



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

THIRD SECTION

CASE OF VERBINTȚ v. ROMANIA

(Application no. 7842/04)

JUDGMENT

STRASBOURG

3 April 2012

FINAL

03/07/2012

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

In the case of Verbinț v. Romania,

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

Josep Casadevall, *President*,

Alvina Gyulumyan,

Egbert Myjer,

Ján Šikuta,

Ineta Ziemeļe,

Nona Tsotsoria,

Mihai Poalelungi, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 13 March 2012,

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

PROCEDURE

1. The case originated in an application (no. 7842/04) 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 Adrian Verbinț (“the applicant”), on 3 February 2004.

2. The applicant was represented by Mr Nicolescu, a lawyer practising in Pitești. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu.

3. As Mr Corneliu Bîrsan, the judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court), the President of the Chamber appointed Mr Mihai Poalelungi to sit as *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court).

4. The applicant alleged that he had been subjected to inhuman treatment which had put his life at risk, since when he had needed special medical treatment it could not be provided in the prisons’ hospitals, he was in prison due to the length of the proceedings regarding his third request for the suspension of the prison sentence.

5. On 16 November 2009 the President of the Third Section decided to communicate the complaint concerning the alleged inhuman conditions in which the applicant was detained in spite of his medical condition to the Government. 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

6. The applicant was born in 1963 and lives in Pitești.

7. While a student at a private law school, he unlawfully practised the profession of lawyer from 1998 to 2000. He presented himself to his clients as a lawyer, pretending that he was entitled to represent them before the courts and public authorities. Although he was not registered with the Bucharest Bar, he forged and used false powers of attorney and contracts of legal assistance. He was paid by his clients for the legal services provided.

A. Criminal proceedings against the applicant

8. On 20 February 2001 he was arrested for unlawfully practising the profession of lawyer from 1998 to 2000 and sent to Jilava Prison.

9. By a bill of indictment of 12 April 2001 of the Prosecutor's Office attached to the Bucharest Fourth District Court (Judecătoria Sectorului 4-București), he was formally indicted for a part of the aforesaid charges. The case was severed and the part concerning the rest of the charges against him and his former wife was remitted to the police for further investigation.

10. On 30 May 2001, the Bucharest Fourth District Court sentenced the applicant to four years' imprisonment for fraud under Article 215 of the Criminal Code, forgery of official documents under Article 288 § 1 of the Criminal Code, use of forged documents under Article 291 of the Criminal Code, and unlawful exercise of the profession of lawyer under Article 281 of the Criminal Code, taken in conjunction with Article 22 of Law no. 51/1995 on the status of lawyer.

11. The judgment was upheld by a final decision of the Bucharest Court of Appeal on 13 December 2001.

B. The applicant's medical condition in prison

12. While he was serving his prison sentence, on 17 November 2002 the applicant had a brain haemorrhage due to a double aneurysm and was hospitalised in the Emergency Hospital of Bucharest until 25 November 2002.

13. On 3 December 2002 he underwent a surgical operation. Following the operation, the applicant became infected with staphylococcus and another condition (*buttock and calcaneous bedsore*). Therefore, he needed two more operations, in January and March 2003. The applicant alleged that

after the surgery he was kept handcuffed and was not turned in his bed while he was unconscious and that this had caused the infection.

C. Suspension of the execution of the applicant's prison sentence on medical grounds

1. The first two suspensions of the execution

14. On 18 December 2002, the Bucharest Fourth District Court allowed an application by the applicant for the suspension of his prison sentence on medical grounds for a period of three months. The period of suspension started on 24 December 2002, when the applicant was released from Jilava Prison Hospital, where he was an inmate at that time.

15. On the grounds of his continuing ill-health the applicant submitted another application for the suspension of his prison sentence for another three months. By a judgment of 24 March 2003 the suspension was granted.

