



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

THIRD SECTION

CASE OF PREDICĂ v. ROMANIA

(Application no. 42344/07)

JUDGMENT

STRASBOURG

7 June 2011

FINAL

07/09/2011

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

In the case of Predică v. Romania,

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

Josep Casadevall, *President*,

Corneliu Bîrsan,

Egbert Myjer,

Ján Šikuta,

Ineta Ziemele,

Nona Tsotsoria,

Kristina Pardalos, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 17 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 42344/07) 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 Ion Predică (“the applicant”), on 26 September 2007.

2. The applicant, who had been granted legal aid, was represented by Ms N. Popescu, a lawyer practising in Bucureşti. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horaţiu Radu, from the Ministry of Foreign Affairs.

3. The applicant complained under Article 2 of the Convention that the authorities failed to protect his son’s life and that the investigation into the matter was not effective and thorough. Under Article 13 of the Convention, he complained that no domestic remedy was provided for the impugned breaches of his rights, as protected by Article 2.

4. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

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

5. The applicant was born in 1946 and lives in Bucharest. He is the father of Mr Marian Predică (“the applicant’s son”), a Romanian national

who was born on 11 August 1983 and who died on 5 October 2003 while he was serving his prison sentence.

A. The death of Marian Predică

6. On 20 March 2000 the applicant's son had been arrested under suspicion of having committed theft; he was taken into custody in the Gaești Correctional Institution for Minors on 2 November 2000. At that time, a medical examination was carried out, the report stating that he was clinically healthy. A copy of the results of a medical examination dated 18 June 1999, with similar conclusions, was attached to the medical file. A subsequent medical examination carried out on 12 March 2001 did not note any chronic or acute illness.

7. On 25 August 2001 the applicant's son was transferred to Jilava Prison, and on 11 September 2003 he was transferred to Rahova High Security Penitentiary. He was placed in cell no. 626.

On that date, a medical examination was carried out, stating that the applicant's son was clinically healthy and that he did not show symptoms of any medical condition. The medical record showed no indication as to the existence of any illness that would require treatment.

According to the same medical file, for the duration of his stay in Rahova Penitentiary, the applicant's son never asked for any medical assistance.

8. In the morning of 1 October 2003, at 10.15, in answer to repeated calls by one of the prisoners, the guards went to cell no. 626, where prisoner T.P. reported that the applicant's son needed to be taken to hospital urgently, as he had lost consciousness and had started to shake.

The supervising officers transported him to the consulting room of the penitentiary. Following an examination performed at 10.27, it was concluded that the detainee was in a generally altered state, disoriented in time and space; a "suspicion of (medical) intoxication" was noted by the doctor, who also recommended that he be taken to Rahova Surgery Hospital urgently. There, at 10.40 he was diagnosed with "convulsions/symptoms of grand mal seizures" (*criza comitiale*). A consultation by a specialist was recommended.

9. As the condition of the patient kept deteriorating, artificial respiration was applied. The applicant's son was then transported to the nearest emergency hospital, Bucharest University Hospital, where he was hospitalised at 11.15 in a coma. The diagnosis upon arrival was "intercerebral haemorrhage, left temporoparietal, with panventricular inundation". The doctors noted that there were no signs of trauma on the cranium or vertebra.

The patient underwent laboratory tests, tomography and surgical and neurosurgical tests. As there was no indication that neurosurgical intervention was necessary, he was moved to another ward, where his

breathing was assisted with a mechanical ventilator and his heart beat maintained by perfusion.

10. In spite of the medical care provided, the applicant's son never came out of the coma. His hospital medical record stated that he died on 5 October 2003, at 13.30,

“due to a cardiac arrest, [while] under artificial respiration and perfusion with adrenaline. Severe damage to the cerebral trunk. Intercerebral haemorrhage, left temporoparietal, with panventricular inundation and compressive effects on the cerebral trunk.”

The medical certificate attesting the death of the applicant's son was issued on 8 October 2003. It stated that the direct cause of death was an intraventricular haemorrhage and a haemorrhage of the cerebral meninges, with serious “cranial and facial trauma due to an aggression”.

11. The preliminary necropsy report issued on 14 October 2003 by the Institute of Forensic Medicine “Mina Minovici” contained the following conclusions:

“The death of Marian Predică was violent. It was caused by an intraventricular haemorrhage and a haemorrhage of the cerebral meninges, consequences of a trauma – cranial-cerebral and facial, with fracture of the nasal bones, facial ecchymosis and left occipital excoriation.

The necropsy revealed excoriation and echhymosis in the left thoracic and pelvic areas.

The traumatic lesions could have been produced by a blow with a solid object to the facial area, followed by falling and hitting a hard surface, with impact to the occiput and the left hemicorp.

The traumatic lesions could have been inflicted between one to three days prior to the day of hospitalisation.

There is a direct causal link between the cerebral traumatic lesions and the death of Marian Predică.”

The final medical report issued on 4 December 2003 confirmed the preliminary observations, stating in addition that the traumatic injuries could have been inflicted “several days prior to the day of hospitalisation on 1 October 2003” and concluded that “the cerebral lesions necessitated medical care, to be provided immediately”.

12. On 21 September 2006 the prosecutor requested the forensic expert from the Institute of Forensic Medicine to answer, on the basis of statements given by the victim's cellmates describing the incident on the morning of 1 October 2003, whether “it was possible that during a seizure, the victim could have bashed against various objects around him and thus self inflicted all the injuries detected at autopsy (including the facial lesions)”. The supplementary medical report issued stated that, “considering the morphology and the topography of the traumatic lesions, it could not be

excluded that all the injuries were sustained in the same context – by falling and hitting a hard surface, several days before the date of death, possibly by hitting against a metal bed in the course of a grand mal seizure of epileptic aetiology, as it transpired from the investigation data forwarded by the prosecutor”. No deficiencies in the medical care provided to the victim prior to his death were detected.

