



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

THIRD SECTION

CASE OF RADU POP v. ROMANIA

(Application no. 14337/04)

JUDGMENT

STRASBOURG

17 July 2012

FINAL

17/10/2012

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

In the case of Radu Pop 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 Ziemele,

Nona Tsotsoria,

Kristina Pardalos, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 26 June 2012,

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

PROCEDURE

1. The case originated in an application (no. 14337/04) 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 Radu Pop (“the applicant”), on 15 March 2004.

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

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 As Mr Corneliu Bîrsan, the judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court), the President of the Chamber appointed Mrs Kristina Pardalos to sit as *ad hoc* judge (Article 26 § 4 of the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, in particular, that he had been ill-treated by police officers on 18 August 2003 and that the investigation into his allegations of ill-treatment had been inadequate and ineffective. He also complained about the material conditions of detention in different prisons where he had been detained and a lack of appropriate medical treatment while in detention. He also claimed that his court-appointed legal-aid defence counsel had not provided effective legal assistance to him in the preparation and conduct of the case before the High Court of Cassation and Justice, with the result that he had been denied the benefit of a fair trial.

5. On 15 June 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

6. The applicant was born in 1967 and is currently detained in Gherla Prison.

A. The incident of 18 August 2003

7. On 2 April 2003 the applicant was convicted of vandalism, assault and disturbance of public order and sentenced to 472 days' imprisonment by a judgment rendered by the Zalău District Court. The judgment became final on 2 July 2003 when the Sălaj County Court dismissed the appeal lodged against it by the prosecutor's office.

8. During the criminal proceedings the applicant was detained in Satu Mare Prison in connection with another offence he had committed, but he attended the hearings before the court of first instance. He was released from that prison on 18 May 2003.

9. According to the information provided by the applicant, he did not attend the final hearings before the Sălaj County Court. He admitted that he had received a copy of the final decision, which had been delivered to his home on 2 July 2003, informing him that he had been convicted and sentenced to 472 days' imprisonment.

10. On 28 July 2003 an arrest warrant for the execution of the sentence was issued in respect of the applicant but could not be executed as he had absconded.

11. Acting on information that the applicant was at his home in the village of Creaca, on the morning of 18 August 2003, at about 6 a.m., eight police officers, together with the head of the local police and his deputy, went to the applicant's home in order to arrest him. The decision to operate in such a large number was taken on the ground that the applicant had antecedents of aggressive behaviour, his previous conviction being for assaulting a police officer.

12. When they arrived outside the applicant's home, the police officers ordered the applicant to surrender to custody, but he did not reply. Knowing that he was inside, an operational group composed of four police officers forced the door and entered. As it was dark in the house, police officer L.L. did not see the applicant, who hit him on the head with a stone. While the other police officers were trying to immobilise him the applicant tried to seize an axe and, before being immobilised, he bit one of police officer H.N.'s fingers. He was handcuffed and transported by car to the Sălaj Police Station.

13. The injured police officer was immediately hospitalised. According to a forensic report drafted after the events, he had suffered a cranial trauma and a fractured skull, which put his life in danger, and he needed between forty and forty-five days of medical treatment to recover.

14. According to the applicant, he was beaten by the police both on his arrest on 18 August 2003 and in the course of police questioning at the police station.

B. The criminal proceedings against the applicant for attempted murder and assault

15. Following the incident, the prosecutor's office attached to the Sălaj District Court initiated criminal proceedings against the applicant for attempted murder and assault.

16. He was heard first on 19 August 2003 at the police station. He stated that he was aware that he had been sentenced to imprisonment in July 2003 for previous offences he had committed.

17. On 13 November 2003 the applicant gave a statement to the prosecutor's office. He stated again that he knew about his conviction and expressly refused to appoint a lawyer of his choice. On the same day a new arrest warrant relating to the new charges against him was issued.

18. On 19 November 2003 the applicant was informed that the investigation was complete. He was invited to study the case file. He again refused to appoint a lawyer, and was assisted by a court-appointed lawyer, P.M.

19. At the last hearing, held on 17 December 2003 before the Sălaj County Court, the applicant agreed to pay the victim L.L. compensation for pecuniary and non-pecuniary damage amounting to 3,000 euros (EUR). His lawyer, P.M., asked the court to take his behaviour into consideration as a mitigating factor in determining his punishment.

20. On 17 December 2003 the Sălaj County Court found the applicant guilty as charged and sentenced him to nine years' imprisonment, taking into account the previous non-executed sentence. The judgment was based on extensive evidence: a report drafted on 18 August 2003 immediately after the events and at the site of the incident (*raport de constatare la fața locului*), a forensic report, the applicant's statements, and the statements of all the police officers present during the applicant's arrest, including those of the two victims, L.L. and H.N.

