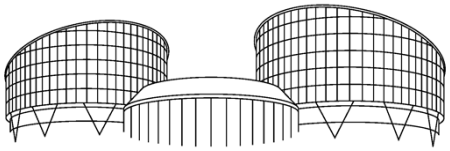

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF BRÂNDUŞE v. ROMANIA (No. 2)

(Application no. 39951/08)

JUDGMENT

STRASBOURG

27 October 2015

FINAL

27/01/2016

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Brânduşe v. Romania (no. 2),

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

Luis López Guerra, *President,*
Kristina Pardalos,
Johannes Silvis,
Iulia Antoanella Motoc,
Branko Lubarda,
Carlo Ranzoni,
Armen Harutyunyan, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 6 October 2015,

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

PROCEDURE

1. The case originated in an application (no. 39951/08) 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 Ioan Brânduşe ("the applicant"), on 18 July 2008.

2. The applicant was represented by Ms R. Crișan Costea, a lawyer practising in Arad. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that he was detained in conditions which do not satisfy the requirements of Article 3 of the Convention and that he was prevented from voting in parliamentary elections because of a blanket ban on prisoners' voting.

4. On 11 September 2013 these complaints were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1951 and lives in Şomoşcheş, Arad County.

6. At the time of the events in the present case, the applicant was serving a prison sentence for fraud, imposed by two decisions of the Timişoara Court of Appeal on 14 August 2002 and 11 November 2004. He was held

mainly in Arad and Timişoara Prisons. In 2008 he spent a few days in cell no. 309 of Jilava Prison. According to the applicant's description, the cell was dirty and lacked access to warm water.

7. On several occasions the applicant was kept in the court's detention rooms where the detainees and guards were allowed to smoke. According to the applicant, he was exposed to passive smoking in the Arad County Court detention room on 15 December 2008.

8. According to the information provided by the prison administration and forwarded to the Court by the Government, the applicant was held in cell no. 309 in Jilava Prison from 29 May to 1 June 2008 and from 16 to 18 June 2008. The personal space available to the applicant was 1.65 sq. m during the first period of detention and 1.93 sq. m during the second period of detention. Disinfection and pest control were carried out three times per year and the cell was cleaned daily by the inmates. The same rules of hygiene applied to the toilets and shower rooms. The cell benefitted from both natural and artificial light and had beds with mattresses, tables, shelves, and a television set. In an annex to the cell there was a toilet space, consisting of two partitioned toilet bowls and two wash basins. Access to warm water was possible in the common shower room, which contained eighteen showers and to which the inmates had access in privacy once a week.

9. On 30 November 2008 the applicant was not allowed to vote in the parliamentary elections and, despite his requests for clarifications, the prison authorities gave him no explanations as to whether he was entitled to vote or not. The next day, he informed the Court about what had happened.

10. On 21 December 2009 the applicant was released on probation. He was arrested again on 2 July 2010 and served the rest of his sentence until 28 March 2011.

II. RELEVANT LAW

A. Conditions of detention

11. Excerpts from the relevant domestic legislation and international reports, specifically Law no. 275/2006 on the execution of sentences; reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT"); and Recommendation Rec(2006)2 of the Committee of Ministers of the Council of Europe to member States on the European Prison Rules, are set out 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.

B. Right to vote

12. The relevant Articles of the Criminal Code providing for the automatic withdrawal of the right to vote and to be elected during the execution of a prison sentence, read as follows:

Article 64 – Additional penalties

"Disqualification from exercising one or more of the rights mentioned below may be imposed as an additional penalty:

(a) the right to vote and to be elected to public authorities or to public office ..."

Article 71 – Secondary penalty

"The secondary penalty shall consist of disqualification from exercising all the rights listed in Article 64.

(2) A life sentence or any other prison sentence shall automatically entail disqualification from exercising the rights referred to in the preceding paragraph from the time at which the conviction becomes final until the end of the term of imprisonment or the granting of a pardon waiving the execution of the sentence ..."