13. The applicant alleged that he had last seen his son on 25 September 2003, when the latter had attended a hearing before the High Court of Cassation and Justice. At that time, he had borne no visible signs of violence. Before his incarceration and upon his transfer to Rahova Penitentiary, he had been healthy, as the medical examinations carried out in the penitentiary also confirmed.

The applicant was informed about his son’s death on 6 October 2003; he, his wife and other son were allowed to take the body from the Institute of Forensic Medicine on 9 October 2003. According to the applicant, none of the family members could recognise the body, as the face was disfigured, the hair had been shaved off, the hands bore the marks of handcuffs and the left hand had a lesion in the handcuffed area. The identity of the deceased was allegedly confirmed based on a particular mark on the left hand.

B. The criminal investigation into the applicant’s son’s death

14. On 5 October 2003, the Bucharest Military Prosecutor’s Office received a phone call from G.I., an officer at Rahova Penitentiary, informing it of the death of the detainee and asking the competent authority to establish the cause and the circumstances of his death.

1. Investigation with respect to the penitentiary guards

15. A preliminary inquiry was carried out with respect to alleged criminal acts perpetrated by the twenty penitentiary guards charged with the supervision of the detainees.

The military prosecutor in charge questioned the officers that had been on duty while the applicant’s son was detained at Rahova Penitentiary, in order to establish whether there had been any incidents between the detainee and his cellmates and whether there had been any incidents when force or other immobilizing methods were used with respect to the detainee. The guards reported that no incidents had occurred in cell no. 626 and that they had not noticed any injuries on the detainee’s face. Similar statements concerning the lack of any incidents in their cell were given by some of the applicant’s son’s cellmates.

One of the cellmates, V.O.C., stated in his deposition given before the military prosecutor on 17 June 2004, that he had heard that Predică Marian had been beaten by “*mascati*” (masked special intervention officers) when

he had returned from a visit or from the court because he had spoken disrespectfully to them.

16. On 26 January 2004, the military prosecutor decided not to indict the guards, as there were no suspicious circumstances regarding the applicant's son's death. The case was referred to a civilian prosecutor for a further investigation to be carried out with respect to his cellmates (see paragraphs 20-22 below). The decision was confirmed by the hierarchically superior prosecutor on 5 August 2004.

The decision was contested by the applicant before the Military County Court of Bucharest. On 24 March 2005, the complaints were dismissed as inadmissible. However, that decision was quashed on 14 July 2005 by the Superior Military County Court of Bucharest and the case was remitted to the first instance.

On 23 September 2005, the case was referred to the Bucharest 5th District Court, which gave judgment on 8 November 2005, declining jurisdiction in favour of the Bucharest County Court.

17. The applicant's complaints were allowed on 21 February 2006 by the Bucharest County Court, which ordered the case to be remitted to the Prosecutor's Office for further investigation. The court held that the investigations had been improperly conducted throughout the proceedings.

Upon an appeal on points of law, the judgment was quashed on 20 April 2006 by the Bucharest Court of Appeal, in so far as the first-instance court had not provided grounds for its decision and had not specified exactly what evidence should be added to the file. The case was consequently remitted back to the first instance.

18. The Bucharest County Court rendered judgment on 20 October 2006. Assessing the evidence before it, it held that the criminal investigation conducted has not proved to be effective within the meaning of Articles 2 and 3 of the European Convention of Human Rights. The court further allowed the applicant's claims and ordered the case to be remitted to the Prosecutor's Office, as a further investigation needed to be carried out with respect to the criminal act of homicide as defined under section 174 of the Romanian Criminal Code. The court summarised the facts for the timeframe of 11 September (day of incarceration) to 1 October 2003, on the basis of the evidence adduced. It held that there was no proof of any altercation having occurred between the applicant's son and his cellmates during that time. In the official register of the penitentiary there was no record of any disciplinary measures having been applied to him.

The court criticised the fact that the prosecutors had discontinued the investigations in general, without making any reference to a specific criminal act, such as homicide, ill-treatment or torture – as defined respectively by sections 174, 267 and 267 – 1 of the Romanian Criminal Code. There was no concrete information on the circumstances of the applicant's son's death or on the persons to be held responsible for it in the

evidence already adduced in the case, “even though his death had undoubtedly been violent”.

The court also mentioned that in assessing the adduced evidence, the fact that the investigation authorities were attached to the military, while the European Court of Human Rights had repeatedly stated that such criminal inquiries conducted by a military prosecutor could not be regarded as effective, could not be overlooked.

It further held that

“None of the accused who attended, together with Marian Predică, the hearing before the High Court of Cassation and Justice on 25 September 2003 was questioned, in so far as they could have been witnesses to a conflict between Marian Predică and the guards of the Penitentiary (especially the accused V.L.).

None of the guards belonging to the Special Intervention Unit on duty on 25 September 2003 and afterwards, until 1 October 2007, was ever questioned.

The contradictory conclusions of the numerous medical reports are to be clarified by the Superior Commission of Forensic Medicine”.

19. This decision was upheld on an appeal on points of law lodged by the twenty incriminated penitentiary guards. On 3 April 2007 the Bucharest Court of Appeal held that the first-instance court’s reasoning was exhaustive and legally sound.

