 in application no. 46546/12 (*Mihăilescu v. Romania*), in which the Court had already found a violation of Article 3 of the Convention regarding the material conditions of detention which the applicant experienced at Bacău Prison.

43. The applicant did not comment on this point.

44. The Court notes that the period of time in which the applicant was in transit at Bacău Prison (between 24 and 26 September 2014 – see paragraph 24 above) does not coincide with the periods of time referred to in application no. 46546/12 (namely from 6 March to 6 November 2012 and from 13 November 2012 to 2 April 2013 – see *Mihăilescu v. Romania*, no. 46546/12, § 13, 1 July 2014).

45. The Court finds that as regards this complaint, the application is not inadmissible within the meaning of Article 35 § 2 (b) of the Convention.

46. It therefore dismisses the Government’s preliminary objection in this regard.

2. *Non-compliance with the six-month time limit*

47. The Government submitted that all the transfers between incarceration units were separate incidents which could not be regarded as giving rise to a continuous situation.

48. Accordingly, only the transfers that had taken place in the six months before the application had been submitted (that is, after 2 April 2014) could be taken into consideration, therefore making the request inadmissible in respect of Article 35 § 1 of the Convention.

49. The applicant did not comment on this point.

50. The Court observes that the applicant complained about the transfers that had taken place from 6 June 2014 onwards (see paragraph 8 above).

51. Therefore, it dismisses the Government's preliminary objection in this regard.

3. Non-exhaustion of all available domestic remedies

52. The Government submitted that the applicant had not exhausted all available domestic remedies pertaining to the lack of a personal assistant, as he could have sought such help from the beginning of his detention.

53. The applicant did not comment on this point.

54. The Court notes that, keeping in mind the applicant's general health and given the vulnerable and difficult situation in which he finds himself because of his permanent disability, as attested by a medical certificate (see paragraph 28 above), he should have been entitled to the help of a personal care assistant, without having to make a special request.

55. Additionally, the Court notes that the applicant lodged a complaint with the post-sentencing judge attached to Jilava Prison, and that the complaint was dismissed (see paragraphs 30 and 31 above).

56. The Court therefore dismisses the Government's plea of non-exhaustion of domestic remedies.

4. Conclusion

57. The Court notes that the application is not 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.

B. Merits

1. The parties' submissions

58. The Government submitted that the applicant had been detained in cells where the capacity had been complied with and not exceeded; he had received appropriate food as required by his medical condition; he had been provided with the means to maintain proper hygiene; he had received the necessary medical care; and the facilities' personnel had monitored his condition closely.

59. Regarding the conditions of transportation and the absence of a personal assistant, the Government submitted that all reasonably expected measures had been taken.

60. Moreover, they argued that after the decision of Vaslui County Court of 22 April 2015, the applicant had been attended by a personal assistant picked from among the inmates of Vaslui Prison (see paragraph 19 above).

61. In relation to the lack of a personal assistant while in transit prisons, the Government submitted that the applicant had had the assistance of fellow inmates.

62. The applicant maintained his complaint.

2. *The Court's assessment*

(a) **General principles**

63. The Court reiterates that Article 3 of the Convention requires the State to ensure that prisoners are detained in conditions which are compatible with respect for human dignity, that the manner and method in which the detention is executed do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI, and *Melnītis v. Latvia*, no. 30779/05, § 69, 28 February 2012).

64. Taking into account the important role played by the minimum personal space per detainee in a multi-occupancy setting in the assessment of conditions of detention, the Court also refers to its principles concerning prison overcrowding set out in its case-law (see, amongst other authorities, *Muršić v. Croatia* [GC], no 7334/13, §§ 96-101, 20 October 2016).

65. The Court has also held that detaining a disabled person in a prison where he could not move around and, in particular, could not leave his cell independently, amounted to degrading treatment (see *Vincent v. France*, no. 6253/03, § 103, 24 October 2006). Similarly, the Court has found that leaving a person with a serious physical disability to rely on his cellmates for assistance with using the toilet, bathing and getting dressed or undressed contributed to a finding that the conditions of detention amounted to degrading treatment (see *Engel v. Hungary*, no. 46857/06, §§ 27 and 30, 20 May 2010; *Price v. the United Kingdom*, no. 33394/96, § 30, ECHR 2001-VII; *Mircea Dumitrescu v. Romania*, no. 14609/10, §§ 56-65, 30 July 2013; and *Semikhvostov v. Russia*, no. 2689/12, §§ 84-85, 6 February 2014).

66. The Court has also held that overcrowding, poor hygiene, poor quality of food and medical care are general characteristics of Romanian prisons (see *Iacov Stanciu v. Romania*, no. 35972/05, § 175, 24 July 2012).

