



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

THIRD SECTION

CASE OF GOH v. ROMANIA

(Application no. 9643/03)

JUDGMENT

STRASBOURG

21 June 2011

FINAL

21/09/2011

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

In the case of Goh 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 24 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 9643/03) 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 Singaporean national, Mr Yong Seng Goh (“the applicant”), on 3 March 2003.

2. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu, of the Ministry of Foreign Affairs.

3. The applicant complained, in particular, of the material conditions of detention in three different prisons in Romania.

4. On 8 September 2009 the President of the Third Section decided to communicate to the Government the complaints concerning the conditions of the applicant’s detention in the establishments concerned. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

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

5. The applicant is a Singaporean citizen, born in 1958 and residing in Romania. He is currently serving a prison sentence in Ploiești Prison.

A. The criminal proceedings against the applicant

6. On 8 March 2001, a robbery took place in the flat of a Chinese couple, H.Z.Y. and Y.X. The two victims reported the incident to the police. They indicated that three men had entered their flat, one of them threatening H.Z.Y. with a knife. The same person had forced H.Z.Y., under the threat of knife, to write down a receipt by which he recognised that he owed a debt of 5,000 US Dollars to another person.

7. On 15 March 2001, the applicant and H.Z.Y. agreed to meet in a restaurant in order to collect payment of part of the debt. After the applicant had received from H.Z.Y. an envelope with money, police officers had intervened and had arrested him. At the same time, the police officers apprehended F.Y., who had been sitting outside the restaurant closely following the movements of H.Z.Y. and the applicant.

On the same date, the police seized from the flats of the two accused items related to the robbery, the knife used to threaten the victims, a wallet and residence permit belonging to H.Z.Y, as well as the stolen electronic equipment.

8. In one of the first statements given to the investigative authorities, both accused denied the robbery.

9. After the prosecutor issued an indictment against the applicant on charges of robbery and blackmail and against F.Y on charges of robbery, the case was referred to the Bucharest District Court (“the District Court”).

10. On 5 October 2001, the District Court heard from the victims, two witnesses who had attended the search of the defendants’ flats, the applicant’s lawyer and both accused. F.Y. admitted that he had committed the robbery, but indicated that the applicant had not been involved. The applicant’s request to have three additional witnesses heard (persons with whom he was sharing his flat) was denied, as the court considered that their statements would be made *pro causa*.

11. By a judgment of 9 October 2001, the District Court found the applicant guilty of both charges and sentenced him to fifteen years’ imprisonment. It considered that F.Y.’s new statement did not corroborate the other evidence. It noted that the applicant had not been consistent in his statements and that there were contradictions between the submissions of the two accused concerning how they knew each other and why they had gone to the restaurant together on 15 March 2001. It considered that F.Y.’s new statement could be explained by the high standing that the applicant had within the Chinese community, as person in charge of obtaining the extension of residence permits and recovery of monetary debts.

The District Court applied the maximum sentence in the applicant’s case, relying on the fact that during the trial he had displayed a violent attitude, threatening the victims in Chinese while they were testifying and taking into

account his criminal record and the circumstances in which the acts had been committed.

12. The applicant and F.Y. lodged appeals, the former alleging that he was innocent and the latter asking for a milder sentence.

13. On 13 May 2002, upon the applicant's request, H.X.P., a new witness, testified in front of the County Court, claiming that he had been involved in the robbery and that the applicant had been the victim of a trap.

14. The County Court dismissed both appeals by a decision of 20 May 2002. After reviewing all of the evidence in the case file, it concluded that H.X.P.'s statement was untrue, as it had not been corroborated by the other evidence in the file.

15. The applicant lodged an appeal on points of law, alleging that he was innocent and that he had not committed the alleged crimes. The Bucharest Court of Appeal ("the Court of Appeal") denied the request to have H.X.P. called as a witness once more. By a final decision delivered on 3 September 2002, the appellate court upheld the decisions of the lower courts. After reviewing all the evidence available in the case file, including the statement made by H.X.P., the Court of Appeal concluded that the evidence pointed to the applicant's guilt and that H.X.P.'s statement had not been corroborated by the rest of evidence.

16. After his final conviction, the applicant lodged an extraordinary appeal, which was dismissed by a final decision of the Court of Appeal on 12 October 2004.