The proceedings are currently pending before the judiciary police, delegated by the Prosecutor’s Office to carry out the investigation (see paragraphs 25, 27 below).

2. Investigation concerning the applicant’s son’s cellmates

20. Concerning the investigation carried out with respect to the applicant’s son’s cellmates, the prosecutor decided on 10 March 2004 to discontinue the proceedings, as there was no indication of any criminal act having been committed in the file. The hierarchically superior prosecutor, however, quashed this decision on 28 May 2004, indicating that a further investigation should be conducted with respect to the offences listed under section 183 of the Romanian Criminal Code, namely, hitting or causing injury to a person resulting in death.

21. The prosecutor questioned the persons who had been detained in the same room as the applicant’s son, and other individuals. They declared that the applicant’s son had not been attacked by other prisoners or by the prison officers. Some of them also stated that on 1 October 2003 the applicant’s son had had a seizure and had hurt himself while falling between the beds and that he had immediately been taken to the consulting room.

22. On 3 November 2006 the prosecutor decided not to indict, finding that “the death was the consequence of [the applicant’s son] accidentally injuring himself during a grand mal seizure of epileptic aetiology”.

23. The decision was upheld on 28 December 2006 by the hierarchically superior prosecutor. His decision was contested by the applicant before the Bucharest County Court, which gave judgment on 18 October 2007.

The court quashed the prosecutor's decision not to indict, holding that it was necessary to adduce more evidence in the case, namely, the video recordings from the place of detention for the relevant period of time.

24. The Prosecutor's Office appealed. In a judgment given on 12 February 2008, the Bucharest Court of Appeal held that the prosecutor needed to establish and clarify the circumstances in which the victim had died, as there was evidence of a homicide having been committed. To that end, the prosecutor was ordered to produce and assess certain pieces of evidence, namely, to identify and watch all video recordings from the hallways of the penitentiary and from the victim's cell; to identify and question as a witness V.L. and a certain N.N. (mentioned in the Amnesty International report on Marian Predică's death, see paragraph 30 below); to identify other medical documents regarding the victim's state of health, prior and subsequent to incarceration.

The case was remitted to the prosecutor for further investigation.

25. On 17 December 2009, the prosecutor initiated the criminal investigation *in rem* with respect to the offences listed under section 183 of the Romanian Criminal Code.

By two consecutive decisions of 22 February and 1 April 2010 the prosecutor decided to delegate the competent police officers to conduct the criminal investigation in conformity with the courts' requirements, as stated in their judgments of 20 October 2006 and 12 February 2008 (see paragraphs 18 and 24 above). He also concluded that at the time of the impugned events, Rahova Penitentiary had not had a video surveillance system in place.

26. The prosecutor also mentioned the fact that the Superior Commission for Forensic Medicine had validated the autopsy report of 4 December 2003, adding that:

"[...] the trauma could have been produced by hitting with or against ... a hard surface (active blows to the facial area followed by a fall with cranial impact, the fatal lesions having been caused by the counter blow), with the following amendments: considering the type of the traumatic lesions, their morphology and their layout, including on an anterior and posterior plan, the possibility that they could have been sustained solely as the result of a fall during an epileptic seizure can be excluded; the other trauma could have been produced by hitting with or against... hard objects, in the same context as the fatal injuries to the cephalic extremity.

No deficiencies in the provision of medical care have been detected."

27. While delegating the judiciary police to carry out the criminal investigation, the prosecutor also decided that the case should be registered in the archives of the Police Service Homicide Division, under "criminal cases with unidentified perpetrators".

28. With the exception of the proceedings lodged by him before the domestic courts contesting the prosecutors' decisions not to indict, the applicant was not involved in the investigation and alleged that he was hence forced to go to considerable lengths to obtain any relevant information regarding the progress of the proceedings.

29. The criminal investigation is still pending.

C. Extrajudicial documents concerning the applicant's son

1. Amnesty International Report on the death of Marian Predică

30. In the report of 11 March 2004 named "Death in suspicious circumstances of Marian Predică", Amnesty International summarily presented the circumstances of the applicant's son's death while in custody. The report also included the statements given to representatives of the NGO by the director of the Penitentiary and by N.N., an alleged acquaintance of Marian Predică.

The relevant parts of this report read as follows:

"Marian Predica, born on 11 August 1983, was arrested on 20 March 2000 and sentenced to a prison term of one and a half years for stealing car radios and spare wheels [...]"

According to information from Ion Predică, Marian's father, on 6 October 2003 at around 8.30am two police officers from Section 23 came to his home and asked him to go urgently to the Rahova Penitentiary. At the Rahova Penitentiary he was told by the doctor that his son had died and that his body was at the Municipal Hospital. He asked the doctor how it had happened and she reportedly replied that Marian Predică had slipped and had a brain concussion [...]"

On 7 October at around 7.30am Ion Predică went to the Institute of Forensic Medicine (*Institutul de Medicină Legală* – IML) to inquire about the cause of death of his son and was told that his son's body had not yet arrived. On the next day Ion Predică returned to the hospital but was unable to obtain any information about the cause of death of his son. At the Hospital Directorate he was told that this information was confidential because Marian Predică had died in detention. Together with his sons, Ion Predică went back to IML where the forensic doctor reportedly told them that on his son's body there had been signs of injuries suffered as a result of some violent act.[...]"

On 3 November 2003 a representative of Amnesty International visited Rahova Penitentiary and spoke to the director. [...]When questioned whether Marian Predică's hair had been shaved off as a disciplinary punishment, the director denied that such punishment is practical in the penitentiary. According to the director, his hair had been shaved in preparation for a brain scan at the Municipal Hospital. When the Amnesty International representative questioned the director why the family had not been notified that Marian Predică had been hospitalized, her reply was that there is no

legal obligation to notify them in such circumstances. Their only duty is to provide the medical treatment.[...]

