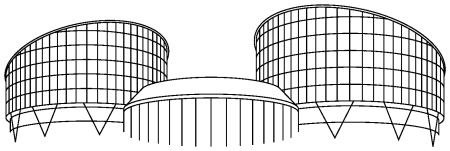

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF GHEORGHE PREDESCU v. ROMANIA

(Application no. 19696/10)

JUDGMENT

STRASBOURG

25 February 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 Gheorghe Predescu v. Romania,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Kristina Pardalos,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 4 February 2014,

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

PROCEDURE

1. The case originated in an application (no. 19696/10) 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 Predescu ("the applicant"), on 24 March 2010.

2. The Romanian Government ("the Government") were initially represented by their Co-Agent, Ms I.Cambrea, and subsequently by their Agent, Ms C. Brumar, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that he had been detained in conditions that had breached the requirements of Article 3 of the Convention.

4. On 6 October 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1955 and is currently serving a prison sentence. Since his sentence began, he has been imprisoned in a number of prisons in Romania.

6. On 22 January 2007 the applicant was placed in pre-trial detention on suspicion of murder.

7. On 10 July 2007 the applicant was convicted of murder and sentenced to seventeen years and six months' imprisonment.

8. According to the information provided by the National Prisons Administration (*Administraţia Naţională a Penitenciarelor*, the "ANP"), from his arrest to January 2012 the applicant was mainly held in Târgu Jiu, Craiova, Giurgiu, Gherla and Arad Prisons. Every two or three months he spent about a week in a prison hospital, in one of Jilava, Colibaşi or Dej Prisons.

During the reporting period, the applicant was transferred forty-seven times between these eight facilities; fifteen of these transfers were to the psychiatric wards of prison hospitals.

9. The applicant alleged that in all of the prisons in which he had been held other inmates had tried to poison his food and to beat him to death, and had been encouraged to do so or even helped by the prison authorities.

A. The applicant's health in detention

10. On 14 March 2007, while in detention, the applicant was diagnosed with delusional disorder, a type of psychosis. Psychiatric treatment in Jilava Prison Hospital was recommended.

11. According to the official prison records, each time the applicant was admitted to a prison hospital the diagnosis was confirmed. From 2007 to March 2010, each time he was discharged from prison hospital he was prescribed medication for his psychiatric disorder. It is mentioned in the official prison records that he refused to accept the diagnosis and to take his medication. For this reason, he was on each occasion discharged from hospital and transferred back to prison.

12. From March to July 2010 the applicant spent two periods of two weeks and one period of one week in Jilava Prison Hospital. He was discharged from hospital each time, it being considered that no medication was needed for his psychiatric condition. Following a further period of admission to Colibaşi Prison Hospital in September 2010, he was given medication again.

B. Complaints about the alleged poisoning

13. On several occasions the applicant reported to the authorities that the other inmates were trying to poison him. According to him, instead of receiving an answer to his complaints, he was transferred each time to a psychiatric hospital. He also asked to be placed in a cell alone, in order to prevent other attempts at poisoning him.

14. According to the information provided by the ANP, the quality of food was tested daily, and water quality was tested periodically. The results

were satisfactory. The applicant was never admitted to the infirmary with symptoms of poisoning.

15. In 2009, in Craiova Prison, he was transferred, at his request, to the maximum security wing of that prison, where he shared a room with two others. While he was there, the applicant nevertheless chose to sleep in a small bathtub (measuring 80 cm by 80 cm) in the unheated bathroom from November 2009 to February 2010, as he feared that his cellmates were trying to poison him while he was asleep.

16. The applicant lodged criminal complaints against the prison guards, the doctor and the governor of Craiova Prison, whom he accused of improper behaviour. On 10 March 2010, 31 March 2010 and 8 July 2011 the Prosecutor's Office decided not to bring a criminal prosecution. It noted that there was no evidence that prison officers had encouraged the inmates to poison or beat the applicant. The prosecutor also noted that the applicant had never sought medical help in prison for any poison-related symptoms and that he had never been in conflict with the other inmates or with the wardens. The prosecutor took account of the fact that the applicant had been diagnosed with mixed delusional disorder and that he had been compulsorily admitted to hospital several times, but discharged only a few days later, because he had refused to acknowledge the illness or to receive treatment.

17. Upon receiving the prosecutor's decision of 10 March 2010, the applicant asked to be examined by the National Institute for Forensic Medicine (“the Forensic Institute”) to prove that he was not mentally ill.

