



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

FOURTH SECTION

CASE OF POTOROC v. ROMANIA

(Application no. 37772/17)

JUDGMENT

Art 3 (substantive) • Inhuman and degrading treatment • Inadequate medical care and assistance during the detention for two years and seven months of a seriously ill person confined to a wheelchair • Domestic courts' decisions assessing the compatibility of the detention with the applicant's health based on medical reports confirming his ability to remain in prison under the impugned conditions of detention • No adequate measures to accommodate his needs for daily assistance despite help from other inmates • Conditions of detention incompatible with respect for human dignity

STRASBOURG

2 June 2020

FINAL

02/09/2020

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

In the case of Potoroc v. Romania,

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

Jon Fridrik Kjølbro, *President*,

Faris Vehabović,

Iulia Antoanella Motoc,

Carlo Ranzoni,

Stéphanie Mourou-Vikström,

Georges Ravarani,

Péter Paczolay, *judges*,

and Andrea Tamietti, *Section Registrar*,

Having regard to:

the application 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 Ioan Potoroc (“the applicant”), on 17 May 2017;

the decision to give notice to the Romanian Government (“the Government”) of the complaint concerning Article 3 of the Convention;

the parties’ observations;

Having deliberated in private on 15 April 2020,

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

INTRODUCTION

The case concerns the applicant’s continued detention and the conditions in which he was detained despite being seriously ill.

THE FACTS

1. The applicant was born in 1953 and lives in Bucharest. He was represented by Mr N. Olteanu, a lawyer practising in Bucharest.

2. The Government were represented by their Agent, most recently Ms O. Ezer from the Ministry of Foreign Affairs.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

A. The applicant’s health

4. The applicant suffers from various medical disorders, including brain damage following several strokes, hemiparesis, prostate adenoma, as well as impaired hearing and severe psycho-organic syndrome (a progressive disease comparable to pre-senile dementia). The applicant, who was at the time of the lodging of the application 64 years of age, is obliged to use a

wheelchair and requires permanent assistance, as well as continuous medical care.

B. The applicant's detention

5. In 2004 the applicant was sent for trial before the domestic criminal courts, accused of having committed several crimes in connection with drug trafficking. In the final judgment of 28 April 2009, the High Court of Cassation and Justice convicted the applicant for involvement in international drug trafficking and sentenced him to fifteen years' imprisonment.

6. The medical reports drawn up pending trial, specifically on 12 June 2006 and 3 November 2006 by a board from the National Institute of Forensic Medicine (hereinafter "the NIFM"), concluded that the prison medical network was capable of providing adequate medical care to the applicant, who had been suffering from brain damage following several strokes in 2005, hemiparesis, severely high blood pressure, as well as impaired hearing (severe for the right ear and moderate for the left ear), severe psycho-organic syndrome and a minor depressive episode.

7. The applicant was placed in Rahova Prison starting with 25 February 2011; between 11 and 31 March 2011 he was hospitalised in Jilava Prison Hospital. Upon his return from the hospital, the applicant, who had to use a wheelchair, refused to be placed in the medical wing of Rahova Prison on account of the fact that it was situated on the first floor, which would make it more difficult for him to get outside for fresh air as there were no ramps available; therefore he was placed in a regular cell.

8. In between 25 February 2011 and 7 August 2012, the applicant spent 350 days out of 529 in prison hospitals.

9. On 1 November 2011 the Argeş Commission for the Medical Assessment of Adults with Disabilities issued a certificate, finding that based on the relevant domestic law, the applicant's state of health had not necessitated a personal assistant. This assessment was confirmed by a higher commission on 1 March 2012, the certificate stating that the applicant did not have any functional deficiency.

10. On 7 August 2012 the applicant was released based on the judgment given on the same date (see paragraphs 25-27 below).

11. In October 2012 he suffered an ischemic stroke, which was treated in a public hospital in Bucharest.

12. The applicant remained out of prison until 5 January 2015, when his reimprisonment was ordered in execution of the judgment of 4 December 2014 (see paragraph 33 below). Subsequently, on 7 January 2015 the applicant was transferred to Jilava Prison Hospital.

13. The applicant challenged his reimprisonment, in view of the fact that the judgment of 4 December 2014 was not final and therefore not enforceable.

14. His application was allowed and he was consequently released on 9 January 2015.

15. On 26 February 2015 the said judgment became final, once it had been confirmed on appeal by the Bucharest Court of Appeal (see paragraph 35 below). The applicant was consequently reimprisoned on 9 March 2015.

16. Lastly, he was placed on and off in Mioveni (Colibași) Prison Hospital for a duration of one year and eleven months, until his release on 20 September 2017 (see also paragraph 21 below). During that time, he was also placed in Rahova Prison for a period of two and a half months, Jilava Prison Hospital for some three and a half months (several non-consecutive periods), Rahova Prison Hospital for about two months (several non-consecutive periods), Giurgiu Prison (thirteen days) and Colibași Prison for some two and a half months (non-consecutive periods).

