



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

FOURTH SECTION

CASE OF KAYMAK AND OTHERS v. ROMANIA

*(Application no. 481/15 and 11 other applications -
see appended list)*

JUDGMENT

STRASBOURG

28 June 2018

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

In the case of Kaymak and Others v. Romania,

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

Vincent A. De Gaetano, *President*,

Georges Ravarani,

Marko Bošnjak, *judges*,

and Liv Tiggerstedt *Acting Deputy Section Registrar*,

Having deliberated in private on 7 June 2018,

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

PROCEDURE

1. The case originated in applications against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on the various dates indicated in the appended table.

2. The applications were communicated to the Romanian Government (“the Government”).

THE FACTS

3. The list of applicants and the relevant details of the applications are set out in the appended table.

4. The applicants complained of the inadequate conditions of their detention.

THE LAW

I. JOINDER OF THE APPLICATIONS

5. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

6. The applicants complained of the inadequate conditions of their detention. They relied on Article 3 of the Convention, which reads as follows:

Article 3

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

7. In applications nos. 22155/15, 25665/15 and 39596/15 the Government raised a preliminary objection of failure to comply with the six-month time-limit claiming that the applicants’ complaints in so far as they concerned the initial period of their detention had been lodged out of the six-month time-limit.

8. The Court observes that the applicant’s complaint in application no. 22155/15, concerning the period of detention in Jilava Prison, which ceased on 17 March 2006, date of his release, was lodged with the Court on 22 May 2015, that is, more than six months after his release.

9. The Court notes that in application no. 25665/15 the applicant’s complaint regarding his initial detention in Aiud Prison, which ceased on 7 December 2010 by his transfer to another prison facility in respect of which he did not raise any complaint, was lodged with the Court on 15 June 2015, that is, more than six months after the transfer.

10. The Court further notes that in application no. 39596/15 the applicant’s complaint regarding his initial detention in Iași Prison, which ceased on 29 May 2012 by his transfer to another prison facility in respect of which he did not raise any complaint, was lodged with the Court on 7 December 2015, that is, more than six months after the transfer.

11. Therefore, the Court accepts the Government’s objection and finds that these parts of the applications nos. 22155/15, 25665/15 and 39596/15 were lodged outside of the six-month time-limit and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

12. The Court notes that the applicants were kept in detention in poor conditions. The details of the applicants’ detention are indicated in the appended table. The Court refers to the principles established in its case-law regarding inadequate conditions of detention (see, for instance, *Muršić v. Croatia* [GC], no. 7334/13, §§ 96-101, ECHR 2016). It reiterates in particular that 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 and may disclose a violation, both alone or taken together with other shortcomings (see *Muršić*, cited above, §§ 122-141, and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 149-159, 10 January 2012).

13. In the leading case of *Rezmiveș and Others v. Romania* (nos. 61467/12 and 3 others, 25 April 2017) the Court already found a violation in respect of issues similar to those in the present case.

14. Having examined all the material submitted to it, as well as the Government’s objection concerning the application of the six-month rule to the continuous situation of the applicants’ conditions of detention in some

of the cases, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. Having regard to its case-law on the subject, the Court considers that in the instant cases the applicants' conditions of detention were inadequate.

15. These complaints are therefore admissible and disclose a breach of Article 3 of the Convention.

III. REMAINING COMPLAINT

16. In application no. 481/15, the applicant also complained under Article 3 of the Convention about the inadequate conditions of his detention in various prisons from 6 June 2014 to 2 July 2015.

17. The Court has examined the application and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, the complaint either does not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or does not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto. It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. 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.”

19. Regard being had to the documents in its possession and to its case-law (see, in particular, *Rezmiveş and Others v. Romania*, nos. 61467/12 and 3 others, 25 April 2017), the Court considers it reasonable to award the sums indicated in the appended table.

20. 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. *Decides* to join the applications;
2. *Declares* the complaints concerning the inadequate conditions of detention as set out in the appended table, admissible and the remainder of the applications nos. 481/15, 22155/15, 25665/15 and 39596/15, concerning the applicants' detention periods which ended on 2 July 2015, 17 March 2006, 7 December 2010 and 29 May 2012 respectively, inadmissible;
3. *Holds* that these complaints disclose a breach of Article 3 of the Convention concerning the inadequate conditions of detention;
4. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (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.

Done in English, and notified in writing on 28 June 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Acting Deputy Registrar

Vincent A. De Gaetano
President

APPENDIX

List of applications raising complaints under Article 3 of the Convention
(inadequate conditions of detention)

No.	Application no. Date of introduction	Applicant name Date of birth	Facility Start and end date Duration	Sq. m. per inmate	Specific grievances	Amount awarded for pecuniary and non- pecuniary damage and costs and expenses per applicant (in euros) ¹
1.	481/15 18/12/2014	Kayhan Kaymak 08/03/1975	Rahova Prison 02/07/2015 pending More than 2 years and 10 months and 15 days	1.93-3.26 m ²	Overcrowding, lack of or insufficient natural light, constant electric light, lack of or inadequate hygienic facilities, no or restricted access to toilet	3,000
2.	9716/15 03/12/2015	Ionuț-Valentin Mavru 05/11/1986	Tulcea Prison 17/04/2013 pending More than 5 years and 5 days	2.82 m ²	Overcrowding, bunk beds, lack of or insufficient natural light, inadequate temperature, infestation of cell with insects/rodents, lack or inadequate furniture, lack or insufficient quantity of food, mouldy or dirty cell, lack of or poor quality of bedding and bed linen, lack of or insufficient physical exercise in fresh air	5,000

¹ Plus any tax that may be chargeable to the applicants.

