



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

THIRD SECTION

CASE OF LĂUTARU v. ROMANIA

(Application no. 13099/04)

JUDGMENT

STRASBOURG

18 October 2011

FINAL

18/01/2012

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

In the case of Lăutaru 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 27 September 2011,

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

PROCEDURE

1. The case originated in an application (no. 13099/04) 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 Iulian Lăutaru (“the applicant”), on 9 February 2004.

2. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu. The applicant was granted leave to represent himself in the proceedings before the Court.

3. The applicant alleged, in particular, that the material conditions of detention in Colibași Prison, lack of adequate medical care, constant psychological pressure from the authorities to withdraw his complaints concerning the conditions of detention, and failure of the prison authorities to provide him with stamps for his letters to the Court, breached his rights guaranteed by Articles 3, 8 and 34 of the Convention.

4. On 15 September 2009 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 1968 and lives in Băbeni, Vâlcea.

6. On 1 March 1999 the applicant was detained pending trial in Colibași Prison.

7. By a decision of 9 June 1999 the Vâlcea County Court convicted the applicant of murder and sentenced him to seventeen years' imprisonment. The decision became final on 4 February 2000 by a judgment of the Court of Cassation. The applicant served out his sentence in Colibași Prison.

1. The material conditions of detention

(a) The applicant

8. The applicant stated that the cells were squalid and overcrowded and the smell was unbearable because of the dirty sanitary facilities.

9. His clothes and bedding were full of lice, which caused him blisters and wounds because he had to scratch constantly.

10. Between January and March 2002 he shared cell 316 with six other detainees and no heating was provided in the cell.

11. During the summer the water was cut off between 7 a.m. and 11 p.m. although the temperature in the cell was above 40 degrees Celsius. Also, the detainees were supplied with water from insanitary plastic containers.

12. The window grille was fitted with a net which prevented proper ventilation and made breathing in the cell extremely difficult as a result of the overcrowded conditions. Also, the electricity was cut off between 9 a.m. and 4 p.m.

13. At unspecified times in 2005 the applicant shared a cell with T.I., a fellow inmate who was HIV-positive and who cut his fingers several times. However, in spite of the increased danger of infection the cell and the food receptacles were not disinfected.

14. Lastly, the food contained impurities and waste and he also complains that there were no activities.

(b) The Government

15. Between February 2001 and May 2003 the Colibași Prison authorities initiated a general reconstruction and maintenance programme for detention Sections II, III and IV of the prison. Because of these works the detainees were relocated from one section to another, which might have caused overcrowding in the cells.

16. The reconstruction and maintenance programme resulted in the building of two new prison Sections, no. 6 and no.7. They included cells 612 and 711. Each of the cells was equipped with eight beds, two sinks with mirrors and shelves, a bathtub and a separate toilet. Each cell measured 17.2 sq. m. The rooms were 3.05 metres high. The lavatory measured 5.77 sq. m, the toilet room 1.57 sq. m. and the storage room 1.65 sq. m. The window of each of the rooms was 1.20 x 1.20 metres with panes of glass,

hermetically sealed. The storage and the toilet room were each equipped with a 0.6 x 0.6-metre window.

17. Cells 203 and 205 located in Section II of the prison are identical and are each equipped with thirty-six beds, six sinks fitted with mirrors and shelves, six shower baths and four separate toilets. Each cell was 57.85 sq. m in area and 4.2 m high, the lavatory was 8.55 sq. m., the toilet room was 1.02 sq. m and the storage room was 10.83 sq. m. The shower baths and toilets were located in a 7.83 sq. m. separate room. The cells each had three windows of 1 x 1.5 m, hermetically sealed. The shower, toilet and lavatory rooms each had 0.6 x 0.6 m windows.

18. Cell 423, in which the applicant was also detained, was renovated to European standards and was not overcrowded, according to prison records. Nor did the records indicate that any of the other prison cells were overcrowded.

19. No information could be provided in respect of the number of detainees sharing cells with the applicant or whether the applicant had had to share a room with an HIV-positive detainee, on the ground that the relevant documents had been removed from the archives and destroyed following the expiry of the statutory time-limit for archiving such information.

20. The cells, the sanitary facilities and the main rooms of the prison underwent maintenance work at least once a year. The metal beds and the windows were repaired at the same time. Drinking water was continuously available: it was cut off only when maintenance work had to be done, and hot water for bathing was available twice a week.