Amnesty International's representative also spoke to N.N. who was arrested together with Marian Predică. They were initially held at Găești and then in Jilava. [...]. He is sure that Marian Predică was beaten by the special intervention unit in Rahova after the hearing in the Supreme Court. The special intervention unit – also referred to as the masked unit – reportedly raids cells of detainees and beats anyone who complains. After the hearing on 25 September 2003 N.N. had been playing in the waiting room with a piece of rope when two masked officers handcuffed him and held him by the arms and the neck. He was then returned to prison where he was taken to the barber and had his hair shaved off. At the time of the interview in November 2003, N.N.'s hair was very short. This is reportedly a usual punishment [...]"

2. *Statement of G.I.*

31. In a letter of 6 November 2003 sent to the Court in his own case, G.I., a detainee at Rahova Penitentiary and applicant before the Court in application no. 25867/03, described what happened – to his knowledge – in November 2003 in the Penitentiary, as follows:

"In November 2003 in this penitentiary, the detainee Predică Marian was brutally beaten and killed [...] by the special intervention forces (*mascați*), who are criminals, beasts with human faces [...] the following witnesses can confirm what I have just stated: M.T.C., T.C., V.L., V. M., P. D. All these witnesses are, together with Predică Marian, parties in the same criminal proceedings".

The parties were invited to submit comments with regard to this statement.

32. In their observations on the merits, the Government expressed their view that the statement could not be included in the present file, in so far as the applicant had never mentioned G.I. or put him forward as a potential witness to be heard in the domestic trial.

Subsequently, in their letter of 26 May 2010, the Government informed the Court that the statement had been sent to the Prosecutor's Office responsible for the criminal investigation, in so far as the circumstances revealed therein should be taken into consideration.

33. The applicant considered that the statement should be included in the present file, as it was "a protest statement sent to the Court", seen by G.I. as the only authority able to help the victim's family. In reply to the Government's argument, the applicant held that he could not have known the names of detainees who had information on his son's death, and thus had not been able to put their names forward as witnesses; moreover, the identification of potential witnesses was not his duty, but primarily the duty of the State.

34. Bearing in mind the particular circumstances in which the impugned statement was given and submitted by G.I., the Court sees no valid reason

why it should not be included in the present file and considered together with all the other documents in the assessment of the present case.

II. RELEVANT DOMESTIC LAW

35. Romanian Criminal Code, in its relevant parts, reads as follows:

Section 174

Homicide shall be punished by detention from 15 to 25 years and the loss of certain rights.

Section 183

Should one of the acts in sections 180-182 (hitting or injuring) result in the victim's death, the penalty shall be imprisonment from five to fifteen years.

Section 267

Subjection to ill-treatment of a person being detained, in detention or in the execution of a security or correctional measure, shall be punished by imprisonment from one to five years.

Section 267-1

(1) An act deliberately causing a person pain or intense suffering, either physically or mentally, in order to obtain from that person or from a third party information or confessions, to punish him/her for an act committed by him/her or a third party or that he/she or a third party is suspected of having committed, to intimidate or exercise pressure on him/her or on a third party, or for any other reason based on a form of discrimination, regardless of its nature, when such pain or suffering is applied by an agent of public authority or by any other person acting in official capacity or upon instigation or with the express or tacit consent of such persons shall be punished by imprisonment from 2 to 7 years.

(2) If the act in para. (1) results in any of the consequences in section 181 or section 182, the penalty shall be imprisonment from 3 to 10 years.

(3) Torture that results in the victim's death shall be punished by life imprisonment or by imprisonment from 15 to 25 years.

(4) An attempt to commit the offences in the present section is punishable.

(5) No exceptional circumstance, whatever its nature may be, regardless of whether it is a state of war or the threat of war, internal political instability or any other exceptional state, can be invoked to justify torture; the order of the law or command of legitimate authority cannot be invoked either.

(6) The acts in para.(1) shall not constitute offences of torture if the pain or suffering are the exclusive result of legal sanctions and are inherent to these sanctions or caused by them.”

36. The provisions of the Romanian Criminal Procedure Code prescribing civil actions lodged within criminal proceedings and the procedure for contesting a prosecutor’s decision not to indict are summarized in the case of *Cobzaru v. Romania* (no. 48254/99, § 36, 26 July 2007).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

37. Relying on Article 2 of the Convention, the applicant complained that the authorities had failed to safeguard his son’s life while in custody and to carry out an effective investigation into his death. Article 2 of the Convention states as follows:

“1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

A. Admissibility

38. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 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

(a) The Government

39. The Government contended that the medical evidence adduced in the file so far showed that the death of the applicant's son was caused by an epileptic seizure.

40. In this connection, they alleged that the doctors from Rahova and those from the University Hospital who had treated the patient had not noted in the medical records any signs of violence or presence of head or spinal injuries at the time when he was brought in and hospitalized.

The supplementary forensic report did not exclude the possibility that all the victim's injuries could have been caused in the same context, possibly by his having hit against a metal bed during an epileptic seizure. Regarding the medical assistance provided by the prison doctors and the University Hospital doctors, no deficiencies had been identified.

Assessing the evidence gathered, the prosecutor in charge concluded that the death was the consequence of a self-inflicted injury sustained during an epileptic seizure. However, once the national courts had quashed the non-indictment decisions, the prosecutor had continued the criminal investigation, in accordance with the requirements set out in the judgments.