21. The applicant appealed against the judgment. He maintained that the statements on the basis of which he had been convicted were subjective as the witnesses were colleagues of the victims. He asked to be acquitted on the ground that, on the one hand, it had not been his intent to kill the police officer and, on the other, because he had not been aware that the persons

who had forced their entry into his house were police officers acting in their official capacity.

22. In the appeal proceedings the applicant was represented by a lawyer appointed at his request, P.P. At the hearing of 3 March 2004 the lawyer made a request for a psychiatric report in respect of the applicant.

23. The psychiatric report, drafted on 28 April 2004, stated that the applicant suffered from a personality disorder of the impulsive type but that he retained his mental capacity for critical appreciation.

24. On 12 May 2004 the Cluj Court of Appeal dismissed the applicant's appeal as unfounded. It held that it could not accept the applicant's account in respect of his alleged error as to the purpose of the police officers' visit to his home, especially since the applicant acknowledged that he had known that an arrest warrant for the execution of an imprisonment sentence against him had been issued. It also noted that the claim of lack of intent to kill the police officer was not tenable, taking into account the circumstances under which the offence had been committed, namely, that the police officer had been struck with considerable force in a vital region of the body, the head, with an object capable of causing lethal injuries. Moreover, the forensic report confirmed that the injuries caused by the applicant had put the victim's life in danger.

25. The applicant lodged an appeal on points of law requesting his acquittal and, failing that, the reduction of his sentence.

26. The applicant was represented before the High Court of Cassation and Justice by two court-appointed lawyers. The first one, T.B., was appointed on 7 June 2004 in order to assist the applicant at the hearing of 16 June 2004 and the other one, M.B., was appointed on 24 June 2004 and assisted him on 7 July 2004.

27. On 7 July 2004 the High Court of Cassation and Justice dismissed the appeal as unfounded.

C. Criminal proceedings initiated by the applicant against the police officers

28. On 5 January 2005 the applicant lodged a complaint against the police officers who had arrested him, accusing them of abuse on account of the ill-treatment to which he said he had been subjected on 18 August 2003.

29. Initially the complaint was lodged with the prosecutor's office attached to the Sălaj County Court, which relinquished jurisdiction in favour of the military prosecutor's office attached to the Cluj Military Tribunal as the defendants were professional soldiers.

30. A forensic report drafted immediately after the incident of 18 August 2003, at the prosecutor's order, on the basis of all the medical documents stated that the applicant had suffered "cranial trauma without concussion, contusion of the nasal pyramid with secondary epistaxis, and

thorax contusion without bone injuries”, and he had needed three-four days of medical treatment to recover.

31. On 15 December 2005 the prosecutor’s office decided not to initiate criminal proceedings against the police officers. It held that they had acted in self defence and that the applicant’s injuries had been incurred while they were trying to immobilise him as he had resisted arrest and been aggressive.

32. On 16 December 2005 the applicant lodged a complaint with the Cluj Military Tribunal against the prosecutor’s decision. By a judgment rendered on 23 January 2007 the Tribunal relinquished jurisdiction in favour of the chief prosecutor of the Cluj military prosecutor’s office.

33. On 27 March 2007 the military prosecutor dismissed the applicant’s complaint, upholding the decision not to initiate criminal proceedings. The applicant did not lodge any complaint against his decision on the basis of Article 278¹ of the Code of Criminal Procedure.

D. Conditions of detention

34. Since 18 August 2003 the applicant has been held in a number of different detention centres. Initially he was detained in Zălau Police Station and then transferred to Satu Mare, Baia Mare, Jilava and Gherla Prisons. In respect of the establishments in which he was detained, the applicant alleged that he had been kept in overcrowded cells in poor conditions of hygiene. He claimed that there were rats and parasites in his cell. In all the prisons hot water was available only once a week. He also claimed that he received poor food and that the opportunity to take outdoor exercise was limited to one ten-minute walk per day.

35. The Government supplied the following details concerning the conditions of the applicant’s detention in each establishment:

1. Zalău Police Station

36. The applicant was detained in Zalău Police Station from 18 August to 11 December 2003.

37. He was detained in cells nos. 7, 8 and 11.

38. All three cells had a length of 4 m, a width of 3 m and a height of 3 m and were occupied as follows: cell no. 7 by six to seven detainees, cell no. 8 by three to six detainees and cell no. 11 by two to four detainees.