16. The two court judgments suspending the applicant's prison sentence were based on forensic reports issued by the Mina Minovici National Forensic Institute (hereinafter called "the Forensic Institute"). They revealed that the applicant was also suffering from a liver disease (hypertrophic hepatic cirrhosis). The experts found that the prison medical care system could no longer offer the applicant the necessary treatment. During this period the applicant was frequently hospitalised, not only for his infection but also for psychiatric treatment. He suffered from severe depression characterised by suicide attempts, considered by the doctors to be a direct consequence of the aneurysm.

2. The proceedings regarding the third applicant's request for the suspension of the execution of the prison sentence

17. On 19 June 2003 the applicant submitted his third application for the suspension of the execution of his prison sentence, since the previous one was due to expire on 24 July 2003. He produced a medical certificate for the court, which attested to his precarious medical condition, caused by several conditions, such as: osteitis frontal-parietal right, left cerebral artery aneurysm, aneurysm of the left artery, arterial-venous malformation fronto-parietal, severe depressive disorder, status post cerebral aneurysm with interemisferic haemorrhage broken, and chronic hepatitis.

18. On the first hearing of 7 July 2003, the applicant, hospitalised in the Pitești Military Hospital, was represented by counsel of his choosing. The court had admitted the evidence requested by the applicant's representative and ordered a medical expert report to be made at the Forensic Institute.

19. On 28 July 2003, the court adjourned the proceedings because there was no medical report in the case file.

20. On 29 July 2003 the medical report was submitted to the court registry by the Forensic Institute. The court noticed that it was the same medical report that had been already submitted in the previous suspension request lodged by the applicant. The conclusion of the report was that the condition of the applicant had not improved and that he had to continue specific therapy through hospitalisation in a medical unit belonging to the network of the Ministry of Health and Family. Furthermore, it clearly stated that the applicant would not be fit to resume serving his prison sentence for another three months.

21. On 18 August 2003 the court ordered a new medical report, on the ground that the one before it was based on previous investigations, and ruled that the applicant had to be re-examined.

22. On 19 August 2003, the court addressed the demand for another medical report to the Forensic Institute.

23. On 8 September 2003, another surgical operation was scheduled, this time for osteitis (inflammation of a bone, commonly involving swelling, enlargement, tenderness and aching) of the skull. For this purpose the applicant had to leave Piteşti, his city of residence, and go to Bucharest. Therefore, he requested the permission of the Piteşti police to leave the city.

24. Although his request for suspension was pending, he was incarcerated again on 8 September 2003, the previous suspension having expired.

25. Between 8 and 26 September 2003, the applicant was incarcerated in the hospital unit of Colibaşi Prison.

26. On 26 September 2003 the applicant was transferred to Jilava Prison Hospital, where he remained until 27 November 2003.

27. The hearings of 8 and 12 September, 6 and 28 October and 3 and 28 November 2003 were repeatedly adjourned for lack of a medical report on the applicant.

28. The judgment regarding the suspension of the prison sentence was rendered on 19 January 2004, seven months after the applicant had lodged his application. It dismissed the applicant's request as being without object, since a pardon had been granted to the applicant by the presidential decree of 27 November 2003.

29. The said judgment was given two months after the applicant had been granted a pardon. The pardon was granted as result of interventions and applications by the applicant's mother to the President of Romania, as well as public pressure, as the applicant's situation had been covered by newspapers.

He was released from prison on 27 November 2003.

D. The applicant's medical condition after release from prison

30. The medical condition of the applicant did not improve after his release from prison.

31. In 2005 he was hospitalised three times.

32. In February 2006 a part of the applicant's skull, which had been affected by osteitis, was surgically removed. A month later, in March 2006, he was operated on again to remove another part of the infected bone.

E. Further criminal proceedings against the applicant

33. By a bill of indictment of 28 June 2004 of the Prosecutor's Office attached to the Bucharest Fourth District Court, the applicant was again formally indicted on the charges with respect to which the initial file had been severed.

34. By a judgment of the Bucharest Fourth District Court of 14 June 2005 he was sentenced to another four years' imprisonment. That judgment was upheld by a final decision of the Bucharest Court of Appeal on 27 April 2006.

35. On 3 August 2006, the applicant started his new sentence in Colibași Prison. Between 6 and 20 February 2007 he was hospitalised in the prison hospital.

