



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

THIRD SECTION

**CASE OF BĂDILĂ v. ROMANIA**

*(Application no. 31725/04)*

JUDGMENT

STRASBOURG

4 October 2011

**FINAL**

*04/01/2012*

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



**In the case of** Badila 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 Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 13 September 2011,

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

## PROCEDURE

1. The case originated in an application (no. 31725/04) 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 Aurel Badila (“the applicant”), on 14 June 2004.

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

3. The applicant complained, in particular, of the material conditions of detention in different prisons in which he had been detained and of the alleged lack of adequate medical treatment for his diseases.

4. On 4 May 2007 the President of the Third Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1960 and lives in Giurgiu. He was detained from 21 March 2002 until 20 March 2009, when he was released from Giurgiu Prison.

6. He was convicted of attempted rape and sentenced to seven years of imprisonment.

### **A. Conditions of detention**

7. During the applicant's seven years of detention he has been held in a number of different detention centres. Starting from 24 April 2002 he was detained in Giurgiu Prison, except the periods in which he was detained in Jilava Prison or hospitalised in Rahova Prison Hospital.

8. As the applicant was a party to different proceedings before the Bucharest courts, he was detained in Jilava Prison in the periods between 25 January and 29 March 2003, 23 August 2003 and 17 January 2004, 14 August and 9 October 2004, and 7 and 10 January 2008.

9. Moreover, as the applicant needed special medical treatment, he was hospitalised in Rahova Prison Hospital for the periods between 17 and 24 April 2004, 26 June and 3 July 2004, 24 July and 7 August 2004, and 4 and 11 March 2006.

#### *1. The applicant's description of the conditions of his detention*

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

##### **(a) Giurgiu Prison**

11. According to the applicant, in Giurgiu Prison he was underfed and detained in a damp cell.

12. He alleged that the temperature in the cell in winter had been very low.

13. In a letter addressed to the Court in July 2005, he maintained that often there had been no water – either for drinking or for the toilet. In a letter dated 4 June 2007 he also claimed that there had been a lack of water.

14. He further alleged that there had been no television, radio or any other source of information at the detention centre.

15. The applicant was transported on several occasions between prison and the domestic courts, where he had been summoned to appear at public hearings. He travelled in vans transporting large numbers of prisoners in cramped conditions and without any ventilation.

##### **(b) Jilava Prison**

16. The applicant was detained in Jilava Prison in 2003 and 2004 for the periods specified above in paragraph 8. He was again transferred to this prison on 7 October 2008, when he occupied cell no. 311 in Section III.

17. Here, in cells originally planned for twenty-four prisoners, fifty prisoners were being detained.

18. He complained that the cell was not heated in winter and that therefore it was very cold.

19. He also complained that there was a lack of running water. With respect to the drinking water, he claimed that it was of very poor quality.

20. He alleged that there were bugs and rats in the cell.

21. The opportunity to exercise outdoors was limited to one ten-minute walk per day, and there were days without any outdoor activity.

22. The quality of food was also very poor, meat being a rarity.

**(c) Medical ward of Rahova Prison**

23. The applicant complained that while he was hospitalised in Rahova Prison he had to share his bed with another prisoner, even after he had undergone a surgical intervention.

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

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

**(a) Giurgiu Prison**

25. According to a letter dated 23 August 2007 addressed to the Romanian Government by the Giurgiu Prison Administration, at that time the applicant was placed in cell no. B 228. It had six beds and accommodated five other detainees, each having his own bed. The surface area of the cell was 21.76 square metres. However, there was no information concerning the surface area of the cell and the number of prisoners occupying it for the period of detention before 2007.

26. The temperature in the cell was adequate, as the cell was connected to the city heating network.

27. The applicant was allowed three hours of outdoor exercise per day between 8 and 11 a.m. The prison owned two buses and three minibuses for the transport of prisoners from the prison to the courts for hearings.

28. A schedule approved by the prison authorities had ensured the availability for prisoners of a shower twice a week.

29. The prisoners had access to a room where they could watch television. They could also read newspapers as the prison had a subscription to the newspaper *Adevărul*.

30. The prison authorities sent copies of the applicant's requests for copies from his medical and criminal files which were allowed (containing the written confirmation by the applicant that he had received the copies). Most of them were dated 2006 and 2007.

31. It also appears that in December 2006 the applicant received copies of the Romanian Constitution and of the laws concerning the rights and

obligations of prisoners. In 2007 he received a certificate attesting to his lack of revenue, to be sent to the Court in order to obtain legal aid.