13. In its decision of 5 November 2007 (following an appeal in the interests of the law) which became mandatory on the date of its publication in the Official Gazette on 18 July 2008, the High Court of Cassation and Justice advised the domestic courts to interpret Article 71 § 2 of the Criminal Code in the light of the Convention and thus assess in each case individually the necessity of the withdrawal of the right to vote.

14. The relevant international instruments concerning restrictions on the right to vote are summarised in *Anchugov and Gladkov v. Russia* (nos. 11157/04 and 15162/05, §§ 38-46, 4 July 2013).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

15. The applicant complained under Article 3 of the Convention about the conditions of his detention in Jilava Prison and about the fact that he had been kept on several occasions with smokers in the court's detention facilities. Article 3 of the Convention reads as follows:

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

A. Admissibility

16. Firstly, the Government argued that the applicant had not raised his complaint in the application form. Moreover, the letter of 18 July 2008 in which he mentioned the complaint did not meet the criteria set forth in Rule 47 of the Rules of Court as the applicant had merely made general statements unsupported by evidence.

17. Secondly, they contended that the applicant had abused the right of individual application. In particular, they considered that the applicant's complaint concerning the conditions of detention in Arad Prison had already been dealt with by the Court in *Brânduşe v. Romania*, no. 6586/03, 7 April 2009. In their view, the applicant had omitted this information in his current request in order to obtain fresh compensation for the same Convention violation as in his previous application, thus abusing his right of petition.

18. The applicant made no further comments on these points.

19. The Court reiterates that, in accordance with its established practice and Rule 47 § 5 of the Rules of Court, as in force at the relevant time, it normally considered the date of introduction of an application to be the date of the "first communication" indicating an intention to lodge an application and giving some indication of the nature of the application (see *Avanesyan v. Russia*, no. 41152/06, § 20, 18 September 2014). In the current case, the applicant set out in his letter of 11 July 2008 a summary description of the conditions of his detention in Jilava Prison which raised a *prima facie* issue concerning the compliance by the State authorities with the criteria set forth in Article 3 of the Convention in this respect. It was therefore sufficient to warrant examination by the Court (see, in contrast, *Nicolescu v. Romania* (dec.), no. 38566/04, §§ 10-11, 14 January 2014).

20. The Court further reiterates that the communication referred to the conditions of detention in Jilava alone and therefore did not overlap with those already examined by the Court in the applicant's previous case before the Court in *Brânduşe*, cited above.

21. The Government's objections are therefore unfounded and must be dismissed.

22. The Court notes that the complaint 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

23. The applicant submitted a statement by F.N.I., another inmate, who explained the situation of non-smokers in prison. He also submitted court

decisions in which the complaint raised by F.N.I. was dismissed as ill-founded.

24. The Government made reference to the information provided by the prison administration, according to which cell no. 309 and the attached washroom and toilets were cleaned daily and disinfected three times per year. They reiterated that the applicant had only spent five days in that cell.

25. As for the exposure to passive smoking, the Government could not provide exact information on whether the room in question had been non-smoking, but pointed out that the applicant himself had received a significant amount of cigarettes during his detention. They further averred that the decision to place the applicant in Jilava Prison had been taken in order to preserve his own interests, namely to ensure that he could easily participate in court hearings in his cases rather than having to be transported from Arad or Timişoara Prisons (which were further away) for each such hearing.

2. The Court's assessment

26. The Court refers to the principles established in its case-law regarding conditions of detention (see, in particular, *Iacov Stanciu*, cited above, §§ 165-70, and *Pavalache v. Romania*, no. 38746/03, §§ 87-88, 18 October 2011). It reiterates, specifically, that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3; the assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI).

27. The Court further reiterates that it has previously found violations of Article 3 on account of severely inadequate conditions of detention, even if the period of detention is brief (notably ten and four days detention in an overcrowded and dirty cell in the case of *Koktysh v. Ukraine*, no. 43707/07, §§ 22 and 91-95, 10 December 2009, and five days in *Căşuneanu v. Romania*, no. 22018/10, §§ 61-62, 16 April 2013).