2. The Satu Mare Prison

39. The applicant was detained in Satu Mare Prison during the following periods: between 11 December 2003 and 2 February 2004, 23 August 2004 and 24 January 2005, 22 March and 30 August 2005, and between 17 and 23 October 2006.

The cells in which the applicant was detained were as follows:

- cell no. 8 with a surface area of 12.54 square metres and occupied by six to eleven detainees;
- cell no. 71 with a surface area of 24.72 square metres and occupied by thirty-four detainees;
- cell no. 56 with a surface area of 8.2 square metres and occupied by seven detainees;
- cell no. 59 with a surface area of 27.78 square metres and occupied by twenty-seven detainees;
- cell no 53 with a surface area of 8.2 square metres and occupied by five detainees.

3. The Baia Mare Prison

40. The applicant was detained in Baia Mare Prison from 30 August 2005 to 1 August 2006.

He was detained in cells nos. 14 and 29.

Cell no. 14 had a length of 7.75 m, a width of 5.2 m and a height of 2.75 m and was occupied by between thirty-one and thirty-seven detainees.

Cell no. 29 had a length of 5.2 m, a width of 3.85 m and a height of 2.9 m and was occupied by thirteen detainees.

4. The Jilava Prison

41. The applicant was detained in Jilava Prison between 29 March and 13 April 2004 and again from 14 June to 23 August 2004, in cells nos. 612 and 619.

42. Both cells had the same dimensions, namely: a length of 9.5 m, a width of 4.5 m and a height of 3 m. The number of detainees in the first cell was on average thirty-seven, and in the second, forty-two.

5. Gherla Prison

43. The applicant was detained in Gherla Prison during the following periods: from 2 February to 11 March 2004, from 14 April to 14 June 2004, from 24 January to 22 March 2005, from 23 October 2006 to 29 October 2007, from 6 November to 12 November 2007, from 18 December 2007 to 25 May 2008, from 3 June to 25 August 2008, from 16 December 2008 to 19 February 2009, from 27 February to 10 April 2009, and from 6 July 2009 until the present.

44. In respect of Gherla prison, the Government submitted information concerning the numbers of the cells the applicant had been detained in and their surface area, but they did not submit any information on the occupancy rate of those cells.

E. Medical care in prison

45. The diagnoses of personality disorder and chronic gastritis were made on the applicant's arrest.

46. From the information submitted by the Government, it appears that the applicant received treatment for his various conditions, especially for chronic gastritis, personality disorder of the unstable-impulsive type and epilepsy. It also appears that he was often admitted to the hospitals of the prisons where he was detained. Thus, he was hospitalised in the medical unit of Dej Prison between 11 and 29 March 2004, 9 and 17 October 2006, and 9 and 16 June 2009. In Jilava Prison he was hospitalised between 30 March and 13 April 2004, 30 October and 5 November 2007, 27 May and 2 June 2008, and 20 and 27 February 2009.

47. The applicant was also examined by different specialists. Thus, he underwent psychiatric medical examinations on 9 November 2006, and 21 and 23 May 2008. He underwent surgical interventions for self-inflicted injuries on 16, 17 and 18 May 2007.

48. On 12 December 2007 the applicant was hospitalised in the medical unit of Dej Prison after falling out of bed during an epileptic fit. On 18 December 2007 he was sent back to Gherla Prison, where he had been detained before hospitalisation. He refused to stay in the medical unit as recommended by the doctor, preferring to stay in his cell and signing a statement to that effect.

49. He systematically refused hospitalisation and the medical treatment he was offered. In this connection, the Government submitted a copy of minutes drafted by the Gherla prison authorities (notably on 11, 14, 16 and 18 July 2008, on 27, 29 and 30 January 2009, and on 2 February 2009) noting the refusal by the applicant of his medication.

50. Moreover, the applicant frequently refused food.

51. On 6 November 2007 he was hospitalised in the medical unit of Dej Prison because of the voluntary ingestion of medicines. He refused medical assistance.

52. According to the applicant's prison medical record, his treatment for his various conditions was continuing.

F. The applicant's complaints concerning the conditions of his detention

1. The complaint concerning the conditions of detention in Baia Mare Prison

53. On 10 January 2006, while detained in Baia Mare Prison, the applicant lodged a complaint against the prison authorities, relying on Ordinance no. 56/2003. He requested, *inter alia*, to be transferred to

another cell with fewer detainees and to be provided with a diet better suited to his medical condition. He also complained of infringements of his right of access to his prison file and of his right to respect for his correspondence, that is, the right to send applications and documents to the Court. He further complained of a lack of adequate medical treatment.