41. The Government submitted that in the existing testimonial evidence adduced by and before the judicial authorities there was no indication of any ill-treatment or treatment involving the use of force by State agents.

In conclusion, the Government stated that the evidence gathered could not enable the Court to find beyond all reasonable doubt that there had been a violation of Article 2 regarding the death of the applicant's son.

42. The Government further submitted that, contrary to the proceedings carried out by the Turkish authorities in the case of *Salman v. Turkey* ([GC], no. 21986/93, ECHR 2000-VII), the Romanian judicial authorities had taken all the necessary measures in order to establish the facts and the law applicable. The penitentiary administration and the prosecutor had initiated a preliminary inquiry, questioned the persons allegedly involved (prisoners and officers), analyzed the medical documents and ordered a forensic report and a supplement to this report to determine the causes of the applicant's son's death. Even where the prosecutors had failed to gather all the relevant evidence, the domestic courts had ordered the completion of the investigation and the shortcomings in the proceedings had been rectified.

Consequently, the Government considered that the national authorities had applied both the domestic and the European Court's case-law in

examining the case, and in that respect, the investigation carried out by the Romanian judicial authorities had been effective and adequate. The applicant's complaints were therefore ill-founded.

(b) The applicant

43. The applicant argued that the Government had failed to provide a satisfactory and convincing explanation for his son's death despite the fact that there was strong evidence that he had been tortured to death.

44. The applicant's son had been in good health before his incarceration in Rahova Penitentiary and at the time there had been no signs of physical abuse on his body. Moreover, during detention he had not taken any medicine. The applicant alleged that he had last seen his son on 25 September 2003, when Marian Predică had attended a hearing before the High Court of Cassation and Justice. At that time, he had borne no signs of violence. Before his incarceration and upon his transfer to Rahova Penitentiary, he had been healthy, as the medical examination carried out in the penitentiary had also confirmed.

Relying on the report produced by Amnesty International (see paragraph 30 above), and also on the statements given by V.O.C. and by G.I. (see paragraphs 15 and 31 above respectively), the applicant contended that his son had sustained traumatic injuries after the hearing before the High Court of Cassation and Justice, on 25 September 2003.

Referring to the Government's observations pointing to a diagnosis of epilepsy, the applicant argued that no doctor had diagnosed his son with epilepsy; no medical record contained any mention that there had been similar episodes in his medical history; and no specific epilepsy treatment had been administered to him, even when he had had the impugned seizure. There was no diagnosis of epilepsy on any of the medical documents available to the parties.

Furthermore, if the nasal bone fracture and head injuries were presumably explained by the detainee's impact with a metal bed, the Government did not indicate the causes of the multiple bruises and excoriations on his body.

45. The applicant therefore considered that the Government had not provided any reasonable explanation for the "cranial and facial trauma with fracture of the nasal bones due to an attack, facial ecchymoses and left occipital excoriation" noted in the forensic reports.

46. At the same time, relying on the Court's judgment in the case of *Gagiu v. Romania* (no. 63258/00, § 57, 24 February 2009), the applicant asked the Court to find a violation of Article 2 on account of the failure of the domestic authorities to provide adequate and timely medical care to his son, in so far as, in spite of the medical emergency, he was not immediately sent to the closest hospital; instead, the applicant's son had only been taken from the penitentiary to Bucharest University Hospital almost one hour after

losing consciousness and having started to shake, while it should have been obvious, when he went into a coma, that this was a medical emergency.

47. The applicant also claimed that the investigation lacked impartiality and effectiveness. Among other grounds, the applicant indicated that the military prosecutor – who is not an impartial authority, as the Court has already held in the case of *Bursuc v. Romania* (no. 42066/98, 12 October 2004) – and who conducted the investigation in its early stages, failed to question any of the doctors or other medical staff who had examined the applicant’s son before and on 1 October 2003.

Furthermore, only the penitentiary guards and the applicant’s son’s cellmates were questioned; no member of the special intervention unit was heard and no potential witnesses were identified or questioned.

48. Neither the applicant, nor any other member of Marian’s family, was ever questioned by the investigating authorities. Moreover, the applicant alleged that he obtained much of the important information regarding the investigation with considerable effort on his part and that some of this information had become available to him only in the course of the proceedings before the European Court, namely, in the exchange of observations stage.

49. Concerning the most recent procedural decisions taken in the case by the prosecutor (see paragraphs 25-27 above), the applicant underlined that the impugned decisions only proved that the responsible prosecutor had showed no real interest in solving the case.

50. Finally, the applicant asked the Court to conclude that after more than seven years since the death of his son, the domestic authorities have still not identified those responsible, or at least clarified the circumstances in which his son died. Therefore, it should find that the investigation failed to fulfil the criteria of promptness, impartiality and effectiveness as required by Article 2 of the Convention.

2. The Court’s assessment

(a) Death of the applicant’s son

(i) General principles

51. The Court reiterates that Article 2 of the Convention, which safeguards the right to life, ranks as one of the most fundamental provisions of the Convention. Together with Article 3, it enshrines one of the basic values of the democratic societies making up the Council of Europe. The first sentence of Article 2 enjoins the Contracting States not only to refrain from the taking of life “intentionally” or by the “use of force”

disproportionate to the legitimate aims referred to in sub-paragraphs (a) to (c) of the second paragraph of that provision, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see, *inter alia*, *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III, and *Keenan v. the United Kingdom*, no. 27229/95, § 89, ECHR 2001-III).