21. Heating was supplied for six and a half hours a day. After this hot air was circulated by pumps for another four to five hours.

22. The quality of the ingredients used to prepare food was checked daily by the prison warden, the prison doctor and a designated prisoner, and the applicant was provided with a special diet appropriate to his medical condition.

23. According to the documents available in the applicant's prison file he was involved in a number of social reintegration activities with positive results, and was rewarded fifty-five times with extended visitation rights, packages and revocation of disciplinary sanctions. He took part in poetry, logic, football, chess and table tennis contests and had poems and essays published in the prison paper.

24. On 15 March 2006 the applicant's right to daily exercise was extended by one hour to a total of three hours on a psychiatrist's advice.

25. During his detention he was repeatedly given other responsibilities, such as editing material for the prison newspaper, acting as representative for cells 316 and 610, keeping attendance records, and distributing newspapers and magazines. He was rewarded four times for dedication.

2. The right to correspondence with the Court

26. On 24 November 2003 the applicant addressed a request to the authorities of Colibași Prison for a stamp to be put on a letter which he intended to send to the European Court of Human Rights (“the Court”) and which contained his application.

27. On 26 November 2003 the authorities refused to stamp the applicant’s letter, on the ground that the applicant had had the necessary amount of money in his account but had spent it all before the date of his request for a stamp.

28. The written refusal of the prison authorities reads as follows: “I propose not to approve the detainee’s request, because he had the necessary amount of money but spent it on shopping. The last remaining money in the account was spent four days before he made the request”.

29. On 4 December 2003, the applicant requested a copy of his written application for a stamp.

30. On 13 December 2003 the authorities of Colibași Prison dismissed his request as unsubstantiated, on the ground that an application could have been lodged with the Court only after exhaustion of the available domestic remedies and within six months of the final court decision. Also, if the applicant brought proceedings before the Court they would provide it with all the pertinent documents.

31. On 3, 19 and 27 May and 9 June 2004 the applicant addressed requests to the Colibași Prison authorities for photocopies of documents, including various complaints and court judgments; the requests were refused. He asked to be informed in writing of the reason for the refusal but did not receive any answer. After repeated requests and complaints he was provided with the requested photocopies on 25 June 2004.

32. The applicant’s requests for stamps and envelopes, made on 22 July, 18 September and 28 October 2003, 26 January, 12 October and 9 November 2004, and 23 February, 15 June and 3 October 2007, were granted and the applicant was provided with the requested items. Also, the applicant’s requests lodged with the prison authorities on 19 December 2006, 15 February and 3 October 2007, and 21 January 2008, for copies of documents to be posted to the Court, were approved and the documents were mailed.

33. From September 2006 to date the applicant lodged twenty requests with the prison authorities for copies of various documents. They were all granted.

3. Medical treatment

34. The applicant stated that while in detention he developed a liver and stomach condition, kidney failure and chronic laryngitis as a result of the conditions of detention, bad food and impure drinking water. He

acknowledges that he received some treatment for his condition, however the treatment lacked consistency and eventually it was stopped. He stated that although his family helped him finance the required treatment his health was permanently damaged. He also stated that his requests for medication had been refused, the reason given being lack of funds.

35. On 24 January 2003 the applicant brought proceedings before the Argeş County Court seeking to be released from his sentence on medical grounds.

36. By a judgment of 25 March 2003 the Argeş County Court dismissed the applicant's action on the ground that according to the medical expert report in the file the applicant's medical condition, including his liver condition, could be treated in a prison hospital. There is no evidence in the file that the applicant appealed against this decision.

37. According to the applicant's medical file, from the date of his imprisonment he was regularly examined by doctors, his health was monitored and he was prescribed and administered medication during the course of his detention.

38. On 11 May 2004 the Colibaşi Prison authorities drafted a medical report concerning the applicant's general state of health. According to the report the applicant was suffering from a liver and kidney condition, although he had been declared clinically healthy at the time of his imprisonment on 1 March 1999. His illness could however be treated in the prison hospital and the applicant had been provided with treatment prescribed by specialist doctors. From March 2003, when he was diagnosed with the liver condition, he was provided with adequate food for his illness. The report stated that, although the applicant's disease was discovered after he had been detained, the exact moment he contracted it could not be established. According to the report the applicant was suffering from chronic diseases which were continuing to progress, often without symptoms. Diagnosis would have been possible only by thorough medical examination, which had not been done at the time of his imprisonment. Lastly, the report concluded that the applicant's illness had been caused by a number of external factors, including lack of adequate nourishment and alcohol consumption prior to his imprisonment and was not connected with the food he received in detention.