54. The judge of the Baia Mare District Court dismissed his complaint on 9 March 2006 on the grounds that the applicant's food was in accordance with the norms adopted by the National Administration of Penitentiaries and that the applicant's cell was similar to other cells in the prison, only the medical unit of the prison having cells designed for fewer detainees. With regard to his right to have access to his file, the judge noted that the applicant had submitted only one request in this regard, on 23 October 2005, and that it had been granted. He also noted that the applicant's request for copies from his file lodged on 23 December 2005 had been granted.

55. An appeal on points of law lodged by the applicant was dismissed by the Maramureş County Court on 23 May 2006 as unfounded.

2. The criminal complaint against the doctors of Gherla Prison

56. On 10 December 2007 the applicant lodged a criminal complaint with the prosecutor's office attached to the Cluj Court of Appeal against three doctors working for the hospital of Gherla Prison for abuse and ill-treatment. He claimed that they had not provided him with the medication he needed for his epilepsy and personality disorder, causing him severe pain and mental suffering.

57. The complaint was dismissed on 19 February 2008 on the ground that there was no evidence to support the applicant's allegations. The applicant challenged the decision not to initiate a criminal investigation but it was upheld by the chief prosecutor on 21 March 2008.

58. The applicant's complaint against the prosecutor's decision was allowed by the Cluj Court of Appeal on 15 May 2008. It held that the investigation conducted by the prosecutor had not been effective as the file had not contained enough evidence for any conclusion to be drawn. It remitted the case to the prosecutor's office for further investigation.

59. The prosecutor's office appealed, claiming that the applicant's initial complaint had been totally unsubstantiated. The High Court of Cassation and Justice allowed the appeal on 11 September 2008, finding that the applicant had submitted no evidence justifying further investigation, his allegations being unsubstantiated.

G. The applicant's correspondence with the domestic authorities and the Court

60. The Government submitted copies of several requests lodged by the applicant with different domestic authorities in order to obtain information concerning proceedings to which he was a party. They also provided the Court with copies of letters addressed by the domestic authorities to the applicant providing the requested information.

61. According to the information provided by Baia Mare Prison, the applicant received stamps and envelopes for correspondence on 5, 8 and 15 June 2006. On 5 June 2006 he received copies of documents from his personal file.

62. According to the information submitted by Satu Mare Prison, the applicant received letters from the Court on 5 October 2004, 25 November 2005, 27 April and 29 June 2006, 5 April 2008, and 7 March 2009. They also stated that the letters had never been opened.

63. The authorities of Gherla Prison maintained that the applicant had been provided with stamps and envelopes in order to send correspondence to the Romanian authorities and the Court.

II. RELEVANT DOMESTIC LAW

64. Article 3 of Government Emergency Ordinance no. 56 of 27 June 2003 ("Ordinance no. 56/2003") regarding certain rights of convicted persons states that convicted persons have the right to bring legal proceedings before a court of first instance concerning 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 restates the content of the above-mentioned Article 3 in Article 38, which provides that a judge has jurisdiction over complaints by convicted persons against measures taken by the prison authorities (see also *Petrea v. Romania*, no. 4792/03, §§ 21-23, 29 April 2008).

65. 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 the prison authorities, lack of adequate medical treatment, and breaches of their rights to receive visits, to correspondence, to the confidentiality of telephone conversations, to take walks outside their cell, and to be placed in a non-smoking cell.

66. The relevant provisions of the Code of Criminal Procedure are set out in *Dumitru Popescu v. Romania* ((no. 1), no. 49234/99, §§ 43-46, 26 April 2007), and *Barbu Anghelescu v. Romania* (no. 46430/99, § 40, 5 October 2004). In paragraphs 43-45 of the judgment in

Dumitru Popescu (no. 1), cited above, there is a description of the development of the law concerning complaints against prosecutors' decisions (Article 278 of the Code of Criminal Procedure and Article 278¹ introduced by Law no. 281/24 June 2003, applicable from 1 January 2004 – "Law no. 281/2003").

III. REPORTS ON THE CONDITIONS OF DETENTION IN ROMANIAN PRISONS

67. The relevant findings and recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") are to be found 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).

68. The CPT report published on 11 December 2008 following a visit to different police detention facilities and prisons in Romania (including Jilava Prison), from 8 to 19 June 2006, indicated that overcrowding was 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.

69. 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 nationally, and that this had remained the case since its first visit to Romania in 1999. The CPT 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

70. The applicant complained under Article 3 of the Convention of ill-treatment by police officers on 18 August 2003 and lack of an effective investigation into the incident. He also complained about the conditions of detention in different prisons where he had been detained, and of a lack of medical treatment.