B. Conditions of detention

17. The applicant has been in prison since the day of his arrest on 15 March 2001. He has been held in a number of different detention centres. No information is available in respect of his place of detention before 13 June 2001. From the latter date until 20 July 2001 he was detained in Jilava Prison. On the latter date he was transferred to Rahova Prison, where he was held until 26 January 2009. He was then transferred to Margineni Prison. On 19 June 2009 he was transferred from that prison to Giurgiu Prison. By letter of 4 January 2011, he informed the Court that he was transferred to Ploiesti Prison.

1. The applicant's description of the conditions of detention

18. In respect of the three establishments, the applicant alleged that he had been kept in overcrowded cells, with poor hygiene conditions. In addition, he described the situation in each of the establishments, as detailed further below.

(a) Jilava Prison

19. The applicant complains that during the months of June and July 2001, owing to extremely hot weather, the conditions in prison had been unbearable: there had been forty to fifty people in one cell; two to three prisoners had shared the same bed; he had had to share a bed with another prisoner who had had many wounds on his skin; the water had been of very poor quality, having been of a yellow colour, smelling and containing worms. Sometimes, there had been no water – either for drinking or for the toilet. The food had also been of very poor quality.

(b) Rahova Prison

20. On 20 July 2001 the applicant was transferred to Rahova Prison.

21. Here, in cells originally planned for ten prisoners (approximately 6 m in length and 3 m wide), there had sometimes been between twelve and fourteen prisoners. The quality of food had been poor.

22. From 1 January 2007 the prisoners had no longer been allowed to receive food by post and the only way of obtaining food had been to do so from the prison shop, where the prices had been higher than normal market prices. The applicant further alleged that the food normally served had not included meat.

23. The applicant complained that money had often been stolen from letters sent to prisoners and that using the bank transfer system had been rather complicated and had taken a considerable time.

24. He alleged that between 2001 and 2006 he had been subjected to great anxiety and stress because of abuses on the part of (masked) special forces, who had stormed the cells, beaten the prisoners and stolen items belonging to them.

(c) Mărgineni Prison

25. The applicant complained that in Mărgineni Prison, he had shared a cell with a surface area of 48 sq. m with twenty-seven other prisoners.

2. The Government's description of the conditions of detention

26. The Government provided official information, submitted by the National Prison Administration ("NPA"), concerning the size of and facilities in the cells that the applicant had occupied during his detention, as well as the general detention conditions in the three establishments.

27. In Jilava Prison, the applicant had been placed in cell no. 512, which had had a surface area of 42.84 sq. m. The average number of prisoners occupying the cell during the month of June 2001 had been forty-five, and during the month of July, forty-nine. The cell had been equipped with two squat toilets connected to the water network and separated from the rest of the room by a wall. Fresh air had been able to come in through the

windows in the cell and toilet. A laboratory analysis of water quality had not indicated that the water had presented the characteristics described by the applicant. The prisoners had been allowed to take one hot shower per week in communal bathrooms available in each section of the prison, where there had been between nineteen and twenty-three showers available. The applicant had been allowed to walk outside the cell for thirty minutes each day. The official documents did not give the exact number of bunks per cell.

28. In Rahova Prison, the applicant had been placed in cells with an average size of 21 sq. m and which had had ten bunk beds for a maximum of ten detainees. The cells had also included a table, benches, a TV stand, a wardrobe, shelves and a food storage space. A bathroom measuring 8.26 sq. m with cold water had been attached to the cell, separated from the rest of the room by a wall and consisting of a shower, two sinks and a toilet. Hot water had been available twice per week, between midday and 2 p.m. and from 5 p.m. to 7 p.m. Each cell had had a double window, while the bathroom and the food storage room had each had one window.

The detainees had been allowed to walk outside for one to three hours per day and, upon their request, they had been given access to sports fields twice a week.

The prison had ensured detainees' right to purchase different items from a shop operated by a company and located inside the prison. The prices had been regularly checked to ensure that they stayed within the average prices charged by other companies nearby the prison.

Although the applicant had had the right to take part in sports or recreational activities, he had not joined in those activities.

29. As regards the applicant's detention in Mărgineni Prison, the applicant had been placed in cell no. 14, which had had a total surface area of 42.12 sq.m. The cell had included twenty-seven bunk beds and the number of detainees had never exceeded the number of available beds. The average number of inmates in the cell had been twenty-five during the months of February, March and May 2009 and twenty-four during April 2009. The cell had also been equipped with a few tables, a TV set belonging to the prison and storage spaces for dishes and food.