67. The lack of separation between smokers and non-smokers has also been identified in the Court's case law as one of the existing problems in

Romanian prisons (see *Elefteriadis v. Romania*, no. 38427/05, § 54, 25 January 2011, and *Florea v. Romania*, no. 37186/03, § 61, 14 September 2010).

68. The conditions in which detainees are transported between prisons have also been recognised as a recurrent issue in Romania (see *Retunșcaia v. Romania*, no. 25251/04, §§ 78-80, 8 January 2013, and *Viorel Burzo v. Romania*, nos. 75109/01 and 12639/02, §§ 48-49 and 102, 30 June 2009).

(b) Application of these principles to the present case

i. On the issues of conditions of detention and minimum personal space

69. The Court observes from the material at its disposal that the personal space afforded to the applicant in Vaslui, Tulcea, Jilava and Bacău Prisons was less than 3 square meters. Moreover, much of the cell areas were taken up by beds (see paragraphs 10, 15 and 22 above). Additionally, in *Mihăilescu v. Romania* (no. 46546/12, § 56, 1 July 2014) the Court found that the applicant's living space in Bacău Prison have been regularly below 4 square meters and sometimes even as low as 1.8 square meters.

70. In the light of the above considerations, the Court finds that a strong presumption of a violation of Article 3 of the Convention arises in the present case on account of the fact that the applicant was detained in cells in which less than 3 square meters of personal space was available to him (see *Muršić*, cited above, § 137).

71. Considering the applicant's permanent visual impairment, there was a severe restriction on the possibility of his having sufficient freedom of movement and out-of-cell activities which could have alleviated the situation created by the scarce allocation of personal space (see *Muršić*, cited above, § 160). In particular, the applicant was not able to move freely within the detention facility, even if his detention arrangements had allowed for this, and his confinement to his cell led to a serious aggravation of his detention conditions.

72. Additionally, the Court observes that the applicant's medical condition was often overlooked or disregarded, as he was held in cells unsuited to disabled persons.

73. The foregoing considerations are sufficient to enable the Court to conclude that with regard to the issue of material conditions of detention and the personal space provided to the applicant, there has been a violation of Article 3 of the Convention.

ii. On the absence of a personal assistant

74. From documents provided by the Government, the Court notes that the applicant was not officially entitled to the help of a personal assistant while in transit in Slobozia and Jilava Prisons (see paragraph 32 above).

75. The Court notes that while the applicant was in transit there, he was left unaided, despite the medical certificate attesting his condition (see paragraph 28 above). This leads to a strong presumption of a violation of Article 3.

76. Even assuming that the applicant had the assistance of fellow inmates, the Court is particularly concerned about the quality of their assistance, as they had neither been trained nor had the necessary qualifications to provide such assistance.

77. The Court has already found a violation of Article 3 of the Convention in circumstances where prison staff felt that they had been relieved of their duty to provide security and care to more vulnerable detainees, whose cellmates had been made responsible for providing them with daily assistance or, if necessary, with first aid (see *Semikhvostov*, cited above, §§ 84-85; *Mircea Dumitrescu*, cited above, §§ 59-65 and *Kaprykowski v. Poland*, no. 23052/05, § 74, 3 February 2009).

78. It is clear that in the present case the help offered by the applicant's fellow inmates did not form part of any organised assistance by the State to ensure that the applicant was detained in conditions compatible with respect for his human dignity. Such help cannot therefore be considered suitable or sufficient.

79. In the light of all circumstances mentioned above, the Court is convinced that the neglect of the applicant while in transit in Slobozia and Jilava Prisons, aggravated by his severe visual impairment, amounted to "inhuman and degrading treatment" within the meaning of Article 3 of the Convention.

80. There has accordingly been a violation of this provision in this respect.

iii. The conditions of the applicant's transport between prisons

81. Taking into account the Court's findings concerning the applicant's conditions of detention as well as his lack of a personal assistant while in transit prisons, the Court considers that it is not necessary to examine the conditions of the applicant's transport between prison facilities.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. 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."

83. The applicant did not submit any claim for just satisfaction. The Court is therefore not called upon to make any award under Article 41 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in Vaslui, Jilava, Tulcea and Bacău Prisons and the lack of a personal assistant while in transit in Slobozia and Jilava Prisons;
3. *Holds* that there is no need to examine the complaint under Article 3 of the Convention concerning the conditions of the applicant's transportation between prison facilities.

Done in English, and notified in writing on 24 September 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Deputy Registrar

Faris Vehabović
President