Article 3 of the Convention reads as follows:

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

A. Admissibility

1. The parties' arguments

71. The Government raised a preliminary objection of non-exhaustion of domestic remedies and argued that for the 18 August 2003 incident the applicant should have used the appeal provided for in Article 278¹ of the Code of Criminal Procedure in order to challenge the military prosecutor's decision not to press charges.

Furthermore, for the complaint concerning the conditions of detention and the alleged lack of adequate medical treatment in all places of detention the applicant could have lodged a complaint under the provisions of Emergency Ordinance no. 56/2003.

72. The applicant did not submit any observation in this regard.

2. The Court's assessment

73. At the outset, the Court reiterates that the purpose of the exhaustion rule is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it. However, the only remedies which Article 35 of the Convention requires to be used are those that relate to the breaches alleged and at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see, among many other authorities, *Selmouni v. France* [GC], no. 25803/94, §§ 74-75, ECHR 1999-IV).

74. In order for the exhaustion rule to come into operation, the effective remedy must exist at the date when the application is lodged with the Court. However, this rule is subject to exceptions which might be justified by the specific circumstances of each case (see *Baumann v. France*, no 33592/96, § 47, 22 May 2001, and *Brusco v. Italy*, (dec.), no. 69789/01, ECHR 2001 IX).

(a) The incident on 18 August 2003

75. The Court observes that Article 278¹ of the Code of Criminal Procedure provides that prosecutor's decisions can be challenged before the domestic courts.

76. However, the Court notes that the applicant failed to challenge the military prosecutor's decision of 27 March 2007 not to prosecute the police officers, although he had an effective remedy at his disposal (*Stoica v. Romania*, no. 42722/02, § 109, 4 March 2008).

77. It follows that this part of the complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

(b) The material conditions of detention

78. 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 a 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).

79. The Court further notes that the domestic decisions submitted by the Government in support of its plea of non-exhaustion relate to specific prisoners' rights, such as the right to medical assistance or the right to receive visits, but they do not relate to structural issues, such as overcrowding.

80. The Court therefore concludes that these decisions do not demonstrate 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.

81. 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.

(c) The alleged deterioration of the applicant's health and the alleged lack of medical treatment

82. In the case of *Petrea*, cited above, the Court concluded that before the entry into force of Ordinance no. 56/2003, on 27 June 2003, there was no effective remedy for situations such as the one complained of by the

applicant. However, after that date persons in the applicant's situation had an effective remedy for complaining about lack of medical treatment.

(i) Baia Mare and Gherla Prisons

83. Turning to the present case, the Court notes that the applicant lodged a complaint about lack of adequate medical treatment on the basis of Ordinance no. 56/2003 on 10 January 2006. However, it notes that he made reference only to a lack of medical treatment in relation to detention in Baia Mare Prison (see paragraph 53).

84. The Court also observes that the applicant lodged a criminal complaint against the doctors working for the Gherla prison hospital (see paragraph 56), claiming that they had not provided him with the medication he needed for his medical conditions. In this regard the Court is not convinced of the necessity of lodging another request on the basis of Ordinance no. 56/2003 with largely the same object.

It therefore rejects the Government's plea of non-exhaustion of domestic remedies in respect of the alleged lack of medical treatment while in detention in Baia Mare and Gherla Prisons.

Noting further that this part of the 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.

(ii) Satu Mare and Jilava Prisons

85. The Court further notes that the applicant did not refer in the two above-mentioned complaints to the alleged lack of proper medical treatment in Satu Mare and Jilava Prisons.

86. It considers that the applicant should have lodged complaints with the domestic courts about the alleged lack of medical treatment in the two above-mentioned prisons.

It follows that this part of the complaint must be rejected for non-exhaustion of domestic remedies.

B. Merits

1. The material conditions of detention

(a) The parties' submissions

87. 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 for maintaining proper hygiene had been lacking.

88. The Government contended that the conditions of detention in all the prisons in which the applicant had been detained were adequate and did not raise an issue under Article 3 of the Convention.

(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).

93. 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).

94. In previous cases where applicants have 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, *Iamandi v. Romania*, no. 25867/03, §§ 59-61, 1 June 2010; *Răcăreanu v. Romania*, no. 14262/03, §§ 49-52, 1 June 2010; and *Flamânzeanu v. Romania*, no. 56664/08, § 98, 12 April 2011).

95. The focal point 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, namely Zalău Police Station and Baia Mare, Satu Mare, Jilava and Gherla Prisons.