A bathroom measuring 7 sq. m had been attached to the cell, including two toilets separated by a wall, a sink and a shower. Cold running water had been available and it had been of drinking quality.

A schedule approved by the penitentiary authorities had ensured the availability of a shower twice a week.

The applicant had been able to take part in outdoor sport activities for one hour twice a week until 31 March 2009 and for two hours once a week starting from 1 April 2009. The applicant had also been able to walk outside the cell in one of the seven prison courtyards according to a schedule approved by the penitentiary authorities.

30. In respect of the three prisons, the Government indicated that the cells had had natural light and electricity. The inmates had been responsible for cleaning their cells, using products put at their disposal by the prison administration. Pest control measures and insecticide treatments had been carried out regularly.

The quality of drinking water had been regularly assessed. Food had been prepared on a daily basis. The quality of the raw materials used for the preparation of meals had been certified by reports attached to the food provided by different suppliers.

C. Medical care in detention

31. The applicant alleged that he did not receive adequate medical treatment for his various medical conditions and he did not receive any treatment for anaemia. He alleged that in the period 2005-2007, he made numerous requests to receive a dental prosthesis, which had been ignored. In December 2007, he received a prosthesis, which according to him was damaged.

32. From the information submitted to the case-file by the Government, based on documents furnished by NPA, it appears that the applicant received and currently still receives treatment for his various medical conditions. None of the medical records indicates that the applicant suffers from anaemia. In respect of the dental treatment, the medical records indicate that a dental prosthesis has been prepared for him and that between the date when he received it (27 December 2007) and his transfer to Margineni prison on 26 January 2009, he did not report to the medical staff any complaint regarding its quality.

II. RELEVANT DOMESTIC LAW

33. The relevant provisions of Law no. 23/1969 on the execution of sentences are described in paragraphs 23 and 25 of the *Năstase-Silivestru v. Romania*, (no. 74785/01, 4 October 2007).

34. The Government's Emergency Ordinance no. 56 of 27 June 2003 ("Ordinance no. 56/2003") regarding the rights of prisoners states, in Article 3, that prisoners have the right to bring legal proceedings before a court of first instance concerning the implementing measures taken by the prison authorities in connection with their rights. Ordinance no. 56/2003 has been repealed and replaced by Law no. 275 of 20 July 2006, which has restated the content of Article 3 mentioned above in Article 38, which provides that a judge shall have jurisdiction over complaints by convicted prisoners against measures taken by prison authorities (see also *Petrea v. Romania*, no. 4792/03, §§ 21-23, 29 April 2008).

35. The Government submitted to the Court copies of judicial decisions delivered by the domestic courts concerning the application of Ordinance no. 56/2003 and Law no. 275/2006. The decisions mainly concern complaints lodged by prisoners in respect of disciplinary sanctions imposed on them by prison authorities, alleged lack of adequate medical treatment, breaches of their rights to receive visits, to correspondence, to confidentiality of telephone conversations, to have walks outside their cell, to medical assistance during transport to a courthouse, and the right to be placed in a non-smoking cell. In one decision of 9 March 2006, a domestic court noted that the cells in the relevant prison had been designed to accommodate a large number of inmates and only the prison infirmary had been able to accommodate a lower number of inmates. Therefore, as the applicant in that case had not had any medical need to be placed in the infirmary, he was required to remain in a large cell. In another decision of 16 June 2006, a domestic court dismissed a prisoner's complaint concerning overcrowded cells and the fact of having to share a bed with another person. The court's reasoning was that the claimant's state of health had actually improved since he had been placed in detention, he had received adequate medical treatment and therefore that none of his rights had been violated.

III. REPORTS ON THE CONDITIONS OF DETENTION IN ROMANIAN PRISONS

36. The relevant findings and recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") are described in *Bragadireanu v. Romania* (no. 22088/04, §§ 73-76, 6 December 2007) and *Artimenco v. Romania* (no. 12535/04, §§ 22-23, 30 June 2009).

37. The CPT report published on 11 December 2008, following a visit to different police detention facilities and prisons in Romania (including Jilava Prison) conducted from 8 to 19 June 2006, indicated overcrowding as a persistent problem. The same report concluded that in the light of the deplorable material conditions of detention in some of the cells of the establishments visited, the conditions of detention could be qualified as inhuman and degrading.