52. As a general rule, the mere fact that an individual dies in suspicious circumstances while in custody should raise an issue as to whether the State has complied with its obligation to protect that person's right to life (see *Slimani v. France*, no. 57671/00, § 27, ECHR 2004-IX (extracts)).

53. Furthermore, persons in custody are in a vulnerable position and the authorities are under an obligation to account for their treatment (see, among many others, *Keenan*, cited above, § 111). Consequently, where an individual is taken into custody in good health but later dies, it is incumbent on the State to provide a plausible explanation of the events leading to his death (see, *mutatis mutandis*, *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V; *Salman* cited above, § 97) and to produce evidence casting doubt on the veracity of the victim's allegations, particularly if those allegations are backed up by medical reports (*Abdişamet Yaman v. Turkey*, no. 32446/96, § 43, 2 November 2004).

54. In assessing evidence, the Court adopts the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25, and *Orhan v. Turkey*, no. 25656/94, § 264, ECHR 2002). However, such proof may follow from the co-existence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact.

Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see, among many other authorities, *Anguelova v. Bulgaria*, no. 38361/97, §§ 109-11, ECHR 2002-IV, and *Carabulea v. Romania*, no. 45661/99, § 109, 13 July 2010).

(ii) Application of the principles to the present case

55. The Court observes that Marian Predică, the applicant's son, died on 5 October 2003, at the age of 20, having been taken to hospital in an emergency from the penitentiary where he was serving his sentence. Medical reports confirmed that he died a violent death due to a major head injury. There was no indication in the medical records that he had had any health problems upon being taken into custody or that he had been injured prior to the day of his death.

56. In these circumstances, it is incumbent upon the Government to provide a possible explanation for the applicant's son's death.

57. The Government's explanation, relying on the prosecutor's findings in the investigation file, is that the applicant's son died as a consequence of self-inflicted injuries during an epileptic seizure.

58. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Articles 2 and 3 of the Convention the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336, and *Avşar v. Turkey*, no. 25657/94, § 283, ECHR 2001-VII (extracts)) even if certain domestic proceedings and investigations have already taken place.

59. In this context, the Court observes that the evidence in the file does not support the contention that the applicant's son was suffering from epilepsy or that he had ever been treated for that condition prior to the incident of 1 October 2003. All the medical documents submitted to the file reveal that Marian Predică was clinically healthy from 2000, when he was first taken into police custody, up to 11 September 2003, when he was medically checked upon transfer to Rahova Penitentiary. In all this time, no epileptic seizure was recorded; no treatment for epilepsy or for any other similar pathology was ever prescribed or administered to the applicant's son.

In addition, with reference to the incident of 1 October 2003 culminating in the death of the applicant's son, the Court notes, contrary to the Government's assertion, that the doctors never mentioned the diagnosis of "epilepsy" in the medical records, the terms used being "suspicion of voluntary drug ingestion" and then "convulsions/symptoms of grand mal seizures" (*criză comițială*).

60. The certificate attesting the death of the applicant's son and the preliminary autopsy report noted that his death had been violent, "with serious cranial and facial trauma due to an aggression" (see paragraph 10 above). The fatal traumatic injuries were established to have been sustained several days before the date of hospitalization and thus before the date of the alleged epileptic seizure.

The conclusions of the supplementary report issued three years after the victim's death on the basis of statements given by his cellmates to the prosecutor, stated that all the injuries could have been produced "possibly by hitting against a metal bed in the course of a grand mal seizure of epileptic aetiology" (see paragraph 12 above).

61. However, these conclusions were later invalidated by the more recent report of the Superior Commission of Forensic Medicine. Thus, the

highest Romanian authority in the forensic medicine field concluded that the possibility that all the traumatic injuries found on the deceased's body were produced solely by a fall during an epileptic seizure was to be excluded (see paragraph 26 above).

Furthermore, the Government has not provided any explanation for the many other injuries found on the applicant's son's body at the moment of his autopsy (see paragraph 11 above), injuries which were sustained, according to the forensic reports, "in the same context as the fatal injuries to the cephalic extremity".

In this context, the Court refers also to the relevant information presented in the Amnesty International report and in the statement of G.I., both of which have been indicated at a national level as evidence to be taken into consideration by the domestic investigative authorities (see paragraphs 24 and 32 above).

62. The Government's hypothesis that the applicant's son might have injured himself by falling during an epileptic seizure is thus improbable when examined in the light of all the above-mentioned facts. No other explanation concerning the circumstances in which the applicant's son died was provided.

63. The Court is mindful of the fact that the proceedings concerning the investigation into the applicant's son's death are pending before the national authorities. However, it also notes that at present, more than seven years after the criminal investigation began, the circumstances in which Marian Predică died are yet to be clarified.

The Court finds therefore that the authorities have failed to provide a plausible and satisfactory explanation for the death of the applicant's son (see, *mutatis mutandis*, *Kats and Others v. Ukraine*, no. 29971/04, §§ 95-96 and § 112, 18 December 2008).

It thus holds that there has been a violation of Article 2 of the Convention, under its substantive limb.

64. Having regard to this conclusion the Court finds it unnecessary to acknowledge separately that there has been a violation of Article 2 on account of a lack of timely medical care.

(b) The alleged inadequacy of the investigation

(i) General principles

65. The Court reiterates that where lives have been lost in circumstances potentially engaging the responsibility of the State, Article 2 entails a duty for the State to ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches

of that right are repressed and punished (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 91, ECHR 2004-XII). In particular, when a detainee dies in suspicious circumstances, an “official and effective investigation” capable of establishing the causes of death and identifying and punishing those responsible must be carried out of the authorities’ own motion (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 74, ECHR 2002-II and the more recent case of *Tsintsabadze v. Georgia*, no. 35403/06, § 85, 15 February 2011).