96. The Court notes that even at the occupancy rate put forward by the Government, the applicant's living space seems to have been less than three square metres in Zalău Police Station and Baia Mare, Satu Mare and Jilava Prisons, which falls short of the standards imposed by the case-law (see *Kokoshkina*, cited above, § 62, and *Orchowski v. Poland*, no. 17885/04, § 122, ECHR 2009 ... (extracts)).

97. The Court further observes that despite the fact that the applicant complained about the improper sanitary facilities and the poor quality of the food, the Government did not make any submissions in this respect.

98. In this respect the Court reiterates 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*, cited above, § 59).

99. However, there is no need for the Court to establish the truthfulness of each and every allegation, since it considers that the overcrowding of the applicant's cell give it sufficient grounds to make substantive conclusions on whether the conditions of the applicant's detention amounted to treatment contrary to Article 3 of the Convention.

100. Lastly, the Court notes that the applicant was transferred many times during his detention. Such frequent transfers may increase the feelings of distress experienced by a person deprived of liberty and held in conditions which fall short of the Convention's standards (see, *mutatis mutandis*, *Orchowski*, cited above, § 133, and *Khider v. France*, no. 39364/05, §§ 110-111, 9 July 2009).

101. In the light of the above, the Court considers that the conditions of the applicant's 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.

2. The alleged lack of proper medical treatment in Baia Mare and Gherla Prisons

(a) The parties' submissions

102. The applicant did not agree with the Government's submissions. He claimed that he had not received proper medical treatment while in detention in Baia Mare and Gherla Prisons.

103. The Government submitted that the applicant had received constant medical treatment and that he had been hospitalised whenever it had been necessary. They further claimed that the applicant had not managed to prove his allegations concerning lack of medical treatment.

b) The Court's assessment

104. The Court observes at the outset 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)).

105. The Court reiterates that 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). In particular, the assessment of whether the treatment or punishment concerned is incompatible with the standards of Article 3 has, in the case of mentally ill persons, to take into consideration their vulnerability and their inability, in some cases, to complain coherently or at all about how they are being affected by any particular treatment (see *Aerts v. Belgium*, 30 July 1998, § 66, *Reports of Judgments and Decisions* 1998-V).

106. The Court observes that in the present case it was not contested that the applicant had suffered from chronic gastritis both before and during his detention. His mental state was also diagnosed as a personality or neurotic disorder.

107. The Court further observes that the medical evidence which the Government produced shows that during his detention the applicant regularly sought, and obtained, medical treatment. He was examined by specialist doctors and frequently received psychiatric assistance. He was hospitalised in the medical unit of the prison concerned whenever it was necessary.

108. Moreover, the Court notes that the adequacy of the medical treatment of the applicant when detained in Baia Mare and Gherla Prisons was examined by the Romanian authorities, which dismissed the applicant's complaints. He was also regularly examined in the prison hospitals.

109. In this connection, the Court has previously held that where domestic proceedings have taken place it is not its task to substitute its own assessment of the facts for that of the domestic courts and that, as a general rule, it is for those courts to assess the evidence before them (see *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269). Though the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Klaas*, cited above, § 30).

110. In the present case, the case file reveals that the authorities took all necessary steps to ensure that the applicant received adequate treatment for his illnesses in Baia Mare and Gherla Prisons.

In conclusion, there was no violation of Article 3 of the Convention in respect of lack of medical treatment in Baia Mare and Gherla Prisons.

II. ALLEGED VIOLATION OF ARTICLE 5 § 2 OF THE CONVENTION

111. The applicant complained that he had not been informed of the reasons for his arrest or of the charges brought against him on 18 August 2003. He relied on Article 5 § 2 of the Convention.

112. The Government submitted that during the investigation it had been established on the basis of the witness statements given by the persons present at the applicant's arrest that the police officers had informed him twice before entering the house that their presence concerned the execution of a sentence of imprisonment.

113. The Court reiterates that two aspects of the application of Article 5 § 2 are at the heart of its case-law: firstly, whether the information provided to a person concerning the reasons for his arrest is sufficient, and secondly, whether such information has been promptly provided (see *Fox, Campbell and Hartley v. the United Kingdom* (30 August 1990, § 40, Series A no. 182).

114. In the instant case, the Court considers that the applicant was promptly informed of the reasons for his arrest: it notes that the police officers informed the applicant even before entering his home on the morning of 18 August 2003 about their intent to enforce a sentence of imprisonment imposed on him. Moreover, the applicant acknowledged in his first statement on 19 August 2003 before the investigation body that he knew that he had been convicted and sentenced to imprisonment in July 2003.

115. Taking into account the particular circumstances under which the applicant was arrested on 18 August 2003, the Court considers that,

although the Government did not submit a formal document signed by the applicant containing the reasons for his arrest, the applicant was aware that his arrest was related to the enforcement of the decision rendered on 2 July 2003.