In the same report, the CPT declared itself gravely concerned by the fact that a lack of beds remained a constant problem, not only in the establishments visited but at national level, and that this had remained the case since its first visit to Romania in 1999. The CPT also welcomed the changes introduced in domestic legislation providing for personal space of 4 sq. m for each prisoner. The CPT therefore recommended that the Romanian authorities take the necessary measures to ensure compliance with this requirement, as well as to ensure that each detainee has his or her own bed.

38. There is no CPT report concerning Rahova Prison. However, a Romanian NGO, APADOR-CH (Association for the Defence of Human Rights in Romania – the Helsinki Committee) visited this establishment on 13 February 2009. The report prepared following this visit indicated that, based on the information submitted by the authorities, the average personal space for prisoners was 2.77 sq. m. The overcrowding was obvious when visiting individual cells: one of the cells visited, measuring 18 sq. m, had accommodated eleven prisoners, even though only ten beds had been available. As regards the prison's food, the report indicated that only one detainee had complained about its quality and that many prisoners had preferred to eat the food they received from home or that they bought from the shop.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

A. Complaint concerning the material conditions of detention

39. The applicant complained of the material conditions of his detention in Jilava, Rahova and Margineni Prisons. He relied in substance 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.”

1. Admissibility

(a) The parties' submissions

40. The Government raised a preliminary objection of non-exhaustion of domestic remedies, in so far as the applicant had not complained to the authorities of the conditions of his detention on the basis of Ordinance no. 56/2003 and subsequently on the basis of Law no. 275/2006. In addition, they pointed out that the applicant could have lodged a civil law complaint seeking compensation for alleged damages. The Government considered both remedies to be efficient, sufficient and accessible.

41. The Government submitted a set of domestic decisions in support of their observations (see paragraph 35 above). They further submitted that the Court implicitly recognised that a civil action in damages represents an

effective remedy in its decision in *Stan v. Romania* (dec.), (no. 6936/03, 20 May 2008).

42. The applicant submitted that his application to the Court dated from 2003, when Ordinance no. 56/2003 and Law no. 275/2006 had not been in force. He further underlined that the domestic decisions sent by the Government had all been delivered after 2005, which showed that no such complaints had been registered beforehand.

(b) The Court's assessment

43. The Court notes that the applicant's complaint concerns the material conditions of his detention and, in particular, overcrowding and poor sanitary facilities. In this respect, it recalls that in recent applications directed against Romania and concerning similar complaints it has already found that, given the specific nature of this type of complaint, the legal actions indicated by the Government, including the civil action in damages, do not constitute an effective remedy (see *Petrea*, cited above, § 37; *Eugen Gabriel Radu v. Romania*, no. 3036/04, § 23, 13 October 2009; *Iamandi v. Romania*, no. 25867/03, § 49, 1 June 2010; *Cucolaş v. Romania*, no. 17044/03, § 67, 26 October 2010; *Ogică v. Romania*, no. 24708/03, § 35, 27 May 2010, and *Dimakos v. Romania*, no. 10675/03, § 38, 6 July 2010).

44. The Court further notes that the domestic decisions submitted by the Government in support of its plea of non-exhaustion relate to specific rights of prisoners, such as the right to medical assistance or the right to receive visits, but that they do not relate to structural issues, such as overcrowding. Among the domestic decisions submitted by the Government, in two of them the claimants raised complaints concerning overcrowding and the fact of having to share a bed with another inmate. The two complaints were dismissed, the first with the reasoning that only the prison infirmary could accommodate a lower number of inmates and the second with the reasoning that the applicant's health had actually improved during detention and without any consideration of the points that he had relied upon concerning the lack of an individual bed.

45. The Court therefore concludes that these decisions do not indicate how the legal actions proposed by the Government could have afforded the applicant immediate and effective redress for the purposes of his complaint (see, *mutatis mutandis*, *Marian Stoicescu v. Romania*, no. 12934/02, § 19, 16 July 2009, and *Ogică v. Romania*, cited above, § 35).

It therefore rejects the Government's plea of non-exhaustion of domestic remedies.

46. The Court considers it necessary to examine on its own motion whether the applicant's complaint was lodged within the six-month time-limit.