39. In view of his state of health, on 25 February 2004 the applicant lodged a request with B.G., the judge responsible for the execution of sentences, for a water heater so that he could prepare herbal teas in his cell. His request was dismissed on 26 February 2004 on the ground that the specialist doctor had not recommended that the applicant use herbal tea as part of his treatment.

40. On 25 May 2006 the Argeş Commission for People with Disabilities diagnosed the applicant with a Category 2 disability on account of his pulmonary fibrosis.

41. On 26 May 2006 the applicant brought proceedings before the Argeş County Court seeking release from his prison sentence on medical grounds.

42. By a judgment of 28 November 2006 the Argeş County Court dismissed the applicant's action, on the ground that he had twice refused to have a medical expert assessment and afterwards he had withdrawn his request. There is no evidence in the file that the applicant appealed against the judgment.

43. According to a medical expert report of 23 July 2007 carried out by the Argeş Pension Rights Office, the applicant was diagnosed with pulmonary fibrosis and a personality disorder. According to the medical report the applicant had been an employee of the Oltchim Chemical Plant in Râmnicu-Vâlcea and had repeatedly been exposed to toxic fumes. For two years prior to the date of the report the applicant had been experiencing several symptoms of pulmonary fibrosis, including, *inter alia*, the sensation of a constricted thorax and physical anaemia.

44. On 29 August 2007 the Argeş Pension Rights Office issued a decision concerning the applicant's ability to work on the basis of the findings of the medical expert report of 23 July 2007. According to the decision the applicant was suffering from a Category 2 work disability.

45. A medical examination was carried out on 9 December 2009. Between 17 May 2007 and 9 June 2009 the applicant was hospitalised five times in Colibaşi Prison Hospital and he received treatment for his medical problems. Also, at the time of the examination he had been prescribed neuroleptic treatment, which he was refusing to take. He was also suffering from a Category 3 work disability.

4. Complaints against the prison administration concerning the material conditions of detention and the refusal of a stamp

46. During 2004 and 2006 the applicant made numerous complaints concerning conditions of detention, including allegations of poor medical treatment.

47. On 4 February 2004 the applicant brought proceedings against the authorities of Colibaşi Prison as a result of the prison authorities' refusal to issue him with a stamp for an envelope addressed to the Court, the quality of the food, overcrowding, lack of proper diet and lack of treatment for his medical conditions. He relied on Government Emergency Ordinance 56/2003 on the execution of prison sentences.

48. On 26 February 2004 the National Prison Authority investigated the applicant's complaints lodged on 4 February 2004 and found, *inter alia*, that the applicant's requests from 24 November and 4 December 2003 had been dismissed by reasoned decisions. Moreover, from 12 April 2002 the applicant had been detained in the new Section IV of the prison, which had been opened in April 2002 and built in accordance with European norms. Furthermore, from 6 June 2002 the applicant had been detained in cell 423

and the available statistical data showed that no overcrowding had been recorded in that cell since 2 March 2003. The report does not contain details of the number of detainees housed in cell 423, the size of the cell or the conditions in it prior to 2 March 2003.

49. On 15 April 2004 the applicant was allegedly told to report to General B. of the former General Prisons Authority and forced to state that he would withdraw his complaint against the Colibași Prison authorities on the ground that the applicant was now requesting to be transferred to another prison in order to work.

50. The applicant's statement reads as follows: "state that before the Pitești District Court I have a case against the Colibași Prison authorities concerning ill-treatment, illness caused by very poor food and refusal to provide me with a stamp for a letter addressed to the Court, on the ground that I had money. I withdraw my complaints for the following reasons: the food has improved and I want to be transferred to Mărgineni Prison in order to work in the factory, as I have a long sentence and I want to earn money". In July, October and December 2004 the applicant was transferred three times to Mărgineni Prison to attend hearings in proceedings he was a party to.