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

III. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (c) OF THE CONVENTION

116. The applicant further complained about the unfairness of the criminal proceedings against him, referring mainly to his difficulty in adducing evidence in his defence and the allegedly insufficient assistance offered by his court-appointed counsel before the High Court of Cassation and Justice. He relied on Article 6 §§ 1 and 3 (c) of the Convention.

A. Complaint concerning the alleged impossibility of calling and questioning witnesses

117. The applicant complained that he and his counsel had not had the opportunity to obtain the examination of all the witnesses on his behalf and against him.

118. The Government submitted that the applicant had had the opportunity to propose evidence and to ask questions of all the witnesses. They also maintained that the applicant had been able to see all the documents in the files and make comments with respect to each.

119. The Court stresses, firstly, that it is not its task to act as a court of appeal or, as is sometimes said, as a court of fourth instance, for the decisions of domestic courts, which, according to the case-law, are best placed to assess the credibility of witnesses and the relevance of evidence to the issues in the case (see, amongst many authorities, *Vidal v. Belgium*, 22 April 1992, § 32, Series A no. 235-B, and *Edwards v. the United Kingdom*, 16 December 1992, § 34, Series A no. 247-B). The Court further reiterates that the principle of equality of arms, one of the broader concepts of a fair hearing, requires each party to be given a reasonable opportunity to present their case under conditions that do not place them at a substantial disadvantage *vis-à-vis* their opponent.

120. Turning to the facts of the case, the Court observes that the domestic courts based the applicant's conviction on a wide range of oral,

material and expert evidence. The evidence which the applicant sought to adduce was admitted and he had the opportunity to question all the witnesses. At the various stages of the proceedings he was able to submit the arguments he considered relevant to his case. The applicant himself gave a full statement before the first-instance court, and in the appeal proceedings he was given the last word. Moreover, in his appeals the applicant, even though he was represented by counsel, failed to make any complaint in respect of his right to be heard by the courts or to call and question witnesses (see paragraphs 20-26).

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

B. Complaint concerning the alleged refusal of court-appointed counsel

122. The applicant claimed that he had asked all the domestic courts to allow him to represent himself without being assisted by a lawyer, but that his requests had not been mentioned in the minutes and decisions of the courts and they had been orally dismissed on the ground that his assistance by a lawyer was compulsory. He added that in any case such lawyers were appointed by the courts with the sole purpose of obstructing the establishment of the truth.

123. With respect to the judicial assistance offered by the lawyers appointed by the courts, the Government averred that the applicant had expressly waived the opportunity to choose a lawyer himself on 13 November 2003 when he gave a statement before the prosecutor's office. He had again refused to appoint a lawyer on 19 November 2003, when he was presented with the results of the investigation. The Government also submitted that they had had enough time to prepare the applicant's defence and they had played an active role.

124. The Court firstly notes that the guarantees in paragraph 3 of Article 6 are specific aspects of the right to a fair trial in criminal proceedings as set forth in paragraph 1 of the same Article. Accordingly, the applicant's complaint will be examined under these provisions taken together (see, among other authorities, *Bobek v. Poland*, no. 68761/01, § 55, 17 July 2007).

125. The Court reiterates that assigning counsel to represent a party to the proceedings does not in itself ensure the effectiveness of the assistance (see *Imbrioscia v. Switzerland*, 24 November 1993, § 38, Series A no. 275). There may be occasions when the State should act and not remain passive

when problems of legal representation are brought to the attention of the competent authorities. It will depend on the circumstances of the case whether, taking the proceedings as a whole, the legal representation may be regarded as practical and effective.

126. The Court observes in this context that the applicant had the legal assistance throughout the proceedings of officially appointed representatives who played an active role in his defence.

It also notes that the applicant did not bring to the attention of the authorities any concrete shortcomings in the defence provided by his appointed counsels. Moreover, there is no indication that in the proceedings conducted against the applicant the Romanian authorities had cause to intervene in respect of the applicant's legal representation.

127. On the basis of the information available, the Court considers that the circumstances of the applicant's representation at the trial do not reveal a failure to provide him with practical and effective legal assistance.

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

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

128. The applicant further complained that his right to respect for his correspondence had been infringed by the prison authorities, claiming that letters received from the Court had been opened before being handed to him, and making particular reference to a letter sent to him by the Court on 29 September 2004, while he was detained in Satu Mare Prison. The applicant also complained that the prison authorities had hindered him in bringing his case before the Court by withholding a letter sent to him by the Court on 6 November 2006. He further claimed in this connection that the authorities had failed to assist him in obtaining copies of the documents necessary for lodging his application and that he had not received the stamps and envelopes he needed for his correspondence with the Court. He relied on Articles 8 and 34 of the Convention.