**(b) Jilava Prison**

32. In Jilava Prison, the applicant had been placed for the period between 14 August 2004 and 9 October 2004 in cell no. 611. It had a surface area of 43.70 square metres. The cell had twenty-seven beds. The average number of prisoners occupying the cell for the period between 14 August 2004 and 7 September 2004 had been between thirty-three and forty.

33. The cell was equipped with two squat toilets connected to the water network and was separated from the rest of the room by a wall.

34. Fresh air had been able to come in through the windows in the cell and toilet area.

35. The prisoners had been allowed to take one hot shower per week in communal bathrooms available in each section of the prison.

36. The applicant had been allowed to walk outside the cell for thirty minutes each day.

37. Disinfection of the cells was carried out periodically. According to the documents provided by the prison authorities, such disinfection of the applicant's cell was carried out on 6 January and 24 June 2004.

38. According to the information provided by the prison authorities, the applicant made a request for stamps, which he needed for his correspondence with the Court, on 8 September 2004. The applicant's request could not be satisfied as he was transferred to Giurgiu Prison the next day. On 6 September 2004 the applicant requested copies from his medical file. The authorities asked him to submit a written request.

39. Although the applicant was hospitalised a few times in the medical ward of Rahova Prison, the Government provided information only in respect of the period between 24 July and 7 August 2004. They mentioned that the prison hospital had ninety beds and that at the time the applicant was hospitalised there were only eighty-seven prisoners being detained.

**B. Medical care in prison**

40. In July 2002 the applicant had an anal abscess. He alleged that, due to lack of medical treatment, it aggravated and became a fissure close to the intestinal ring that caused him intense physical pain. Therefore, he was hospitalised in the medical ward of Jilava Prison for the period between 23 July and 3 August 2002. The doctors considered that a surgical intervention was not necessary.

41. In March 2004, following a hunger strike, the applicant was examined by a medical expert. He concluded that the applicant must undergo a surgical operation because of the anal fissure. For this reason, the

applicant was hospitalised this time in the medical ward of Rahova Prison for the period between 17 April and 24 April 2004. There he underwent a surgical operation for haemorrhoids, but not for anal fissure.

42. The applicant alleged that he had not received the medical treatment which had been prescribed by doctors as the prison or prison pharmacy did not have the medicine he needed.

43. The Government sent the applicant's medical file, along with a letter from the Prison Service dated 8 October 2007, which detailed the medical care that the applicant had received in prison.

44. From the information submitted by the Government, it appears that the applicant received treatment for his various medical conditions. It also appears that from 17 until 24 April 2004, he was hospitalised in Rahova Prison Hospital where he was examined by the prison doctors. As a result of the medical treatment with antibiotics and the anti-inflammatory medication that he received, his anal fissure was improving and the doctor considered that it did not require a surgical intervention.

45. From 26 June to 3 July 2004 the applicant was hospitalised again in the Rahova Prison Hospital. A surgical intervention was recommended, but the applicant left the hospital at his own request. However, he underwent a surgical intervention when he was again hospitalised on 24 July 2004. He left the hospital on 7 August 2004, as his health significantly improved after the operation.

46. He was hospitalised again in the medical ward of Jilava Prison from 23 October to 20 November 2004.

47. His medical supervision continued throughout 2005, 2006 and 2007. He underwent ophthalmological, orthopaedic and neurological check-ups, was periodically seen by specialist doctors, and received the prescribed medicines through the prison pharmacies.

48. Between the periods during which he was hospitalised, the applicant was detained in Giurgiu and Jilava Prisons.

### **C. Complaints concerning the conditions in prison and medical care**

49. On an unspecified date the applicant lodged a criminal complaint against Dr D.V. of Rahova Prison Hospital who had operated on him whilst he was in detention. He alleged that he had been subjected to a surgical intervention which had not been necessary. The prosecutor's office decided not to initiate a criminal investigation. The applicant did not appeal against that decision.

50. On an unspecified date the applicant also lodged a criminal complaint against Dr I.C. of Jilava Prison. He alleged that his medical file had been stolen. On 10 November 2004 the prosecutor's office decided not to initiate an investigation on the ground that no offence had been

committed. As appears from the documents submitted by the parties, the applicant did not file any appeal against that decision.

## II. RELEVANT DOMESTIC LAW

51. The relevant provisions of the Execution of Sentences Act (Law no. 23/1969) are set out in paragraphs 23 and 25 of the Court's judgment in the case of *Năstase-Silivestru v. Romania* (no. 74785/01, 4 October 2007).

52. 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 reproduced the content of Article 3 mentioned above in its section 38, which provides that a judge has 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).