51. On 29 April 2004 the Pitești District Court acknowledged that the applicant had withdrawn his complaint.

52. On 26 April 2004 the applicant was informed, following a letter addressed by him to the Romanian President, that his complaint about the conditions of his detention had been forwarded to the National Prisons Authority for investigation. The latter informed the applicant that his complaints had not been upheld.

53. The applicant stated that he was constantly under threat and psychological pressure from the prison administration. In particular, Captain C.A. (head of Section IV of the prison) and Lieutenant N.A. (head of the re-education department) repeatedly threatened him with serious consequences if he continued to lodge complaints about the conditions of his detention. There is no evidence in the file that the applicant lodged any complaints against C.A. and N.A.

54. On 22 March 2006 the applicant lodged a criminal complaint with the Argeș Prosecutor's Office against the Colibași Prison authorities, alleging torture and inhuman treatment on account of the conditions of detention. He argued that the food was inadequate for his medical condition; the cells were overcrowded, poorly lit and cold, with no running water during the summer, and that the transport conditions were inadequate. After evidence was heard from him the Argeș Prosecutor's Office informed the applicant on 18 April 2006 that his complaint had been referred to the National Prisons Authority.

55. On 23 May 2006 the National Prisons Authority informed the applicant that his complaints had not been upheld. Nevertheless, the

applicant stated that the National Prisons Authority had failed to hear him and to carry out an inspection of his cell and of the prison wing.

56. Numerous similar complaints were also sent to various other authorities, such as the Romanian Parliament and the Human Rights Committee of the Romanian Chamber of Deputies; several letters were sent to members of the above-mentioned committee and the Delegation of the European Commission in Romania. The applicant's complaints were referred to the National Prisons Authority, which did not uphold any of the allegations.

57. On 18 June 2006 the applicant lodged a complaint with the Pitești County Court against the Colibași Prison authorities about inhuman and degrading conditions of detention. The applicant complained that the overcrowded conditions, inappropriate food, lack of appropriate medical treatment, lack of drinking water during the day, extreme heat in his cell, overcrowded conditions of transport to court hearings and lack of exercise had damaged his health. Further, he argued that he had been forced to abandon his Christian Orthodox religion on the ground that he was not allowed to attend religious services in the prison's Orthodox church.

58. By a final judgment of 27 September 2007 the Pitești District Court decided, on the basis of the provisions of Law no. 275/2006 ("the Execution of Sentences Act 2006"), to refer the applicant's case to the judge responsible for the execution of sentences attached to Colibași Prison.

59. On 26 September 2007 the prison authorities proceeded to investigate the applicant's complaints of 18 June 2006 in respect of the conditions of detention. They visited cell 204, where the applicant was detained, and according to the record of the visit drafted on the same day they found that the cell measured 10.02 m long by 5.65 m wide and 4.23 m high. The room had forty-five beds and housed thirty-six detainees. The authorities also found that eight detainees had attested to the quality of the food between January and September 2007.

60. On 6 November 2007 the applicant was heard by the judge responsible for the execution of sentences attached to Colibași Prison. At the hearing the applicant signed a declaration stating that he would like to withdraw his complaint of his own free will and without being pressured to do so.

61. In his letter of 25 January 2008, the applicant informed the Court that prior to his hearing before the judge responsible for the execution of sentences he had been contacted by the prison warden and threatened with serious consequences if he failed to withdraw the complaint. Lastly, at the hearing before the judge he was allegedly under psychological pressure from the judge himself, to state in writing that he wished to withdraw the complaint. There is no evidence in the file that the applicant lodged any complaints against the prison warden or the judges responsible for the execution of sentences.

62. On 18 March 2008 the applicant lodged a complaint with the judge responsible for the execution of sentences attached to the Colibași Prison concerning the detention conditions in cell 205, where he was detained at the time. He claimed that the room did not have the necessary facilities for the detainees to store their food and personal belongings, the volume of air for each detainee was insufficient and the room was infested with cockroaches as a result of the poor state of hygiene.

63. On 19 March 2008 the applicant was summoned before the judge responsible for the execution of sentences attached to Colibași Prison for a hearing in respect of his complaints. In a written statement submitted to the judge the same day, the applicant withdrew his complaint without giving any reasons.

64. On 24 March 2010 the National Prisons Authority dismissed the applicant's complaint concerning his inability to work addressed to the President of Romania and referred it to the National Prisons Authority for investigation. The National Prisons Authority grounded their decision on the medical report of 8 December 2009 classifying the applicant as unfit to work on account of his medical condition.