18. In Gherla Prison, the applicant chose to sleep on the toilet seat to avoid the alleged poisoning and used to wake up in the middle of the night to rinse his mouth, being certain that he had been poisoned in his sleep. According to the official prison records, the most difficult stage of his detention in Gherla Prison was in April 2010, when he repeatedly complained that the administration was promising benefits for inmates if they poisoned his food and water.

19. In February 2010 the applicant went on hunger strike to force the prison administration to place him alone in a cell. The judge delegated by the court of appeal to supervise the observance of prisoners' rights for the purpose of Law no. 275/2006 on the execution of sentences (“the post-sentencing judge”) visited him and explained that his request could only be met if there were places available in individual cells, which was not the case at that time. In a decision of 24 February 2010 the post-sentencing judge determined that it was appropriate for the applicant to be kept in common dormitories but asked that he be seen daily by a doctor during his hunger strike, to ensure that his life was not endangered.

20. In 2011, a similar request to be placed alone was denied by the Craiova Prison administration, as there were no individual cells available.

21. The applicant asked to be transferred to Rahova Prison Hospital, in a single room under medical supervision, from September to November 2009. His request was refused, as it was considered that the conditions of detention in Craiova Prison were appropriate.

22. On 8 September 2009, 9 November 2009 and 15 June 2011 the Craiova Prison administration responded to inquiries by the ANP concerning the applicant's allegations of poisoning, explaining the applicant's mental health problems. In the letter of 15 June 2011 they also informed the ANP that the applicant was not "a person in need" who required the help of another person, as he could take care of himself, notably wash and feed himself.

At the end of its investigation, the ANP informed the applicant that his allegations remained unfounded.

23. The applicant lodged similar complaints with the post-sentencing judge.

On 9 November 2010 such a complaint concerning the situation in Giurgiu Prison was dismissed as unfounded. On 12 February 2009 the post-sentencing judge dismissed a similar complaint concerning Craiova Prison as unfounded.

C. Incident of 30 August 2008

24. On 30 August 2008, while in Târgu Jiu Prison, the applicant was involved in a violent incident.

25. According to the applicant, he was beaten up by three inmates and stabbed in the lungs, kidneys, spleen and other organs by H.G. He was only taken to the doctor seven days after the incident and never received a copy of the medical certificate. Despite the applicant's complaints H.G. was never punished for the attack.

26. According to the official prison records, the applicant was found injured by a guard and immediately taken to the prison infirmary, where he refused to be bandaged. As a consequence, he was immediately taken to a civilian hospital. Later on, he was also examined by a forensic doctor, who confirmed the existence of lesions and established that the applicant needed nine to ten days of medical care but that his life had not been endangered.

27. During disciplinary proceedings opened in the prison, the applicant refused to give statements or to get acquainted with the official reports. On 10 September 2008 the disciplinary commission punished H.G. with three days' isolation. On 21 November 2008 the same disciplinary commission exonerated the applicant of any responsibility for the incident; a copy of this decision was forwarded on the same day to the applicant.

28. No criminal complaint was filed with respect to that incident.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

29. Excerpts from Law no. 275/2006 on the execution of sentences concerning the rights of detainees and the remedies provided therein are summarised in *Iacov Stanciu v. Romania* (no. 35972/05, §§ 113-119, 24 July 2012).

30. The relevant findings and recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") and the reports by the Council of Europe Commissioner for Human Rights, made following numerous visits to Romanian prisons, are also summarised in *Iacov Stanciu*, cited above, §§ 125-129).

31. The Standard Minimum Rules for the Treatment of Prisoners, adopted on 30 August 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 (U.N. Doc. A/CONF/611, annex I, with amendments) read as follows, in so far as relevant:

> "22. (1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.
>
> (2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers."
>
> "24. The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.
>
> 25. (1) The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.
>
> (2) The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment."
>
> "82. (1) Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible.
>
> (2) Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management.

(3) During their stay in a prison, such prisoners shall be placed under the special supervision of a medical officer.

(4) The medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.

83. It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric after-care."

32. On 8 April 1998 the Committee of Ministers adopted Recommendation No. R (98) 7 concerning the ethical and organisational aspects of health care in prison. The relevant provisions of this Recommendation are detailed in *Rivière v. France* (no. 33834/03, § 31, 11 July 2006). In particular, they state as follows:

"D. *Psychiatric symptoms, mental disturbance and major personality disorders, risk of suicide*

52. The prison administration and the ministry responsible for mental health should co-operate in organising psychiatric services for prisoners.