36. Following the request of the applicant for the recalculation of his prison sentence resulting from the two criminal judgements, the one of 30 May 2001 and the last one, of 14 June 2005, taking into account the part of the prison sentence already served by the applicant, the County Court of Argeș decided in its final decision of 26 March 2007 that the applicant's prison term was to be four years.

37. On 30 May 2007 the execution of the applicant's prison sentence was suspended and he was placed on probation and consequently released from Colibași Prison.

II. RELEVANT DOMESTIC LAW

38. The relevant provisions of Government Emergency Ordinance no. 56/2003 on certain rights of those serving custodial sentences, in force at the time of the events in the instant case, as well as of the Romanian Code of Criminal Procedure concerning suspension of prison sentences (Articles 453 and 455) are described in *Aharon Schwarz v. Romania*, no. 28304/02, §§ 66, 67, 12 January 2010.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

39. The applicant complained that he did not receive the special medical treatment that he needed and which could not be provided in the prison hospital, due to the fact that the domestic court had given a decision on his third request for the suspension of his prison sentence only after more than seven months. This situation caused him intense physical and psychological suffering and aggravated his health to such extent that he had to undergo new surgical procedures, which removed a large part of his infected skull.

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. Admissibility

1. *Submissions of the parties*

(a) The Government

40. The Government argued that the applicant had not exhausted domestic remedies, since he had failed to take every legal action available to him in Romanian law to complain about the conditions of detention or of lack of medical treatment. Furthermore, they insisted that the applicant had failed to provide any evidence that there were no effective remedies in the national legal system. They stressed that in accordance with the Court’s case-law (indicating, among other cases, *Petrea v. Romania*, no. 4792/03, 29 April 2008, and *Măciucă v. Romania*, no. 25763/03, 26 May 2009) the procedure provided by Ordinance 56/2003 was an adequate and effective remedy to afford the applicant redress in respect of the alleged breaches.

41. In addition, they averred that the applicant could have lodged a civil action for damages on the basis of Article 998-999 of the former Civil Code, or a criminal complaint against the prison authorities.

(b) The applicant

42. The applicant averred that he had taken the appropriate legal action, and that other remedies were not effective.

2. *The Court's assessment*

43. The Court observes that the rule of exhaustion of domestic remedies contained in Article 35 § 1 of the Convention requires that normal recourse should be had by an applicant to domestic remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, *Akdivar and Others v. Turkey*, judgment of 16 September 1996, Reports of Judgments and Decisions 1996 IV, § 65).

44. In the area of the exhaustion of domestic remedies there is a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and practice at the relevant time, that is to say that it was accessible, was capable of providing redress in respect of the applicant's complaints, and offered reasonable prospects of success. However, once this obligation has been satisfied it falls to the applicant to establish that the remedy advanced by the Government had in fact been tried or was for some reason inadequate or ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her of the requirement (*ibid.*, § 68).

45. In addition, Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. This means amongst other things that it must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned, but also of the general legal and political context in which they operate, as well as the personal circumstances of the applicants (*ibid.*, § 69).

46. The Court notes that the applicant had asked for the suspension of his prison sentence on the ground that the medical treatment he needed and the surgical intervention he had to undergo could not be provided by prison hospitals.

47. The Court notes that the reason provided by the domestic court, which was analysing the request for suspension of the applicant's prison sentence, for continually adjourning the hearings, was the absence of the medical report regarding the applicant's health. The said report had as its main objective the establishment of the facts as to whether or not the medical treatment needed by the applicant could have been provided by the prison hospital. Even seven months later the medical report had still not been produced, the reason for dismissing the applicant's request being the fact that in the meantime he had been granted a presidential pardon.

48. Moreover, according to the national law, the court which would have had jurisdiction to analyse the request forwarded by the applicant, according to the procedure provided by Ordinance 56/2003, was the same as that for the court which ruled on the applicant's request for the suspension of the

execution of his sentence. Therefore, the Court cannot see how the same court could have reacted more promptly to a similar request with a different legal basis.