28. The Court has also already found violations of Article 3 of the Convention on account of the material conditions of detention in Jilava Prison, especially with respect to overcrowding and lack of hygiene (see, among others, *Iacov Stanciu*, cited above, §§ 173 and 179).

29. Turning to the facts of the present case, the Court notes that the applicant's submissions in respect of the poor conditions of detention, all be they succinct, correspond to the general findings by the CPT in respect of Romanian prisons (see *Iacov Stanciu*, cited above, §§ 125-126). Furthermore, it appears from the Government's submissions that the applicant was also held in overcrowded conditions. The Court considers that the material conditions that the applicant had to live in for five days (see

paragraph 8 above) were sufficiently intolerable to cause him suffering (see, *mutatis mutandis*, *Căşuneanu*, cited above, § 61). The Government failed to put forward any argument that would allow the Court to reach a different conclusion.

30. The foregoing considerations are sufficient to enable the Court to conclude that the conditions of incarceration caused the applicant harm that exceeded the unavoidable level of suffering inherent in detention and thus reached the minimum level of severity necessary to constitute degrading treatment within the meaning of Article 3 of the Convention.

31. There has accordingly been a violation of Article 3 of the Convention in respect of the material conditions of the applicant's detention.

32. On account of this finding, the Court does not consider it necessary to examine the remainder of the complaint concerning the conditions of detention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF PROTOCOL No. 1 TO THE CONVENTION

33. Relying in substance on Article 3 of Protocol No. 1 to the Convention, the applicant complained that he had not been allowed to vote in the parliamentary elections of 30 November 2008. That provision reads as follows:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

A. Admissibility

34. The Government firstly argued that the applicant had failed to observe the requirements of Rule 47 of the Rules of Court, in that he had not raised his complaint in the application form. Moreover, the letter in which he had mentioned the complaint, specifically that of 1 December 2008, had not met the criteria set forth in Rule 47, as the applicant had merely made general statements unsupported by evidence.

35. Secondly, they pointed out that the restrictions on the applicant's right to vote had been instituted by the decision of 11 November 2004 and argued that the six-month time-limit for lodging this complaint with the Court had started running from that date. Moreover, they noted that two other elections had occurred since that date – the presidential elections of 2004 and the European parliamentary elections of November 2007 – and that the applicant could not vote on those occasions either. In their view, the fact that he had not complained about his disenfranchisement for those

elections showed that he had lacked interest and that his complaint was thus purely vexatious.

36. The applicant did not comment.

37. The Court makes reference to the requirements of Rule 47 at the date when the application was lodged (see paragraph 19 above). It notes that the elections complained of took place on 30 November 2008 and the applicant brought his complaint on 1 December 2008, giving sufficient details in his letter addressed to the Court about the factual situation and the nature of his grievance. It is satisfied that Rule 47 was observed by the applicant.

38. The Court further notes that, although disenfranchisement was imposed by the final decision adopted in the case – therefore in 2004 at the latest – the applicant was directly affected by it when he wished to cast his vote in the parliamentary elections of 2008 (see, for instance, *Firth and Others v. the United Kingdom*, nos. 47784/09, 47806/09, 47812/09, 47818/09, 47829/09, 49001/09, 49007/09, 49018/09, 49033/09 and 49036/09, 12 August 2014 where the applicants complained about their inability to vote in specific elections – for the European Parliament – and lodged their complaint within six months of those elections, irrespective of the date when the statutory ban had been imposed). In a similar case, the Court has concluded that such a disenfranchisement provision produced a continuing state of affairs against which no domestic remedy was in fact available to the applicant, and which could end only when the provision in question was no longer in force or when it was no longer applicable to the applicant (see *Anchugov and Gladkov*, cited above, § 77).