47. It observes in this respect that the applicant raised a complaint concerning the conditions of his detention and poor hygiene for the first time by letter of 30 April 2003. He reiterated and detailed his complaints in this respect by subsequent letters of 14 April 2005, 15 January 2008 and 19 March 2009. His complaints concerned three specific establishments, mainly the Jilava, Rahova and Margineni prisons.

48. The Court has previously held that an applicant's detention in different establishments may be considered a continuous situation if the detention conditions remained substantially identical and the prisoner's transfer from one facility to another did not change the situation (see, among others, *Seleznev v. Russia*, no. 15591/03, §§ 35-36, 26 June 2008). The Court considers that such a situation arises in the instant case in respect of the three establishments concerned. Taking into account that the applicant complained consistently about the material conditions of detention in the three establishments and that his transfer from one facility to the other did not change the situation, the Court considers his detention in the three establishments can be regarded as a continuous situation.

49. Noting further that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds, the Court concludes that it must therefore be declared admissible.

2. Merits

(a) The parties' submissions

50. The Government, referring to the description of the detention conditions in the information provided by the NPA (paragraphs 26-30 above), contended that the domestic authorities had taken all necessary measures in order to ensure adequate conditions of detention. They further contested the allegation that the applicant had been held in overcrowded cells. They stressed that the quality of water and food in the prisons had been adequate, as had been shown by the relevant authorities.

51. In respect of Jilava Prison, the applicant, without contesting the figures concerning the size of the cell, indicated that the cell area quoted had also included the bathroom and toilets, thus reducing the effective space available for beds to 37 sq. m for forty-five to forty-nine inmates. He further argued that even if the Government could not provide the exact number of beds available in a cell, it was possible to independently calculate how many beds could fit in such a space, considering that each bed occupied an area of 1.52 sq. m. He further indicated that no relevant documents had been submitted regarding water quality prior to 2005.

52. As to Rahova Prison, the applicant further conceded that the water quality had been better when compared to other detention centres. In respect of the food, he did not contradict the Government's arguments concerning

the quality check done on the raw materials. However, he contended that the products purchased by the administration for preparing meals had not actually been used for this purpose, but rather that they had been sold on. He reiterated his complaint that the prices of items sold within the prison had been higher than average market prices. In terms of the cells where he had been detained in this establishment, he reiterated his allegation that they had included more than ten inmates, even though only ten beds had been available. During 2004-2006 the cell where he had been placed had sometimes even accommodated fourteen prisoners. He wondered why the Government had not submitted to the Court a list recording the number of his cell and the number of inmates held therein. He included statements made by three inmates, who declared that during 2001 and 2003 the cells where they had been held had included more than ten people and that the applicant had had to share a bed with someone else or to sleep on the floor.

53. The applicant further argued that in Mărgineni Prison he had shared cell no. 14, which had had a surface area of 42.12 sq. m, with twenty-seven inmates. He underlined that even though he had been able to take a shower twice a week, he had had to go to a different section of the prison, which had required exposing himself to wind and cold temperatures. He submitted statements made by two inmates, one of whom indicated that from January to May 2009 twenty-seven inmates had been held in a room of 48 sq. m, including the toilets, while the other prisoner declared that for twenty days twenty inmates, including the applicant, had been held in a cell of 48 sq. m.

(b) The Court's assessment

54. The Court reiterates that Article 3 enshrines one of the most fundamental values of democratic societies. The Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (*Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

55. Measures depriving a person of his liberty may often involve an inevitable element of suffering or humiliation. Nevertheless, the suffering and humiliation involved must not go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment.

56. In the context of prisoners, the Court has already emphasised in previous cases that a detained person does not, by the mere fact of his incarceration, lose the protection of his rights guaranteed by the Convention. On the contrary, people in custody are in a vulnerable position and the authorities are under a duty to protect them. Under Article 3 the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that,

given the practical demands of imprisonment, his health and well-being are adequately secured (*Valašinas v. Lithuania*, no. 44558/98, § 102, ECHR 2001-VIII, and *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

57. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The length of the period during which a person is detained in the particular conditions also has to be considered (see among others *Alver v. Estonia*, no. 64812/01, 8 November 2005).

58. An extreme lack of space in a prison cell weighs heavily as a factor to be taken into account for the purpose of establishing whether impugned detention conditions were “degrading” from the point of view of Article 3 (see *Karalevičius v. Lithuania*, no. 53254/99, 7 April 2005).