49. In this respect, the Court is not convinced of the necessity of lodging another request with largely the same object as the request for the suspension of the prison sentence, namely to determine whether the conditions from which the applicant was suffering could have been treated in prison hospitals (see also the above-mentioned judgment, *Aharon Schwarz*, § 95).

50. In the light of the foregoing, the Court considers that the Government's preliminary objection on the ground of non-exhaustion cannot be accepted.

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 be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

51. The applicant stressed that the first two requests for the suspension of his prison sentence were allowed on the basis of the reports of the Forensic Institute, which stated that he could not be treated in the prison hospital. This aspect contradicts the Government's opinion that he had received proper medical treatment in the prison hospital.

52. He alleged that the medicines he needed had in fact been provided by his mother.

53. He pointed out that the conditions of detention, particularly as regards his state of health, were poor, and not adequate as the Government claimed, and caused him immense physical suffering.

54. The applicant concluded that keeping him in detention in a place that could not provide protection for his health, which was in constant decline, led to the deterioration of his health and caused him intense psychological suffering, as he knew that he could die if he could not obtain medical treatment in an ordinary hospital.

(b) The Government

55. After mentioning the main principles established by the Court in its case-law in respect of conditions of detention and lack of medical treatment while in detention, the Government contended that the applicant

was regularly examined by doctors and received adequate medical treatment for his illnesses. They stressed that the applicant did not submit any evidence to the contrary.

56. They maintained that in the period between 8 and 26 September 2003 the applicant was in the medical unit of Colibași Prison, insisting that good conditions were provided there for detainees who were ill.

57. In respect of the medical treatment the Government claimed that between 26 September and 27 November 2003 he had received adequate medical treatment.

With regard to his psychological state, the applicant had been supervised by a therapist educator who performed educational activities and had daily individual conversations with all the detainees.

58. The Government claimed that for the period between 26 September and 27 November 2003, while the applicant was in Jilava Prison Hospital, he benefited from adequate conditions for his state of health.

59. They also alleged that the applicant's medical file revealed that he was suffering from chronic hepatitis and that his general physical condition had been deteriorating since 1997, and accordingly no medical record could reveal any causal link between the medical problems suffered by the applicant and his detention.

60. In respect of the length of the proceedings concerning the applicant's third request for the suspension of the prison sentence, the Government maintained that the domestic court had an active role throughout the proceedings, and that it cannot be deemed that the applicant suffered any infringements of his rights during this period.

61. They concluded that the evidence gathered could not enable the Court to find beyond any reasonable doubt that the applicant was subjected to treatment that attained a sufficient level of severity to come within the scope of Article 3. Therefore, in the absence of sufficient evidence they asked the Court to find that there was no violation of Article 3, in either the material or the procedural limbs.

2. The Court's assessment

(a) General principles

62. The Court observes at the outset that Article 3 enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

63. It reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases,

the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25; *Costello-Roberts v. the United Kingdom*, 25 March 1993, § 30, Series A no. 247-C; and *Dougoz v. Greece*, no. 40907/98, § 44, ECHR 2001-II).

64. The Court observes that it cannot be ruled out that the detention of a person who is ill may raise issues under Article 3 (see *Mouisel v. France*, no. 67263/01, § 38, ECHR 2002-IX). Although this Article cannot be construed as laying down a general obligation to release detainees on health grounds, it nonetheless imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty by, among other things, providing them with the requisite medical assistance (see *Sarban v. Moldova*, no. 3456/05, § 77, 4 October 2005, and *Khudobin v. Russia*, no. 59696/00, § 93, ECHR 2006-XII (extracts)).

65. The Court has also emphasised the right of all prisoners to conditions of detention which are compatible with respect for their human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention (see *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI, and *Jalloh v. Germany* [GC], no. 54810/00, § 68, ECHR 2006-IX). Hence, a lack of appropriate medical care and, more generally, the detention in inappropriate conditions of a person who is ill, may in principle amount to treatment contrary to Article 3 (see, for example, *İlhan v. Turkey* [GC], no. 22277/93, § 87, ECHR 2000-VII).