39. As for the allegations of vexatious complaint, the Court notes that casting a vote in elections is not an obligation in the respondent State (Article 36 of the Constitution (the right to vote), and Article 4(4) of Law no. 35/2008 on parliamentary elections). Therefore, no negative consequences can be inferred from the applicant's choice not to participate in the previous elections mentioned by the Government.

40. The Government's objections are therefore unfounded and should be dismissed.

41. The Court notes that this complaint 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

42. The applicant averred that he could not vote in the elections.

43. The Government contended that the disenfranchisement was applied according to the law. They further argued that the Court's findings in *Cucu*

v. Romania (no. 22362/06, 13 November 2012) were not applicable in this case, in so far as in *Cucu* the Court only established that the interested party had to contest the decision to disenfranchise and not a subsequent application of that decision in particular elections.

2. The Court's assessment

44. The Court reiterates that Article 3 of Protocol No. 1 guarantees subjective rights, including the right to vote and to stand for election. It further notes that the rights guaranteed by this Article are crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law. In addition, the right to vote is not a privilege. In the twenty-first century, the presumption in a democratic State must be in favour of inclusion and universal suffrage has become the guiding principle. As the Court has already noted, the same rights are enshrined in Article 25 of the International Covenant on Civil and Political Rights (see *Scoppola v. Italy (no. 3)* [GC], no. 126/05, §§ 81-82, 22 May 2012).

45. The Court has established in *Hirst v. the United Kingdom (no. 2)* ([GC], no. 74025/01, § 82, ECHR 2005-IX), that when disenfranchisement affects a group of people generally, automatically and indiscriminately, based solely on the fact that they are serving a prison sentence, irrespective of the length of the sentence and irrespective of the nature or seriousness of their offence and their individual circumstances, it is not compatible with Article 3 of Protocol No. 1.

46. In several cases against Romania, the Court has found a similar restriction to be incompatible with the requirements of Article 3 of the First Protocol in so far as, according to Romanian law as it was applied by the domestic courts at that time, all convicted prisoners serving prison sentences received a secondary penalty in the form of a general, automatic and indiscriminate restriction on the right to vote (see, notably, *Calmanovici v. Romania*, no. 42250/02, §§ 150-151, 1 July 2008, and *Cucu*, cited above, § 109).

47. The circumstances of the present case are identical to those examined by the Court in *Calmanovici* and *Cucu*, both cited above, as the disenfranchisement was imposed as a direct consequence of incarceration, without an individual assessment of the applicant's concrete situation by the courts.

48. The Court notes the change in the interpretation of the legislation in question brought about by the decision adopted by the High Court of Cassation and Justice on 5 November 2007 (see paragraph 13 above and *Pleş v. Romania* (dec.), no. 15275/10, 8 October 2013). However, this new approach did not benefit the applicant who remained unable to vote in elections.

49. For these reasons, the Court concludes that there has been a violation of Article 3 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant claimed just satisfaction in respect of damage requesting, in particular:

– 250,000 euros (EUR) for non-pecuniary damage for the alleged violation of Article 3 of Protocol No. 1 to the Convention (and other Articles); and

– EUR 200 for pecuniary damage for each day of detention in breach of the requirements of Article 3 of the Convention; he further asked the Court to determine the amount of compensation for the non-pecuniary damage incurred.

52. The Government contested these claims.

53. The Court notes that the applicant failed to justify the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicant EUR 1,500 in respect of non-pecuniary damage for the violation of Article 3 of the Convention. No additional award is made for the violation of Article 3 of Protocol No. 1 to the Convention (see *Firth and Others*, cited above, § 18).

B. Costs and expenses

54. The applicant also claimed EUR 1,000 for costs and expenses incurred before the domestic courts and the Court.

55. The Government contested the claim.

56. 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 rejects the claim for costs and expenses.

C. Default interest

57. 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* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 3 of Protocol No. 1 to the Convention;

4. *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, EUR 1,500 (one thousand and five hundred euros) plus any tax that may be chargeable, in respect of non-pecuniary damage, 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 October 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Luis López Guerra
President