The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility (*Mastromatteo v. Italy* [GC], no. 37703/97, § 89, ECHR 2002-VIII).

66. For the investigation to be effective, it is necessary for the persons responsible for carrying it out to be independent from those implicated in the death. They should not be hierarchically or institutionally subordinate to them but independent in practice (see, among many others, *McKerr v. the United Kingdom*, no. 28883/95, § 112, ECHR 2001-III, and *Paul and Audrey Edwards*, cited above, § 70).

67. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident (see *Salman*, cited above, § 100). Any deficiency in the investigation which undermines its ability to establish the cause of death or the person responsible will risk falling foul of this standard (see, for instance, *McKerr*, § 113, and *Paul and Audrey Edwards*, § 71, both cited above).

Accordingly, the competent authorities must act with exemplary diligence and promptness, and must of their own motion initiate investigations capable of, firstly, ascertaining the circumstances in which the incident took place and any shortcomings in the operation of the regulatory system and, secondly, identifying the State officials or authorities involved. The requirement of public scrutiny is also relevant in this context (see *Kats and Others v. Ukraine*, cited above, § 116,), the degree of which may well vary from case to case. In all cases, however, the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see *Carabulea*, § 131, and for a full summary of the relevant case-law see *McKerr*, cited above, §§ 111-15).

(ii) Application of those principles to the present case

68. Turning to the circumstances of the present case, the Court, in the light of the above principles, finds that a procedural obligation arose under Article 2 of the Convention to investigate the circumstances of the death of the applicant’s son (see *Slimani*, cited above, §§ 29-34). It further considers

that the criminal investigation into the death of Marian Predică revealed serious inconsistencies and deficiencies.

69. The Court observes at the outset that the investigation into the applicant's son's death is still pending before the judiciary police, more than seven years after it was commenced by a military prosecutor. During this period the investigation authorities refused on several occasions to institute criminal proceedings, but these decisions were subsequently quashed by the national courts and the case was submitted for further investigation, with detailed instructions as to what evidence should be obtained and what circumstances established in the context of the investigation into the death of Marian Predică.

However, those instructions have to date not been fully complied with by the investigating authorities. Moreover, the file is still pending with the prosecutor, who decided to delegate all the investigative work to the judicial police and in the meantime, to register the case in the Police Service Homicide Division archives under "criminal cases with unidentified perpetrators" (see paragraph 27 above).

70. Furthermore, parts of the investigation (see paragraphs 15-16 above) did not satisfy the minimum requirement of independence and objectiveness, as some of the evidence in the file was adduced while the criminal investigation was pending before the military prosecutor, whose lack of institutional independence has been acknowledged by this Court in many cases (see, among others *Bursuc v. Romania*, no. 42066/98, § 107, 12 October 2004).

71. The Court also notes that the applicant was not appropriately involved in the investigation procedure, he was not informed of or consulted about any proposed evidence or witnesses and on many occasions he did not receive any information about the progress of the investigation (see, *mutatis mutandis*, *Kats and Others*, cited above, §§ 121-122). Accordingly, the investigation and its results were not ensured with a sufficient element of public scrutiny; nor did they safeguard the interests of the next-of-kin (see also *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 109, 4 May 2001; *McKerr*, § 115; and *Paul and Audrey Edwards*, § 73).

72. The Court notes in this respect that some of the above-mentioned deficiencies, as well as the failure of the investigation to comply with the requirements set out in the Convention, were acknowledged by the national courts, who decided to overturn the prosecutors' decisions not to indict and gave precise indications as to what evidence should be obtained and what circumstances should be clarified in the case (see paragraphs 18 and 24 above).

However, to this day, in spite of the medical evidence in the file attesting a violent death and the domestic courts' instructions, no person has been held accountable for the impugned facts and no clarification of the circumstances of death has been put forward by the competent authorities.

73. The foregoing considerations are sufficient to enable the Court to conclude that the authorities have failed in their obligation to conduct an effective investigation into the applicant's son's death.

It accordingly finds that there has also been a violation of Article 2 of the Convention in this respect.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

74. The applicant complained of a lack of domestic remedies for the alleged breaches of Article 2. He relied on Article 13 of the Convention, which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

75. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

A. The parties' submissions

76. Referring to the proceedings lodged by the applicant pursuant to sections 278 and 278¹ of the Romanian Criminal Procedure Code and to the judgments given therein, the Government contended that those proceedings had proved to be the appropriate remedy for the alleged breach of the applicant's Convention rights and freedoms. In analyzing the applicant's complaints, the national courts had relied not only on the applicable domestic law, but also on the Convention principles.

The evidence brought until the present moment showed that the death of the applicant's son had been caused by a medical incident. The fact that the persons allegedly involved (prisoners and officers) were not found responsible for his death could not be regarded as an omission on the part of the authorities that could hinder the exercise of the right provided for by Article 13 of the Convention.

77. The applicant referred to his submissions made under Article 2, claiming that the investigation into his son's death had been far from being effective, prompt and impartial. In addition, the applicant contended that in so far as no one had been held responsible for the death of his son, deemed by the prosecutor to have been natural and non-violent, he did not have sufficient cause to bring a civil action for damages before the domestic courts.