66. In assessing whether the continued detention of an applicant is compatible with his or her state of health, the Court must take account of factors, such as: (a) the prisoner's condition, (b) the quality of care provided and (c) whether or not the applicant should continue to be detained in view of his or her state of health (see *Farbtuhs v. Latvia*, no. 4672/02, § 53, 2 December 2004; *Rivière v. France*, no. 33834/03, § 63, 11 July 2006; and *Enea v. Italy* [GC], no. 74912/01, § 59, ECHR 2009-...).

(b) Application of these principles in the present case

1. The substantive limb of the alleged ill-treatment

67. Turning to the present case, the Court must determine whether during his detention in Colibaşi Prison from 8 to 26 September 2003 and in Jilava Prison from 26 September to 27 November 2003 the applicant needed regular medical assistance, whether he was deprived of it as he claims and, if so, whether this amounted to inhuman or degrading treatment contrary to Article 3 of the Convention (see *Sarban*, cited above, § 78).

68. The Court notes that it is undisputed that the applicant was suffering from a number of serious illnesses, including osteitis frontal-parietal right, left cerebral artery aneurysm, aneurysm of the left artery, arterial-venous

malformation frontal-parietal, severe depressive disorder, status post cerebral aneurysm with interemisferic haemorrhage, broken, and chronic hepatitis, confirmed by the medical certificate submitted by the applicant to the domestic court on June 2003 together with the request for the third suspension of his prison sentence. Therefore, throughout the applicant's incarceration doctors stressed that he should receive specialised treatment and should be under constant medical supervision.

69. With regard to the medical treatment received, the Court notes that the authorities made efforts to meet the applicant's health needs by hospitalising him in the medical units of Colibaşi and Jilava prisons. Moreover, the Court notes that there is no indication of any negligence on the part of the medical services, nor has the applicant adduced any evidence to show that the authorities were negligent in administering medical treatment to him.

70. The applicant suggested that the medical treatment he had received had not had a stabilising effect on his health, but the contrary as he needed an urgent surgical intervention. However, it is not for the Court to speculate whether the lack of surgical intervention had as a direct consequence the deterioration of his health. Besides, according to the information submitted by the applicant, he had not undergone any surgical intervention immediately after his release from prison. He underwent two surgical interventions in 2006 only.

71. The Court finds that the applicant failed to submit any details which might indicate that the conditions of his detention in the prisons' hospitals were particularly difficult or that they caused him any hardship other than that inherent to detention, or incompatible with his health.

72. Therefore, having regard to the above considerations and to the fact that his detention had only lasted two months and nineteen days, the Court can conclude that there has been no violation of Article 3 under its substantive limb.

(ii). The procedural limb of the alleged ill-treatment

73. The Court has already stressed the need for national legal systems to implement judicial procedures concerning requests submitted by detainees to be released for medical reasons. It considers that such procedures represent guarantees of the protection of prisoners' health and well-being that the State should reconcile with the legitimate requirements of punishments that deprive a detainee of liberty (see *Tekin Yıldız v. Turkey*, no. 22913/04, § 73, 10 November 2005, and *Mouisel*, cited above, §§ 45-46).

74. In this context, the Court considers that the general interdiction provided for by Article 3 of the Convention, as well as the special obligations that this article imposes on the Contracting States with respect to measures of deprivation of liberty, would be deprived of their contents in

the absence in the domestic legal systems of such mechanisms and in the absence of the control exercised by the Court over the effectiveness of the mechanism in specific cases.

75. The Court notes that the applicant, referring to his severe medical condition and his need for surgical intervention, submitted his third request for the suspension of his prison sentence on 19 June 2003. On 8 September 2003, on the very day that a new surgical intervention was scheduled, he was reincarcerated, although his request for suspension was pending.

76. With regard to the procedural limb of the alleged ill-treatment, the Court notes that the prolongation of the examination of the applicant's request for the suspension of the prison sentence for a period of seven months was caused by the absence of an updated medical report that should have been submitted by the Forensic Institute. It reflects the deficiencies of the domestic system with respect to the existing mechanism for the suspension of the prison sentences. The Court arrived at the same conclusion in the above-mentioned case, *Aharon Schwarz* (§ 106), where the examination of the applicant's request for the suspension of the prison sentence took two years and three months. In the present case, the applicant's request for suspension was dismissed after seven months, because in the meantime the applicant had been granted a presidential pardon due to his special situation. However, the Court cannot make any inferences with respect to the possible duration of the proceedings if there had been no presidential pardon.