59. In its previous cases where applicants had at their disposal less than 3 sq. m of personal space, the Court has found that the overcrowding was so severe as to justify of itself a finding of a violation of Article 3 of the Convention (see, among many others, *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007; *Kantyrev v. Russia*, no. 37213/02, § 50-51, 21 June 2007; *Andrey Frolov v. Russia*, no. 205/02, §47-49, 29 March 2007, and *Labzov v. Russia*, no. 62208/00, § 44, 16 June 2005).

60. By contrast, in other cases where the overcrowding was not so severe as to raise in itself an issue under Article 3 of the Convention, the Court has noted other aspects of physical conditions of detention as being relevant for its assessment of compliance with that provision. Such elements have included, in particular, the availability of ventilation, access to natural light or air, adequacy of heating arrangements, compliance with basic sanitary requirements and the possibility of using the toilet in private. Thus, even in cases where a larger prison cell was at issue – measuring in the range of 3 to 4 sq. m per inmate – the Court has found a violation of Article 3 because the space factor was coupled with an established lack of ventilation and lighting (see, for example, *Babushkin v. Russia*, no. 67253/01, § 44, 18 October 2007; *Ostrovar v. Moldova*, no. 35207/03, § 89, 13 September 2005, and *Peers v. Greece*, no. 28524/95, §§ 70-72, ECHR 2001-III) or lack of basic privacy in a prisoner’s everyday life (see, *mutatis mutandis*, *Belevitskiy v. Russia*, no. 72967/01, §§ 73-79, 1 March 2007; *Valašinas*, cited above, § 104; *Khudoyorov v. Russia*, no. 6847/02, §§ 106 and 107, ECHR 2005-X (extracts), and *Novoselov v. Russia*, no. 66460/01, §§ 32, 40-43, 2 June 2005).

61. The key issue in the case at hand is the assessment by the Court of the living space afforded to the applicant in the three establishments concerned. The Court notes that the applicant did not contradict the Government’s submissions on the size of the cells. What is contested between the parties is the actual occupancy of those cells: while the

Government submitted that the number of prisoners in a cell was always inferior or equal to the cell's designated occupancy, the applicant claimed that, at times, prisoners had had to share beds. The applicant also indicated that part of the surface of the cells had been occupied by the bathroom facilities.

62. The Court notes that, even at the occupancy rate indicated by the Government, the applicant's personal space seems to have been consistently below 3 sq. m, which falls short of the standards imposed by the Court's case-law (see *Marian Stoicescu*, cited above, §§ 13 and 24, and *Orchowski v. Poland*, no. 17885/04, § 122, ECHR 2009-... (extracts)). Thus, taking as a base of reference the figures indicated by the Government, during the few months spent in Jilava Prison the applicant had less than 1 sq. m available to him as personal space, during the seven-and-a-half years spent in Rahova Prison he had around 2.9 sq. m available to him on average, whereas in the few months spent in Margineni Prison he had less than 2 sq. m available to him. The Court further underlines that, in reality, these figures are even lower, taking into account that some of the room was occupied by the toilets and different items of furniture.

The amount of outdoor exercise claimed by the Government to have been available to the applicant cannot compensate, in this case, for his severe lack of personal space (see, *Dimakos*, cited above, § 46).

63. The Court further notes that the applicant spent most of his detention in Rahova Prison. Even though there are no CPT reports concerning this specific establishment, the Court has recently analysed the material conditions of detention in this prison for periods of time which overlap with the period in which the applicant was detained there (see *Răcăreanu v. Romania*, no. 14262/03, §§ 49-52, 1 June 2010, and *Dimakos*, cited above, §§ 45-50). In both judgments, the Court concluded that the applicants had been held in overcrowded cells providing them with less than 3 sq. m of personal space and that they had been deprived of the possibility of maintaining adequate bodily hygiene in prison. In the light of the information submitted by the Government in the instant case in respect of the arrangements for showers and in the light of its findings in the *Dimakos* and *Răcăreanu*, cases cited above, the Court cannot but conclude that the applicant was also deprived of the possibility of maintaining adequate bodily hygiene.

64. The Court thus considers that the applicant's situation resulting from insufficient personal space was further exacerbated by poor hygiene conditions.