53. 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 in practice. The decisions mainly concern complaints lodged by prisoners in respect of disciplinary sanctions imposed on them by prison authorities, an alleged lack of adequate medical treatment, breaches of their rights to receive visits, to correspondence, to the confidentiality of telephone conversations, to have walks outside their cell, and the right to be placed in a non-smoking cell.

## III. REPORTS ON THE CONDITIONS OF DETENTION IN ROMANIAN PRISONS

54. 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 the Court's judgments in the cases of *Bragadireanu v. Romania* (no. 22088/04, §§ 73-76, 6 December 2007) and *Artimenco v. Romania* (no. 12535/04, §§ 22-23, 30 June 2009).

55. 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.



56. 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 four square metres 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 had his or her own bed.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

#### **A. Complaint concerning the material conditions of detention**

57. The applicant complained of the material conditions of his detention in Giurgiu and Jilava Prisons and in Rahova Prison Hospital. 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**

58. 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 Article 267 of the Criminal Code, nor had he lodged a civil action for damages before Ordinance no. 56/2003 entered in force and, subsequently, on the basis of that Ordinance. The Government considered both remedies to be efficient, sufficient and accessible.

59. The Government submitted a set of domestic decisions in support of their observations.

60. The applicant did not submit any observations in this respect.

##### **(b) The Court's assessment**

61. 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 connection, it observes that in recent applications against Romania 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, did not constitute effective remedies (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).

62. 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 they do not relate to structural issues, such as overcrowding.

63. 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.

64. 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

65. The Government, referring to the description of the detention conditions in the information provided by the NPA (see paragraphs 24-27 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 found by the relevant authorities.

66. The applicant contested the Government's submissions and reiterated that he had been held in precarious conditions, that the cells had been overcrowded, the food of poor quality and that the conditions had not been conducive to maintaining proper hygiene. He referred to the CPT reports of that time as confirming his allegations.

**(b) The Court's assessment**

67. 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 (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

68. 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.

69. 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 (see *Valašinas v. Lithuania*, no. 44558/98, § 102, ECHR 2001-VIII, and *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

70. 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 other authorities, *Alver v. Estonia*, no. 64812/01, 8 November 2005).

71. 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).

72. In previous cases where applicants had at their disposal less than three square metres 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 other authorities, *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007; *Kantirev 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).

73. 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 three to four square metres 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; and *Novoselov v. Russia*, no. 66460/01, §§ 32 and 40-43, 2 June 2005).

74. The key issue in the case at hand is the assessment by the Court of the living space afforded to the applicant in the detention centres where he was held, in particular in Giurgiu and Jilava Prisons where the applicant spent most of his time.

75. The Court notes that, even at the occupancy rate indicated by the Government, the applicant's personal space seems to have been consistently below four square metres, 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-...). Thus, taking as a point of reference the figures indicated by the Government, during the period he spent in Jilava Prison in 2004 the applicant had less than one square metre available to him as personal space. For the rest of the period he spent in Jilava, the Government did not provide any information. In 2007 in Giurgiu Prison, the applicant had 3.6 square metres available to him on average, whereas for the rest of the period between 2002 and 2007, the Government did not provide any information. The Court also notes that there is no information provided by the Government concerning the space available to the applicant in Rahova Prison Hospital.

76. The Court further observes that the applicant spent most of his detention in Giurgiu 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 *Iamandi v. Romania*, no. 25867/03, §§ 56-62, 1 June 2010 and *Bragadireanu v. Romania*, no. 22088/04, §§ 92-98, 6 December 2007). In both judgments, the Court concluded that the applicants had been held in overcrowded cells, providing them with less than three square metres 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 *Iamandi* and *Bragadireanu* cases cited above, the Court cannot but conclude that the applicant was also deprived of the possibility of maintaining adequate bodily hygiene.

Moreover, the applicant's description of the overcrowding, in particular in Jilava Prison, corresponds to the findings made by the CPT (see paragraph 55 above).

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

78. 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 *Iamandi* and *Bragadireanu*, cited above).

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

79. 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.

80. 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 available to the applicant in prison.

## **B. Complaint concerning the lack of adequate medical treatment**

81. Relying in substance on Article 3 of the Convention, the applicant complained of an alleged lack of adequate medical treatment for his health problems.

### *Admissibility*

#### **(a) The parties' submissions**

82. 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 lack of adequate medical treatment, on the basis of Article

267 of the Criminal Code before Ordinance no. 56/2003 entered in force, and subsequently on the basis of that Ordinance.