No.	Application no. Date of introduction	Applicant name Date of birth	Facility Start and end date Duration	Sq. m. per inmate	Specific grievances	Amount awarded for pecuniary and non- pecuniary damage and costs and expenses per applicant (in euros) ¹
3.	18424/15 25/06/2015	Irimie Cornelea 24/12/1959	Miercurea Ciuc Prison 08/03/2011 pending More than 7 years and 1 month and 15 days	1.4 - 2.66 m ²	Overcrowding, inadequate temperature, infestation of cell with insects/rodents, lack of fresh air, lack of or poor quality of bedding and bed linen, lack or inadequate furniture, lack or insufficient quantity of food, lack of or inadequate hygienic facilities, lack of or insufficient physical exercise in fresh air	5,000
4.	22155/15 22/05/2015	Carmeluş Constantin 28/05/1973	Bucharest Police Arrest, Jilava, Mărgineni, Galaţi, Rahova, Giurgiu, Miercurea Ciuc and Ploieşti Prisons 31/12/2006 to 30/09/2016 9 years and 9 months and 1 day	1.43-4.34 m ²	Overcrowding (save for the period from 17/02/2007 to 12/04/2007 in Jilava Prison), lack of or inadequate hygienic facilities, infestation of cell with insects/rodents, lack of or restricted access to leisure or educational activities, poor quality of food	5,000
5.	25665/15 15/06/2015	Ionuţ Andrei 08/12/1988	Aiud Prison 10/11/2011 to 02/09/2016 4 years and 9 months and 24 days	1.7-3.73	Overcrowding (save for the period from 17/04/2015 to 16/03/2016 in Aiud Prison), inadequate temperature, lack of or insufficient natural light, lack of or insufficient physical exercise in fresh air, lack of or poor quality of bedding and bed linen, lack of or inadequate hygienic facilities, lack or inadequate furniture, lack or insufficient quantity of food	3,000

No.	Application no. Date of introduction	Applicant name Date of birth	Facility Start and end date Duration	Sq. m. per inmate	Specific grievances	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros) ¹
6.	39596/15 07/12/2015	Ionuț Munteanu 12/01/1992	Iași Prison 27/01/2013 to 06/12/2016 3 years and 10 months and 10 days	1.28-1.99 m ²	Overcrowding, infestation of cell with insects/rodents, lack or insufficient quantity of food, mouldy or dirty cell	3,000
7.	42995/15 03/03/2016	Gerald-Mirel Toilă 08/10/1971	Craiova Prison 10/10/2014 pending More than 3 years and 7 months and 15 days	1.21 - 3.2 m ²	Overcrowding (save for the periods from 06/11/2014 to 10/11/2014, from 20/11/2014 to 24/11/2014 and from 06/01/2015 to 10/01/2015), bunk beds, infestation of cell with insects/rodents, lack of fresh air, lack of or inadequate hygienic facilities, lack of or insufficient physical exercise in fresh air, lack or inadequate furniture, no or restricted access to shower, no or restricted access to warm water	3,000
8.	56966/15 07/12/2015	Eugen-Árpád Nagy 23/04/1977	Miercurea Ciuc Prison 30/10/2011 to 06/03/2017 5 years and 4 months and 7 days	0.77-1.68 m ²	Overcrowding, lack of or inadequate hygienic facilities, lack of or insufficient natural light, lack or inadequate furniture	5,000
9.	6300/16 18/01/2016	Marin Georgescu	Craiova Prison 22/12/2011 pending More than 6 years and 5 months and 4 days	1.42-4.16 m ²	Overcrowding (save for the period from 04/08/2012 to 21/08/2012 in Craiova Prison), infestation of cell with insects/rodents, lack of or inadequate hygienic facilities, lack of or	5,000

No.	Application no. Date of introduction	Applicant name Date of birth	Facility Start and end date Duration	Sq. m. per inmate	Specific grievances	Amount awarded for pecuniary and non- pecuniary damage and costs and expenses per applicant (in euros) ¹
					insufficient physical exercise in fresh air, lack or insufficient quantity of food, lack or inadequate furniture	
10.	11422/16 09/05/2016	Karol Fogarași 05/12/1972 represented by Irina Maria Peter Bucharest	Rahova, Giurgiu, Jilava and Găești Prisons 16/11/2010 to 10/09/2016 5 years and 9 months and 26 days	1.7-3.19 m ²	Overcrowding (save for the period in Găești Prison from 22/12/2014 to 31/08/2015), infestation of cell with insects/rodents, lack of or inadequate hygienic facilities, poor quality of food, no or restricted access to potable water, lack or inadequate furniture, lack of or insufficient physical exercise in fresh air	5,000
11.	16700/16 27/07/2016	Mihăiță Dumitriu 29/03/1986	Iași Prison 08/06/2011 pending More than 6 years and 11 months and 18 days	1.28-2.19 m ²	Overcrowding, lack of or insufficient natural light, lack or inadequate furniture	5,000
12.	17849/16 04/05/2016	George-Petru Baras 26/08/1984	Iași Prison 12/10/2015 to 22/04/2016 6 months and 11 days	1.3-5.8 m ²	Overcrowding, bunk beds, inadequate temperature, lack of or insufficient electric light, lack of fresh air, lack of or insufficient natural light, mouldy or dirty cell, no or restricted access to toilet, no or restricted access to shower	1,000