65. In a letter of 20 May 2011 the applicant informed the Court that he has been released from Colibași Prison on 14 May 2011.

5. Other proceedings

66. By a final judgment of 12 November 2004 the Vâlcea County Court dismissed as ill-founded the action brought by the applicant against third parties seeking to contest the enforcement of the award of civil damages granted by the domestic courts to third parties following the applicant's conviction for murder. The court held that the enforcement proceedings had been lawful.

67. By a final judgment of 13 July 2005 the Court of Cassation dismissed as ill-founded the applicant's action seeking a stay of execution of his sentence for family reasons, citing a need to supervise one of his daughters, as she was exhibiting inappropriate social behaviour and had dropped out of school. On the basis of a social investigation and expert reports the court found that the applicant's daughters had been placed under the care and supervision of the applicant's parents, where they were being properly looked after. The court ruled that continuing with the execution of the applicant's sentence would not have any consequences for his family, as the applicant had abandoned his daughters in 1997 after the death of their mother and had moved in with another woman, whom he later murdered. The Court ruled that the applicant had neither the child-rearing skills nor the moral authority to contribute to the improvement of his daughter's upbringing.

68. On an unspecified date in 2005 the applicant brought a second set of proceedings seeking a stay of execution for family reasons.

69. By a judgment of 21 February 2006 the Pitești Court of Appeal dismissed the applicant's action on the ground that according to the social assessment carried out by the authorities the applicant's family did not have any material or health-related problems, his daughters were being properly cared for by the applicant's mother, and his younger daughter had started going to school again and was a good student. There is no evidence in the file that the applicant appealed against the judgment.

70. By a final judgment of 18 January 2006 the Vâlcea County Court dismissed as ill-founded the applicant's criminal complaint with civil claims brought against the journalist M.D. for insult following a press article written by the third party reporting the murder committed by the applicant. The domestic court held that the third party had informed the general public in an objective and professional way about the crime committed by the applicant and had relied on the evidence produced by the preliminary investigation carried out by the police, without referring to any false or compromising statements. Also, the applicant had been convicted of the crime reported in the article, and sentenced by a final court judgment after a public criminal trial. Furthermore, the third party exercised her right to freedom of speech understood in the context of the freedom of the press and observed the citizens' constitutional right to be informed about events with a major social impact.

II. RELEVANT DOMESTIC LAW AND PRACTICE

71. The relevant provisions of Law no. 23/1969 on the execution of sentences ("the Execution of Sentences Act 1969") are described in *Năstase-Silvestru v. Romania*, (no. 74785/01, §§ 23-25, 4 October 2007).

72. The Government's Emergency Ordinance. 56 of 25 June 2003 regarding the rights of prisoners states, in section 3, that prisoners have the right to bring legal proceedings before a court concerning measures taken by prison authorities in connection with their rights. Ordinance 56/2003 has been repealed and replaced by Law no. 275 of 20 July 2006 ("the Execution of Sentences Act 2006"), which has restated the content of section 3 mentioned above in its 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).

1. Civil Code

73. Articles 998 and 999 of the Civil Code provide that any person who has suffered damage can seek redress by bringing a civil action against the person who has intentionally or negligently caused that damage.

2. Case-law of the domestic courts

74. The Government submitted three final judgments (of 31 January 2006 and 21 March and 31 July 2007) delivered by the Bucharest District Court, one final judgment (of 12 April 2005) delivered by the Arad District Court, and one judgment (of 31 March 2005) delivered by the Giurgiu District Court, concerning proceedings brought by detainees against Rahova, Arad and Giurgiu Prisons on the basis of Emergency Ordinance 56/2003, seeking court orders for adequate medical treatment, treatment during transfer to courts, for accommodation with non-smoking detainees, visiting rights and stomatological treatment. There is nothing in the file to indicate whether the judgment of 31 March 2005 of the Giurgiu District Court was final.

75. Relying on the provisions of the domestic legislation concerning the execution of prison sentences and the evidence available in the files, the domestic courts allowed the detainees' claims.

III. REPORTS ON THE CONDITIONS OF DETENTION IN ROMANIAN PRISONS

76. 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 *Artimenc v. Romania* (no. 12535/04, §§ 22-23, 30 June 2009).

77. The CPT report published on 11 December 2008, following a visit to different police detention facilities and prisons in Romania 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 had his or her own bed.