77. Having regard to the ineffective mechanism implemented by the domestic system with respect to the suspension of prison sentences, the Court finds that there has been a violation of Article 3 of the Convention under its procedural limb.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

78. Lastly, relying on Article 3 of the Convention, the applicant complained that he was kept handcuffed in the hospital after the first surgical intervention of 3 December 2002, causing him additional and unnecessary health problems.

79. The Court notes at the outset that the complaint, according to which the applicant was kept handcuffed after his first surgical operation, was not raised before the local authorities, or at least not in substance. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention, for non-exhaustion of domestic remedies. If it were argued that he had no effective channel of complaint at his disposal, the six-month rule, with which the applicant did not comply, would come into operation (see, *mutatis mutandis*, *Rosengren v. Romania* (partial dec.), no. 70786/01, 27 April 2004).

80. With regard to the rest of the complaints raised by the applicant under Article 2 and Article 8 of the Convention, the Court appreciates that there is no need for a separate analysis of the complaints, taking into account the violation found under Article 3.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. 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

82. The applicant claimed 27,509.4 Romanian lei (RON), (EUR 6,549.86) in respect of pecuniary damage, representing the cost of the expenses he incurred for his medical treatment between December 2003 and May 2010. He added that the monthly cost of his medical treatment amounted to RON 315.66 (EUR 75.16), and asked that the Government be ordered to pay for his medical treatment every month, for as long as necessary. He asked for an additional amount of RON 10,500 (EUR 2,500) for the expenses caused by the surgical interventions necessary for the recovery of his head and skin which had been infected in prison. He also asked the Court for a monthly amount corresponding to the loss of his capacity for work, without mentioning an exact amount.

In respect of non-pecuniary damage, the applicant asked for 4,000,000 euros (EUR) justified by the extreme pressure, stress and suffering to which he was exposed. He added that his situation should be compared to that of a person convicted on death row, because he knew that he could die if not released from prison.

83. The Government stated that the amounts claimed by the applicant for the non-pecuniary damage were speculative, excessive and not proven, and asked the Court, if it found a violation, to consider that violation of itself to be sufficient just satisfaction.

In respect of the compensation for pecuniary damage claimed by the applicant, the Government stated that it was not justified by adequate documents; namely that the calculations submitted by the applicant did not have an official character.

84. The Court rejects the claim in respect of pecuniary damage, as the applicant did not submit any documents to justify it. On the other hand, having regard to its findings concerning the applicant's complaints under Article 3 of the Convention, the Court considers that the applicant suffered

damage of a non-pecuniary nature as a result of the inefficiency of the procedural mechanism for the suspension of the prison sentence for medical reasons, which is not sufficiently redressed by the finding of a violation of his rights under the Convention.

85. For the foregoing reasons, having regard to the specific circumstances of the present case and its case-law in similar cases (see *Aharon Schwarz*, cited above, § 127) and deciding on an equitable basis, the Court awards EUR 7,500, plus any tax that may be chargeable on that amount.

B. Default interest

86. 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 complaints concerning the lack of adequate medical treatment, the inappropriate conditions of detention in Jilava and Colibași prisons and inefficiency of the procedural mechanism for the suspension of the prison sentence for medical reasons admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 3 of the Convention in respect of the lack of adequate medical treatment and the inappropriate conditions of detention in Jilava and Colibași prisons;
3. *Holds* that there has been a violation of Article 3 of the Convention in respect of the inefficiency of the procedural mechanism for the suspension of the prison sentence for medical reasons;
4. *Holds* that there is no need to examine the complaints under Articles 2 and 8 of the Convention;
5. *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 7,500 (seven thousand five hundred 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 on 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;

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

Done in English, and notified in writing on 3 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President