129. The Government raised a preliminary objection of non-exhaustion of domestic remedies, in so far as the applicant had not complained to the authorities about the alleged breach of his right to respect for his correspondence with the Court or the refusal of the prison authorities to provide him with copies from his files and with stamps and envelopes while he was detained in Satu Mare, Jilava and Gherla Prisons. They relied mainly on Article 8 of Emergency Government Ordinance no. 56/2003 concerning the right to correspondence of detained persons, and also on Article 46 of Law no. 275/2006.

130. The applicant did not agree with the Government's submissions.

131. 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 in that case that before the entry into force of Ordinance no. 56/2003, on 27 June 2003, there was no effective remedy for the situation complained of by the applicant. However, after that date, persons in the applicant's situation did have an effective remedy for complaining about alleged interference with their correspondence (see *Petrea*, cited above, §§ 35-36, and *Dimakos v. Romania*, no. 10675/03, §§ 54-56, 6 July 2010).

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

133. 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 interference with his Article 8 rights. There is no evidence in the file that he did so while detained in Satu Mare, Jilava and Gherla Prisons.

It follows that the part of the complaint concerning the alleged breach of Article 8 while detained in Satu Mare, Jilava and Gherla Prisons must be rejected for non-exhaustion of domestic remedies.

134. In respect of the infringement of the applicant's right to correspondence while detained in Baia Mare Prison, the Government submitted that, even if with short delays, all the applicant's requests for copies from his file and stamps and envelopes for his correspondence had been granted. They maintained that the applicant had had extensive correspondence with the Court. Thus, the applicant had received letters from the Court on 5 October 2004, 25 November 2005, 27 April and 29 June 2006, 5 April 2008, 7 March and 19 June 2009, and 16 and 23 July 2009. They further claimed that the prison authorities had not held back any letter sent by the Court to the applicant.

135. The applicant contested the Government's submissions.

136. The Court observes that Article 34 of the Convention imposes an obligation on a Contracting State not to hinder the right of individual petition. While the obligation imposed is of a procedural nature, distinguishable from the substantive rights set out in the Convention and Protocols, it flows from the very essence of this procedural right that it is open to individuals to complain of its alleged infringement in Convention proceedings (see *Manoussos v. the Czech Republic and Germany* (dec.), no. 46468/99, 9 July 2002). The Court also reiterates that the undertaking not to hinder the effective exercise of the right of individual application precludes any interference with the individual's right to present and pursue his complaint before the Court effectively (see *Tanrikulu v. Turkey* [GC], no. 23763/94, § 130, ECHR 1999-IV and *Kornakovs v. Latvia*, no. 61005/00, § 164, 15 June 2006).

137. As to the alleged monitoring of the applicant's communications with the Court, the Court notes that the applicant has not submitted any direct proof in respect of the alleged opening of letters by the prison administration.

Therefore, it concludes that there is nothing to indicate that the applicant was in any way frustrated in the exercise of his right to respect for his correspondence or of his right of petition (contrast *Petra v. Romania*, 23 September 1998, §§ 41-44, *Reports* 1998-VII, and *Cotlet v. Romania*, no. 38565/97, § 71, 3 June 2003).

138. The Court also notes that the applicant periodically received stamps and envelopes from the prison authorities and was able to obtain copies of documents in support of his application and submit them to the Court.

139. 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 these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

140. 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

141. The applicant claimed a total amount of 210,000 euros (EUR) in respect of non-pecuniary damage. He claimed EUR 20,000 for the alleged infringement of Article 5 § 2, EUR 50,000 for the ill-treatment to which he claimed to have been subjected on 18 August 2003, EUR 70,000 for the inhuman conditions of detention, EUR 10,000 for infringement of his right to correspondence, and EUR 60,000 for the alleged violation of Article 6 of the Convention. He did not claim any amount in respect of pecuniary damage.

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

143. 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 by the mere finding of a violation. Ruling on an equitable basis, it therefore awards the applicant EUR 8,400 in respect of non-pecuniary damage.

B. Costs and expenses

144. The applicant did not claim any amount for costs and expenses incurred.

C. Default interest

145. 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 under Article 3 concerning the conditions of detention and the medical treatment 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* that there has been no violation of Article 3 of the Convention on account of lack of medical treatment in Baia Mare and Gherla Prisons;
4. *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 8,400 (eight thousand four 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;

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

Done in English, and notified in writing on 17 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President