B. The Court's assessment

78. In accordance with the Court's well-established case-law (see, for instance, *Cobzaru v. Romania*, no. 48254/99, §§ 81-82, 26 July 2007), Article 13 of the Convention requires that where an arguable breach of one or more of the rights under the Convention is at issue, there should be available to the victim a mechanism for establishing any liability on the part of State officials or bodies for that breach. In cases of suspicious death or ill-treatment, given the fundamental importance of the rights protected by Articles 2 and 3, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and, if appropriate, the punishment of those responsible for the impugned acts (see *Süheyla Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005).

79. On the basis of the evidence adduced in the present case, the Court has found that the State authorities were responsible for the applicant's son's death while in their custody. The applicant's complaints to the domestic authorities in this regard were based on the same evidence and were therefore "arguable" for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). The authorities thus had an obligation to carry out an effective investigation into his allegations.

80. For the reasons stated above (see paragraphs 69-73 above), no effective or thorough criminal investigation can be considered to have been carried out in the seven years following the impugned incident, either pursuant to Article 2 of the Convention, or even less so in accordance with Article 13, the requirements of which are broader than the obligation to investigate imposed by Article 2 (see *mutatis mutandis*, *Buldan v. Turkey*, no. 28298/95, § 105, 20 April 2004, and *Tekdağ*, no. 27699/95, § 98, 15 January 2005). None of the persons responsible was identified, let alone punished, for the death of the applicant's son, and no remedy for the ineffective investigation was provided (see, *mutatis mutandis*, *Abramiuc v. Romania*, no. 37411/02, § 130, 24 February 2009).

Moreover, in so far as no person was found responsible for the applicant's son's death, the possibility for the applicant to lodge a civil action seeking for damages is purely theoretical and in any case this option has already been qualified in the Court's case-law as not capable of affording redress (*Cobzaru v. Romania*, no. 48254/99, § 83, 26 July 2007; *Rupa v. Romania* (no. 1), no. 58478/00, §§ 189-91, 16 December 2008; and *Carabulea v. Romania*, no. 45661/99, § 167, 13 July 2010).

81. The Court finds therefore that the applicant has been denied an effective remedy in respect of the death of his son and has thereby been denied access to any other available remedies at his disposal, including a claim for compensation.

Accordingly, it concludes that there has been a violation of Article 13 of the Convention.

III. 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.”

A. Damage

83. According to a handwritten letter to his counsel dated 19 May 2010 with respect to the non-pecuniary damage that he suffered, the applicant claimed the sum of EUR 4,000,000 (four million euros) as compensation. He alleged to have experienced intense mental suffering, as a parent who was told he had to collect the body of his dead child from the hospital five days after his son had gone into a coma. At the same time, he alleged that the fact that to this day the circumstances in which his son died have not been elucidated has caused him significant psychological distress.

84. The Government asked the Court to dismiss the claims as ill-founded. Alternatively, if the Court were to find a violation in this case, the Government considered that the mere acknowledgment of such a violation would suffice for the purposes of Article 41. In any event, they requested the Court to dismiss the applicant’s claims as being exorbitant.

85. The Court finds that the applicant undoubtedly suffered damage as a result of the violations found by the Court. Having regard to the circumstances of the present case and the nature of the multiple violations found, it awards him EUR 35,000 in respect of the non-pecuniary damage sustained.

B. Costs and expenses

86. The applicant claimed the amount of EUR 5,135 for costs and expenses incurred before the Court, namely, EUR 4,835 for his lawyer’s fee and EUR 300 for the costs borne by APADOR-CH related to technical support and postal expenses. He submitted an itemised schedule of costs of legal assistance based on the contract he had concluded with his lawyer.

87. The Government contended that the sum claimed was excessive, both with respect to the number of hours of work and the rates per hour claimed. They also contested the claims made with respect to the costs

borne by APADOR-CH, as this was a non-profit organization and the alleged expenditure was not substantiated by any documents.

88. The Court reiterates that in order for costs and expenses to be reimbursed under Article 41, it must be established that they were actually and necessarily incurred and are reasonable as to quantum (see, for example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII; *Boicenco v. Moldova*, no. 41088/05, § 176, 11 July 2006; and *Cobzaru*, cited above, § 111). In accordance with Rule 60 § 2 of the Rules of Court, itemised particulars of all claims must be submitted, failing which the Chamber may reject the claim in whole or in part.

89. In the present case, having regard to the above criteria, to the itemised list submitted by the applicant and to the complexity of issues of fact and law dealt with, the Court awards the applicant the requested amount, less the sum of EUR 850 received in legal aid from the Council of Europe, plus any tax that may be chargeable thereon to the applicant, to be paid as follows: the remaining EUR 3,985 to Ms N. Popescu and EUR 300 to APADOR-CH, to be paid separately into the bank account indicated by the applicant's representative.

C. Default interest

90. The Court considers it appropriate that the default interest 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 2 of the Convention in respect of the death of the applicant's son;
3. *Holds* that there has been a violation of Article 2 of the Convention in respect of the respondent State's obligation to conduct an effective investigation;
4. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of effective remedies in respect of the death of the applicant's son while in State custody;

5. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency at the rate applicable at the date of settlement:

(i) EUR 35,000 (thirty-five thousand euros) to the applicant in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount;

(ii) EUR 5,135 (five thousand one hundred and thirty-five euros) in respect of costs and expenses, less EUR 850 (eight hundred and fifty euros) granted by way of legal aid, plus any tax that may be chargeable on that amount, to be paid into the bank account indicated by each representative as follows:

(a) EUR 3,985 (three thousand nine hundred and eighty-five euros) to Ms N. Popescu;

(b) EUR 300 (three hundred euros) to APADOR-CH;

(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;

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

Done in English, and notified in writing on 7 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President