78. There is no CPT report concerning Colibași Prison. However, a Romanian NGO, APADOR-CH (Association for the Defence of Human Rights in Romania – the Helsinki Committee) visited this establishment on 26 April 2007. The report prepared following this visit indicated that, on the

basis of the information submitted by the authorities, it could be ascertained that the total cell area was 1,170 sq. m., a quarter of the minimum area recommended by the European Committee for the Prevention of Torture and Inhumane or Degrading Treatment (CPT), which is 4 sq. m per detainee. As regards the prison's lavatories they were in rather poor condition in the areas visited – in a bad state of repair, unhygienic, not working properly, and so on.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

79. The applicant complained about the physical conditions of his detention and of a lack of adequate medical treatment in Colibași Prison. He alleged, in particular, overcrowding, unhygienic sanitary facilities, lice, extreme cold during winter, lack of running water and lack of activities. Moreover, he complained that at the time he was imprisoned he had been clinically healthy but that during detention he had been diagnosed with various conditions and with a Category 2 disability. Furthermore, he stated that he had not been treated adequately and his repeated requests for medicines had been refused, with lack of funds given as the reason. He relied on Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. Complaint concerning the material conditions of detention

1. Admissibility

(a) The parties' submissions

80. 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 Emergency Ordinance no. 56/2003 and subsequently on the basis of the Execution of Sentences Act 2006, or he had repeatedly withdrawn his complaints. They argued that the remedy was effective having regard to the five domestic court judgments submitted before the Court (see Relevant domestic law and practice, §§ 74-75). In addition, they submitted that the applicant could have lodged a general tort law action on the basis of Articles 998-999 of the

Romanian Civil Code seeking to establish the prison authorities' liability for the difficult conditions of detention. They argued that the latter remedy was also efficient, sufficient and accessible.

81. The applicant disagreed.

(b) The Court's assessment

82. The Court notes that the applicant's complaint concerns the material conditions of his detention, in particular, *inter alia*, overcrowding and poor sanitary facilities. In this respect, it notes that in recent applications lodged against Romania and concerning similar complaints it has already found that, given the specific nature of this type of complaint, the legal actions suggested by the Government, including a general tort law action, do 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).

83. The Court further notes that the five domestic decisions submitted by the Government in support of its plea of non-exhaustion, of which only four are final, 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. Moreover, the Government have not submitted any domestic court judgments supporting their argument that a general tort law action on the basis of Articles 998-99 of the Romanian Civil Code seeking to establish the prison authorities' liability for the difficult conditions of detention would have been effective.

84. The Court therefore concludes that the judgments submitted by the Government do not indicate how the legal actions proposed by them 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).

85. It therefore rejects the Government's plea of non-exhaustion of domestic remedies in respect of the applicant's complaint concerning the material conditions of detention in Colibaşi Prison.

86. Finally, the Court notes that the applicants' complaint concerning the material conditions of detention 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.

2. *Merits*

(a) **The parties' submissions**

87. The Government, referring to their description of the detention conditions submitted before the Court (paragraphs 15-25 above), contended that the domestic authorities had taken all necessary measures to ensure adequate conditions of detention and that the applicant's complaint was groundless. They further stressed that there was no evidence in the file that the applicant had been pressured by the prison authorities to withdraw his complaints, and that in any event he had failed to lodge any complaints against the prison authorities in this regard. Lastly, they argued that the applicant did not submit any relevant evidence to support his assertion that he was subjected to physical or mental ill-treatment during his detention.

88. The applicant disagreed. He argued that the Romanian Government had failed to submit to the Court any information with regard to the cells where he had been detained, the period of time he had spent in each cell and the number of detainees occupying the cells he was in. Moreover, they also failed to submit any copies of their daily report on the quality and quantity of the food, or of their reports concerning the disinfection of the detention cells.

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

89. 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).

90. 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.

91. 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).

92. 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).

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

94. In 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 and *Brândușe v. Romania*, no. 6586/03, § 50, CEDH 2009 (extracts)).