65. The Court has frequently found a violation of Article 3 of the Convention on account of the lack of personal space afforded to detainees and unsatisfactory sanitary conditions (see, in particular, *Ciorap v. Moldova*, no. 12066/02, § 70, 19 June 2007; *Kalashnikov v. Russia*,

no. 47095/99, §§ 97 et seq., ECHR 2002-VI; and the judgments cited above: *Răcăreanu*, § 49, *Dimakos*, § 49, and *Petrea*, §§ 49-50).

In the case at hand, the Government failed to put forward any argument that would allow the Court to reach a different conclusion.

66. Even though in the present case there is no indication that there was a positive intention to humiliate or debase the applicant, the Court concludes that the conditions of his detention caused him suffering that exceeded the unavoidable level of suffering inherent in detention and that attained the threshold of degrading treatment proscribed by Article 3.

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

67. Taking into account this finding, the Court does not consider it necessary to examine further the part of the complaint concerning the poor quality of food and water.

B. Other complaints under Article 3

68. Relying in substance on Article 3 of the Convention, the applicant complained about the anxiety and stress suffered between 2001 and 2006 while detained in Rahova Prison because of abuses on the part of special intervention forces storming prisoners' cells. He further complained of an alleged lack of adequate medical treatment for his health problems relating to his teeth, anaemia and haemorrhoids.

69. The Court notes firstly that the complaint concerning the storming of the cells has been raised for the first time by letter of 15 January 2008, whereas the alleged events took place during the period 2001 to 2006. It follows that this part of the complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

70. Secondly, in respect of the complaint concerning the alleged lack of medical treatment, the Court recalls that in the case of *Petrea*, cited above, it has concluded that before the entry into force of Ordinance no. 56/2003, on 27 June 2003, there was no effective remedy for situations such as the one complained of by the applicant. However, after that date, persons in the applicant's situation had an effective remedy to complain about the alleged lack of medical treatment even if their applications had already been pending with the Court at the relevant date (see *Petrea*, cited above, §§ 35-36).

The Court sees no reason to depart in the present case from the conclusions it reached in *Petrea*.

71. As regards the complaint concerning the dental treatment, the Court notes that the applicant raised it for the first time by letter of 15 January 2008. Taking into account that the applicant's complaint in the instant case does not relate to a systemic problem caused by the flaws of the medical insurance system for ensuring dental care for detainees deprived of any

financial means, contrary to the factual situation in the case of *V.D v. Romania* (no. 7078/02, § 86-88, 16 February 2010), the Court considers that the applicant had available an effective remedy to complain about the alleged poor quality of the dental treatment. Nevertheless, it does not transpire from the available material that the applicant made any specific requests with the prison authorities in that connection.

72. It follows that the part of the complaint concerning the alleged lack of medical treatment after 27 June 2003 should be rejected for non-exhaustion of domestic remedies.

73. Further, the Court finds no evidence in the file of a potential breach of the applicant's right to receive medical treatment during detention for the period before the entry into force of Ordinance no. 56/2003.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

74. The applicant raised complaints under Articles 6 §§ 1-3 in respect of the fairness of the criminal proceedings against him and 8 of the Convention in respect of alleged breaches of his rights to correspondence while in detention.

75. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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

77. In respect of non-pecuniary damage, the applicant claimed 600,000 euros (EUR) for the alleged violation of Article 6 of the Convention, EUR 200,000 in respect of non-pecuniary damage caused by

the alleged violation of Article 3 of the Convention and EUR 50,000 for the alleged violation of Article 8 of the Convention.

78. The Government considered that the claims were exaggerated and that there was no causal link between the alleged violations and the damages sought. They argued that a conclusion of a violation of Article 3 could constitute just satisfaction in the case.

79. The Court notes that it has found a violation of Article 3 in the present case. In these circumstances, it considers that the applicant must have experienced a certain distress, which the mere finding of a violation cannot compensate. It therefore awards him 16,000 EUR in respect of non-pecuniary damage.

B. Costs and expenses

80. The applicant did not submit a claim for costs and expenses. Accordingly, there is no call to award him any sum on that account.

C. Default interest

81. The Court considers it appropriate that 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 complaints concerning Article 3, in so far as they refer to the material conditions of detention in Jilava, Rahova and Mărgineni Prisons admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 16,000 (sixteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the respondent State's national currency at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 21 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Section Registrar

Josep Casadevall
President