53. Mental health services and social services attached to prisons should aim to provide help and advice for inmates and to strengthen their coping and adaptation skills. These services should co-ordinate their activities, bearing in mind their respective tasks. Their professional independence should be ensured, with due regard to the specific conditions of the prison context...

55. Prisoners suffering from serious mental disturbance should be kept and cared for in a hospital facility which is adequately equipped and possesses appropriately trained staff. The decision to admit an inmate to a public hospital should be made by a psychiatrist, subject to authorisation by the competent authorities.

56. In those cases where the use of close confinement of mental patients cannot be avoided, it should be reduced to an absolute minimum and be replaced with one-to-one continuous nursing care as soon as possible...

58. The risk of suicide should be constantly assessed both by medical and custodial staff. Physical methods designed to avoid self-harm, close and constant observation, dialogue and reassurance, as appropriate, should be used in moments of crisis.

59. Follow-up treatment for released inmates should be provided for at outside specialised services.

E. *Refusal of treatment, hunger strike*

60. In the case of refusal of treatment, the doctor should request a written statement signed by the patient in the presence of a witness. The doctor should give the patient full information as to the likely benefits of medication, possible therapeutic alternatives, and warn him/her about risks associated with his/her refusal. It should be ensured that the patient has a full understanding of his/her situation. If there are difficulties of comprehension due to the language used by the patient, the services of an experienced interpreter must be sought."

33. On 11 January 2006 the Committee of Ministers of the Council of Europe adopted Recommendation Rec(2006)2 to member States on the European Prison Rules, which replaced Recommendation No. R (87) 3 on

the European Prison Rules and took account of the developments which had occurred in penal policy, sentencing practice and the overall management of prisons in Europe. The amended European Prison Rules lay down specific guidelines for prison health care and the duties of medical practitioners. In particular, they state that:

> "43.3 The medical practitioner shall report to the director whenever it is considered that a prisoner's physical or mental health is being put seriously at risk by continued imprisonment or by any condition of imprisonment, including conditions of solitary confinement."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

34. The applicant complained about the incident of 30 August 2008 and about the conditions of his detention. 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

35. The Government contended that the applicant had failed to complain to the Court within six months from the incident of 30 August 2008. They pointed out that the applicant had been aware of the outcome of the investigation at the latest on 21 November 2008.

36. The applicant contested the authorities' findings about the incident of 30 August 2008.

37. The Court notes that the applicant refused to participate in the disciplinary proceedings initiated in prison with respect to the incident of 30 August 2008. He also failed to lodge a criminal complaint regarding the matter. Moreover, he did not contest the official prison records, according to which he had received medical care immediately after the incident.

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

39. The Court notes that the remainder of this complaint, concerning the conditions of detention, is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

40. The applicant reiterated that the other inmates had tried to poison him in all of the prisons in which he had been held. He had had to sleep on the toilet seat to protect himself. He asked to be allowed to serve the remainder of his sentence in Rahova Prison Hospital. He denied being mentally ill and pointed out that he had asked to be examined at the Forensic Institute in order to prove that he was not mentally ill. Lastly, he sought to have several individuals from the prison administration dismissed from their posts.

41. The Government contended that the authorities had taken all necessary measures to offer the applicant appropriate conditions in prison. Furthermore, his complaints of alleged attempts to poison him had been investigated but dismissed as unfounded.

42. The Government pointed out that the applicant had been offered medical care and had been hospitalised fifteen times for treatment for his mental illness. On several occasions he had been discharged from hospital because he had refused to acknowledge his illness and to receive treatment.

2. The Court's assessment

(a) General principles

43. The Court refers to the general principles concerning medical assistance to detainees set out in its previous case-law (see, amongst many other authorities, *Kudła v. Poland* [GC], no. 30210/96, ECHR 2000-XI; *Peers v. Greece*, no. 28524/95, ECHR 2001-III; and *Rivière v. France*, no. 33834/03, §§ 59-63, 11 July 2006).

44. In particular, it reiterates that it cannot be ruled out that the detention of a person who is ill may raise issues under Article 3 of the Convention (see *Mouisel v. France*, no. 67263/01, § 37, ECHR 2002‑IX). Although Article 3 of the Convention cannot be construed as laying down a general obligation to release detainees on health grounds, it nonetheless imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty, for example by providing them with the requisite medical assistance (see *Oprea v. Moldova*, no. 38055/06, § 38, 21 December 2010).