95. 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 the physical conditions of detention as 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 ability to use 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, lighting or appropriate hygiene conditions (see, for example, *Babushkin v. Russia*, no. 67253/01, § 44, 18 October 2007; *Ostrovar v. Moldova*, no. 35207/03, § 89, 13 September 2005; *Peers v. Greece*, no. 28524/95, §§ 70-72, ECHR 2001-III; *Flamânzeanu v. Romania*, no. 56664/08, § 98, 12 April 2011, not final and *Iamandi v. Romania*, no. 25867/03, §§ 59-61, 1 June 2010), or lack of basic privacy in a prisoner’s everyday life (see, *mutatis mutandis*, *Belevitskiy v. Russia*, no. 2967/01, §§ 73-79, 1 March 2007; *Valašinas*, cited above, § 04; *Khudoyorov v. Russia*, no. 847/02, §§ 06 and 107, ECHR 2005-X (extracts); and *Novoselov v. Russia*, no. 66460/01, §§ 32, 40-43, 2 June 2005 and *Iamandi*, cited above, § 61).

96. The Court observes that Convention proceedings, such as the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) because in certain instances the respondent Government alone have access to information capable of corroborating or

refuting these allegations. A failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Kokoshkina v. Russia*, no. 2052/08, § 59, 28 May 2009).

97. The focal point in the case at hand is the assessment by the Court of the living space afforded to the applicant in Colibași Prison, where the applicant spent most of his sentence.

98. 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 real occupancy of those cells: while the Government submitted that the cells were not overcrowded, the applicant disagreed.

99. However, even at the occupancy rate put forward by the Government, the applicant's living space for the approximately eleven years he spent in Colibași Prison seems to have been consistently below 3 sq. m and sometimes even below 1.6 sq. m (see paragraph 59 above), which falls short of the standards imposed by the Court's case-law (see *Kokoshkina*, cited above, § 62, and *Orchowski v. Poland*, no. 17885/04, § 122, ECHR 2009 (extracts)). The Court further underlines that, in reality, these figures are even lower, taking into account that the cells also contained various 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 the severe lack of personal space (see, *a contrario*, *Sulejmanovic v. Italy*, no. 22635/03, §§ 8-49, 16 July 2009).

100. Moreover, the applicant's description of the overcrowded conditions corresponds to the general findings by the CPT in respect of Romanian prisons (see paragraphs 76-77 above).

101. Furthermore, the Court considers that, in comparing each party's claims regarding the sanitary conditions with the findings of the CPT reports in respect of overcrowded prison facilities and the findings of the report of the national branch of the Helsinki Committee in respect of Colibași Prison (see paragraph 78 above), it can only conclude that the applicant was also deprived of the ability to maintain adequate bodily hygiene in prison.

102. The Court has frequently found a violation of Article 3 of the Convention on account of 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; *Petrea*, cited above, §§ 49-50; *Răcăreanu v. Romania*, no. 14262/03, §§ 49-52, 1 June 2010 and *Ali v. Romania*, no. 20307/02, § 83, 9 November 2010).

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

103. 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.

104. Taking into account this finding, the Court does not consider it necessary to examine further the remaining issues of his complaint concerning the material conditions of detention.

B. Complaint concerning the alleged lack of medical treatment

105. The Government raised a preliminary objection of non-exhaustion of domestic remedies, in so far as the applicant had not complained or pursued his complaints before domestic courts in respect of the lack of adequate medical treatment in Colibași Prison on the basis of Emergency Ordinance no. 56/2003 and subsequently on the basis of the Execution of Sentences Act 2006.

106. The applicant disagreed and argued that he had been constantly pressured by the prison authorities to withdraw his complaints.

107. The Court has already had the opportunity to examine a similar objection raised by the Government in the case of *Petrea*, cited above. It concluded that before the entry into force of Emergency Ordinance no. 56/2003, on 25 June 2003, there had been no effective remedy for the situation complained of by the applicant. However, after that date, those in the applicant's situation had had an effective remedy for their complaints of lack of medical treatment, even if their applications were already pending with the Court at the relevant date (see *Petrea*, cited above, §§ 35-36).

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

109. It therefore considers that after the entry into force of Emergency Ordinance 56/2003, the applicant should have lodged or continued his complaints with the domestic courts about the alleged lack of medical treatment. His two requests for early release, which in any event the applicant did not appear to have appealed against, do not satisfy these conditions.