83. The applicant did not submit any observations in this respect.

**(b) The Court's assessment**

84. The Court notes that in the case of *Petrea*, cited above, it concluded that before the entry into force of Ordinance no. 56/2003, on 27 June 2003, there had been 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 in relation to their complaints concerning an alleged lack of medical treatment, even if their applications had already been pending before 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*.

85. It therefore considers that after the entry into force of Ordinance no. 56/2003, the applicant should have lodged a complaint with the domestic courts about the alleged lack of medical treatment.

86. The Court notes that the applicant lodged a criminal complaint about the surgical intervention to which he had been subjected (only on the ground that it was not necessary), but he did not lodge any complaint about the lack of adequate medical treatment on the basis of Ordinance no. 56/2003. Therefore, 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.

87. As for the period before the entry into force of Ordinance no. 56/2003, the Court finds no evidence in the file of any other potential breach of the applicant's right to receive treatment. In particular, it notes that he formulated his complaint about the alleged lack of medical treatment in very general terms, without allowing for any specific determination of when the alleged interference with his right could have occurred. Furthermore, his statements are contradicted by the medical records and, in his observations in reply to those formulated by the Government, he did not make any additional submissions that would allow the Court to substantiate the complaint.

88. Therefore, 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 complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLES 8 AND 10 OF THE CONVENTION

89. Relying on Article 8 of the Convention, the applicant complained that his right to respect for his correspondence had been infringed owing to the alleged difficulties he had encountered in obtaining paper, stamps and envelopes in order to lodge his application with the Court. Under Article 10 of the Convention, he complained about the difficulties which he had allegedly encountered in obtaining copies of his medical and criminal file from the prison authorities. Under the same Article he claimed that while in prison he had not had access to public information, as he could not watch television, listen to the radio or read any newspapers.

Article 8 of the Convention reads, as far as relevant, as follows:

“1. Everyone has the right to respect for ... his correspondence.”

Article 10 of the Convention reads, as far as relevant, as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers ....”

### **Admissibility**

#### *1. The parties' submissions*

90. The Government submitted that the applicant's requests for paper, stamps and envelopes, as well as for copies of his medical and criminal file, were always allowed, according to the information obtained from the prison authorities. In respect of his access to information as provided by televisions, radio and newspapers, they maintained that the applicant had had continuous access to all these sources of information, as evidenced by the documents submitted by the prisons in which he was detained.

They requested that the Court reject the complaint as manifestly ill-founded.

91. The applicant did not submit any comments in this respect.

#### *2. The Court's assessment*

92. The Court has already found that, before the entry into force of Ordinance no. 56, no effective remedy for alleged violations of the right to respect for one's correspondence was available (see *Petra*, § 38, and *Năstase-Silivestru*, §§ 47-54, judgments cited above). However, as from June 2003, Ordinance no. 56 introduced an appeal before the courts against any act of the prison authorities. This also includes the infringement of prisoners' right to information, which is guaranteed by the Ordinance.

93. The Court also notes that the applicant did not substantiate any of his allegations of interference with his right to respect for his correspondence and to receive information for the period before the entry into force of Ordinance no. 56.

94. Therefore, 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 complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

95. As regards the period after June 2003, the applicant did not lodge any complaint on the basis of the Ordinance concerning his alleged difficulties in obtaining all the material he needed in order to lodge his application with the Court, or to submit the requested documents to the latter. Neither did he complain about his alleged lack of access to public information. Moreover, on the basis of the information received from the prison authorities, the Court notes that the applicant's requests for copies of different documents from his medical and criminal file were allowed.

96. It follows that the complaints concerning the alleged infringement of the applicant's right to respect for his correspondence under Article 8, and the alleged breach of his right to access to information under Article 10, should be rejected for non-exhaustion of domestic remedies in so far as they concern the period after the entry into force of Ordinance no. 56.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

97. 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

98. The applicant claimed 500,000 euros (EUR) in respect of non-pecuniary damage for the suffering caused to him by the conditions of detention in the three prison establishments, and for the health conditions he developed as a result of his detention.

99. The Government considered that the amount requested by the applicant was exorbitant, and that the conclusion of a violation of the Convention would suffice to compensate him for the non-pecuniary damage allegedly suffered.



100. The Court finds that the conditions in which the applicant was detained must have caused him serious physical discomfort and mental suffering which cannot be compensated for by the mere finding of a violation. Ruling on an equitable basis, it therefore awards the applicant EUR 6,000 in respect of non-pecuniary damage.

#### **B. Default interest**

101. 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 complaint concerning the conditions of detention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of detention;
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 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Romanian lei, 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 4 October 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli  
Deputy Registrar

Josep Casadevall  
President