45. The Court has also emphasised the right of all prisoners to conditions of detention which are compatible with human dignity, so as to ensure that the manner and method of execution of the measures imposed do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. In addition to the health of prisoners, their well-being also has to be adequately secured, taking into

account the practical demands of imprisonment (see *Bragadireanu v. Romania*, no. 22088/04, § 84, 6 December 2007).

46. Furthermore, the assessment of whether the treatment or punishment concerned is incompatible with the standards of Article 3 has, in the case of mentally ill persons, to take into consideration their vulnerability and their inability, in some cases, to complain coherently or at all about how they are being affected by any particular treatment (see, for example, *Keenan v. the United Kingdom*, no. 27229/95, § 111, ECHR 2001-III). It is important to distinguish, within the vast category of mental illnesses, those conditions, such as psychosis, which pose a particularly high risk for the individual suffering from the condition (see *Rivière*, cited above, § 63).

(b) Application of those principles to the facts of the case

47. The Court observes at the outset that in the case at hand the issue is whether the authorities took all necessary measures to ensure that the conditions of the applicant's detention were compatible with his health.

48. On March 2007, that is to say two months after his placement in pre-trial detention, the applicant was diagnosed with delusional disorder, a type of psychosis, a diagnosis which was henceforth confirmed during his detention. The authorities were therefore aware of this diagnosis from the early stages of his detention (see paragraph 10 above).

49. Throughout his detention the applicant spent on average one week in hospital every two to three months, mainly in psychiatric wards (see paragraph 8 above). His medical records indicate that he was prescribed psychiatric treatment, but not continually. On each occasion he was discharged from hospital because he refused to acknowledge his illness or to be treated (see paragraph 11 above).

50. However, there is no mention in the official records of whether he received effective treatment while in hospital, as required by Recommendation No. (98)7 (see paragraph 32 above and *Rivière*, cited above, § 72). In fact, the Court notes that the applicant was in a constant state of distress while in prison, convinced that the other inmates were trying to poison him. He slept in bathtubs or on toilet seats. Furthermore, the period from March to July 2010 when the prison doctors in Jilava considered that he did not need psychiatric treatment coincided with harsh episodes of detention in Gherla Prison, ending in the applicant making complaints of poisoning and refusing to sleep in bed (see paragraphs 12 and 18 above). In the face of this evidence, it is difficult to accept that he received effective treatment in hospital.

51. The Court has already found that the absence of adequate medical treatment can breach the requirements of Article 3 (see *İlhan v. Turkey* [GC], no. 22277/93, § 87, ECHR 2000-VII, and *Naumenko v. Ukraine*, no. 42023/98, § 112, 10 February 2004).

52. In addition, the applicant's behaviour and his repeated allegations of being poisoned should have alerted the prison administration and the medical personnel. However, it appears that the authorities simply blamed his behaviour and the numerous complaints made on his mental health without taking any measures. His requests to be placed alone in a cell were mostly denied for reasons of convenience (see paragraphs 19 and 20 above). The Court reiterates that the Council of Europe has recommended that prisoners suffering from serious mental illnesses (such as the applicant's psychiatric condition appears to be) should be kept and cared for in appropriate hospital facilities (see paragraph 32 above).

53. Moreover, despite his numerous admissions to psychiatric hospitals, the prison authorities considered that the applicant was not a person "in need", as he could look after himself on his own (see paragraph 22 above). There is no evidence that their decision was based on an expert evaluation of the applicant's state. His repeated requests to be examined by experts from the Forensic Institute went unanswered (see paragraphs 17 and 40 above).

54. Furthermore, the doctor bears the responsibility for making the patient fully aware of his condition (see paragraph 32 above). In the present case, there is no evidence whether the applicant was assisted by medical personnel in dealing with his condition and no counselling was offered to him in detention.

55. Moreover, his request to be transferred to Rahova Hospital was dismissed, although it could have provided the authorities with the opportunity to offer the applicant such counselling and treatment (see paragraphs 21 and 40 above).

56. Lastly, the Court notes that the Government did not indicate whether specific protocols are in place to deal with mentally ill prisoners. They made no reference to the legal framework or, should it exist, how it had been implemented in the case at hand.

57. The foregoing considerations are sufficient to enable the Court to conclude that the State has failed to take positive measures in order to ensure the applicant had appropriate conditions of detention.

There has accordingly been a violation of Article 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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."

59. The applicant did not submit a claim for just satisfaction.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the conditions of detention admissible and the remainder of the application inadmissible;

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

Done in English, and notified in writing on 25 February 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President