110. Moreover, the Court notes that, in spite of the applicant's allegations, it does not transpire from the available material that the applicant was pressured by the domestic authorities to withdraw any of his complaints concerning lack of adequate medical treatment, nor that he was denied medication on account of lack of funding. It appears that, although he was a party to numerous sets of proceedings, the applicant did not bring court proceedings against any of the members of the prison administration who allegedly pressured him into withdrawing his complaints. Furthermore,

according to the applicant's medical file, he was examined regularly by doctors, his condition was monitored and he was prescribed and administered medication during his detention.

111. 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 Emergency Ordinance no. 56/2003.

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

II. ALLEGED VIOLATION OF ARTICLES 8 AND 34 OF THE CONVENTION

113. The applicant complained that his right to correspondence and his right to individual petition with the Court had been infringed, in so far as between November and December 2003 the prison authorities refused his request for a stamp and a copy of a document he wanted to submit to the Court. Moreover, he was allegedly threatened by the prison authorities to induce him to withdraw his complaint brought before domestic courts on the basis of Emergency Ordinance no. 56/2003. He relied in substance on Articles 8 and 34 of the Convention taken alone or together.

114. Having regard to the applicant's submissions and the circumstances of the present case, the Court considers that the applicant's complaint must be examined under Article 34 of the Convention, taken alone, which reads as follows:

Article 34

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

115. The Government raised a preliminary objection of non-exhaustion of domestic remedies in so far as although the applicant complained before domestic courts on the basis of Emergency Ordinance no. 56/2003 in respect of the failure of the domestic authorities to provide him with a stamp, he eventually withdrew his complaint.

116. The applicant disagreed, and argued that he was pressured by the prison authorities to withdraw his complaint.

117. The Court notes that from the outset the applicant was able to obtain copies of documents in support of his application and submit them to the Court at the early stages of his application (paragraphs 31-32, above). Moreover, the Court notes that the domestic authorities refused the applicant's requests for a stamp and for a copy of his request for a stamp on

26 November and 13 December 2003, after the entry into force of Emergency Ordinance 56/2003 on 25 June 2003.

118. Even assuming that the prison authorities had an obligation to provide the applicant with free stamps, the Court reiterates that in the case of *Petrea*, cited above, it has already held that after the entry into force of Emergency Ordinance no. 56/2003 those in the applicant's situation had an effective remedy to complain about alleged interference with their right to correspondence with the Court (see *Petrea*, cited above, § 36, and *Măciucă v. Romania*, no. 25763/03, § 31, 26 May 2009). The Court notes that although the applicant brought proceedings before the domestic courts complaining about the refusal of the authorities to provide him with a stamp, he eventually withdrew his complaint.

119. In respect of the applicant's allegation that he had been pressured by the prison authorities to withdraw his complaint, the Court sees no reason on the basis of the evidence available in the file to depart from its finding (see paragraph 110 above) concerning the applicant's identical allegation in respect of his complaint of lack of medical treatment.

120. It follows that the applicant's complaint should be rejected as manifestly ill-founded on the basis of Articles 35 §§ 3 and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

121. The applicant complained under Article 5 § 1 (c) of the Convention that an arrest warrant issued against him during the criminal proceedings which ended on 4 February 2000 was unlawful. Furthermore, he complained under Articles 6 § 1 of the Convention that the criminal proceedings which ended on 4 February 2000 had been unfair, as had been the outcome of the proceedings which had ended with the final judgments of 12 November 2004, 13 July 2005 and 18 January 2006. Lastly, the applicant complained under Article 13 of the Convention that the Vâlcea County Court had allegedly failed to consider his appeal during the course of the proceedings which ended with the final judgment of 12 November 2004.

122. The Court has examined these complaints as submitted by the applicant. However, having regard to all the material in its possession, and in so far as they fall within its jurisdiction, the Court finds that these complaints 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 must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

123. 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

124. The applicant claimed 50,000 euros (EUR) in respect of damage.

125. The Government considered the sum claimed by the applicant to be excessive and argued that there was no causal link between the alleged violations and the damages sought. They submitted that that a finding of a violation would constitute sufficient just satisfaction in the case.

126. The Court notes that it has found a violation of Article 3 in the present case. In these circumstances, the Court considers that the applicant’s suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 16,000 in respect of non-pecuniary damage.

B. Costs and expenses

127. The applicant did not submit a claim for costs and expenses.

C. Default interest

128. The Court considers it appropriate that the default interest rate 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 Article 3, in so far as it concerns the material conditions of detention in Colibași Prison, 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 of 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 18 October 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President