

Detention of a person with terminal cancer must have due regard for humanitarian considerations

In today's **Chamber** judgment¹ in the case of **Dorneanu v. Romania** (application no. 55089/13) the European Court of Human Rights held, unanimously, that there had been, in particular:

a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights.

The case concerned the living conditions and care provided to a prisoner, Mr Dorneanu, who was suffering from terminal metastatic prostate cancer. He died after eight months in detention.

The Court found in particular that the authorities had not taken into account the realities of Mr Dorneanu's personal situation, and had not examined whether in practice he was fit to remain in detention. Accordingly, the decisions by the national authorities showed that the procedures applied had prioritised formalities over humanitarian considerations, thus preventing the dying Mr Dorneanu from spending his final days in dignity.

Principal facts

The applicant, Florin Liviu Dorneanu, was a Romanian national who was born in 1965. At the time of his application he was serving a prison sentence for economic offences.

In February 2013 Mr Dorneanu was sentenced by the High Court of Cassation and Justice to three years and four months' imprisonment for criminal conspiracy. Although he had been diagnosed with prostate cancer in November 2012 and the seriousness of his condition had been confirmed by oncologists, he was admitted to Bacău Prison on 4 March 2013 to begin his sentence.

On the same day, Mr Dorneanu applied to the Bacău County Court to suspend the execution of his sentence on health grounds, arguing that his life was at risk because he would be unable to receive his treatment in prison. After seeking the opinion of a panel from the National Institute of Forensic Medicine, which concluded that Mr Dorneanu's survival was dependent on the medical attention he was receiving, the court ordered the suspension of his sentence on 25 June 2013 for a three-month period. The public prosecutor's office appealed, and on 29 August 2013 the Bacău Court of Appeal rejected Mr Dorneanu's application. He was sent back to Bacău Prison. Mr Dorneanu was repeatedly admitted to hospital and his condition deteriorated, with the result that he could no longer undergo chemotherapy and received palliative care instead. He died in Bacău Hospital on 24 December 2013.

Complaints, procedure and composition of the Court

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Mr Dorneanu complained that his immobilisation in his hospital bed had amounted to inhuman treatment, and that his state of health was incompatible with detention.

The application was lodged with the European Court of Human Rights on 30 July 2013.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Judgment was given by a Chamber of seven judges, composed as follows:

Ganna Yudkivska (Ukraine), *President*,
Vincent A. De Gaetano (Malta),
Faris Vehabović (Bosnia and Herzegovina),
Iulia Motoc (Romania),
Carlo Ranzoni (Liechtenstein),
Gabriele Kucsko-Stadlmayer (Austria),
Péter Paczolay (Hungary),

and also Marialena Tsirli, *Section Registrar*.

Decision of the Court

The Court gave Mr Dorneanu's son leave to pursue the proceedings, finding that he had a legitimate interest in doing so.

[Article 3 \(prohibition of inhuman or degrading treatment\)](#)

The Court considered it appropriate to examine separately the compatibility of Mr Dorneanu's immobilisation in hospital with Article 3, and the compatibility of his state of health with detention.

Mr Dorneanu's immobilisation in hospital

The Court observed that at the material time, the use of handcuffs to immobilise prisoners in hospital was strictly forbidden by the implementing regulations of Law no. 275/2006. In the present case, it found that neither Mr Dorneanu nor his family members had availed themselves of the remedy provided for in that law. Noting that a complaint to the post-sentencing judge could have led to a finding against the prison authorities for breaching the legal rules on the use of handcuffs, the Court rejected this complaint for failure to exhaust domestic remedies.

Compatibility of Mr Dorneanu's state of health with detention

The Court noted firstly that Mr Dorneanu had suffered from the effects of overcrowding in Vaslui and Iași Prisons. It observed that despite the short duration of his detention in an environment with less than 3 sq. m of personal space, the lack of space had been exacerbated by the fact that he had been held in ordinary cells that were unsuitable for his medical condition. It therefore held that there had been aggravating circumstances in relation to the poor conditions of Mr Dorneanu's detention, on account of his state of health in particular.

The Court further noted that the authorities dealing with Mr Dorneanu's case had not taken into account the realities of his personal situation, and had not examined whether in practice he was fit to remain in detention. Thus, in the time between his initial incarceration and his death, Mr Dorneanu had been transferred between different prisons on seventeen occasions, and to health-care institutions on seven occasions; these facilities were a long distance apart, in some cases several hundred kilometres away, but the domestic authorities had not at any time envisaged the possibility of providing some forms of treatment in the same place to spare Mr Dorneanu from some of the transfers. Although there had been no intention on the authorities' part to humiliate or debase Mr Dorneanu, the Court nevertheless pointed out that his repeated transfers had undoubtedly subjected him to hardship of an intensity exceeding the unavoidable level of suffering inherent in detention.

The Court further observed that, as his disease progressed, it had become impossible for Mr Dorneanu to endure it in a prison environment, meaning that the national authorities had a responsibility to take special measures on the basis of humanitarian considerations. However, no reasons linked to the threat that Mr Dorneanu's release might have posed in terms of protecting

the community had been put forward by the Court of Appeal; indeed, he had displayed good behaviour, thus reducing the risk of his reoffending. The Court therefore considered that the authorities had not taken account of the realities of Mr Dorneanu's personal situation, and had not examined whether in practice he was fit to remain in detention, since they had failed in particular to consider the conditions and practical arrangements for the provision of his medical treatment in prison. Accordingly, the decisions by the national authorities showed that the procedures applied had prioritised formalities over humanitarian considerations, thus preventing the dying Mr Dorneanu from spending his final days in dignity.

The Court concluded that the national authorities' treatment of Mr Dorneanu had not been compatible with the provisions of Article 3 of the Convention, and that they had subjected him to inhuman treatment while he was terminally ill.

Just satisfaction (Article 41)

The Court held that Romania was to pay the applicant's son 9,000 euros in respect of non-pecuniary damage.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.