17. The Government further indicated that while the applicant had been held in Colibași Prison Hospital, medical assistance had been provided also by a team of inmates who had not been allocated individually, but rather collectively. Moreover, in March 2017, while in Jilava Prison Hospital, the applicant had been helped by another inmate, V.I., who had been appointed as “his personal assistant”, according to the minutes drafted on 28 April 2017. The minutes showed that V.I. had also been assistant to two other inmates hospitalised in the same prison hospital.

18. The Government submitted that since 9 March 2015, the applicant had been placed in prison cells (for a total of 115 non-consecutive days) or rooms in prison hospitals where he had at his disposal a minimum 4.22 sq. m, with the exception of a period of thirteen days in Giurgiu Prison (between 29 January and 11 February 2016), when the personal space afforded to the applicant had been 3.06 sq. m.

19. The Government also submitted that while in Giurgiu Prison, the applicant had not been held in a room fit for physically disabled persons; however, the prison had access ramps both outside and inside the detention wings. The same was true for all prison hospitals, which were equipped so as to ensure the mobility of physically disabled inmates.

C. The applicant’s release

20. Following the finding by the Court of a violation of Article 6 of the Convention in his case concerning the unfairness of the criminal proceedings (*Potoroc v. Romania* [Committee], no. 59452/09, 14 February 2017), the applicant applied for the review of the decision sentencing him to imprisonment.

21. On 20 September 2017 the High Court of Cassation and Justice allowed his application and reviewed the sentence, quashing it. The applicant was consequently released on the same day (see paragraph 16 above). The court referred its decision to release the applicant to, *inter alia*, the medical report issued on 12 February 2013 (see paragraph 29 below), which had revealed that the applicant's state of health had been serious enough and that unpredictable complications could appear in time, as well as on the criterion of the applicant's good behaviour, which allowed the court to assume that his release would not constitute a public threat.

22. Without re-examining the applicant, who was "no longer capable of communicating", as noted by the court, the High Court decided on 11 April 2018 to acquit the applicant based on the *in dubio pro reo* principle.

D. Applications for interrupting the execution of the sentence on health grounds

1. First set of proceedings: application for the interruption of the prison sentence on health grounds

23. On 18 May 2012 the applicant applied to the Argeş County Court for an interruption of his prison sentence (*întreruperea executării pedepsei*) on health grounds, pursuant to Articles 453-55 of the Code of Criminal Procedure (hereinafter "the CCP", see paragraph 43 below). He argued that since he had been imprisoned, his already serious health problems had visibly worsened, to the point where he was confined to a wheelchair and at the mercy of his cellmates. He relied on Article 3 of the Convention, submitting that his state of health was incompatible with detention.

24. The medical report of 4 July 2012, delivered by the Argeş Forensic Unit at the court's request, recommended that the applicant be hospitalised in Colibaşi Prison Hospital, where he could receive adequate medical treatment; the board concluded that adequate care for the applicant's health problems was available in the prisons in-house medical wings, more specifically in a specialist unit under medical supervision.

The board also mentioned that it could not guarantee that the medical treatment would in fact be provided to the applicant by the prison healthcare system.

25. By judgment of 7 August 2012 the Argeş County Court allowed the application on account of the applicant's "dreadful" (*deplorabilă*) state of health, witnessed by the court itself, and confirmed by the above-mentioned medical report.

26. The court noted the medical report's conclusion that adequate treatment for the applicant's ailments was available in the prison healthcare system. However, it considered that humanitarian considerations meant that such care would be better provided outside the prison system, in view also of the fact that the applicant's release did not represent a public threat.

27. According to the court's decision, the applicant was to be released until his health improved. This judgment was immediately enforced and the applicant was released from prison (see paragraph 10 above).

28. This decision was appealed against by the prosecutor's office by the Pitești Court of Appeal.

29. A new medical report commissioned by the appellate court was drawn up on 12 February 2013 by the Argeș Forensic Unit. The board concluded that the applicant's state of health was serious enough and that unpredictable complications could appear in time, including with reference to a prostate neoplasm, detected during a medical examination. It was also noted that the applicant needed permanent care and supervision, consequently Colibași Prison could not provide adequate medical care; however, the National Prison Service (hereinafter "the NPS") had a network of hospitals in which the applicant could find appropriate care.

30. In a final judgment of 4 September 2013 the Pitești Court of Appeal dismissed the appeal and confirmed the lower court's conclusions. As evidenced by the medical documents on file and witnessed by the court itself, the applicant was in a deplorable state of health and needed constant assistance, as he was confined to a wheelchair. In view, however, of the seriousness of the crime committed, the court imposed on the applicant specific restrictions and obligations to be respected following his release, such as a ban on his bearing arms or approaching any of the persons involved with him in the criminal proceedings, a ban on changing residence without prior permission from the court as well as the obligation to appear before the relevant authorities charged with his supervision whenever if called.

2. Second set of proceedings: the authorities' application for a reassessment of the applicant's state of health

31. On 2 December 2013 the Department for the Execution of Criminal Sentences by the Bucharest County Court lodged an application with that court for an assessment of the applicant's state of health, in particular to check whether his state of health had improved so as to make the interruption of the execution of his sentence unnecessary (see paragraph 27 above).

32. The medical report of 13 October 2014 commissioned by the court and drawn up by a board of ten experts from the NIFM concluded that adequate health care could be provided to the applicant by the NPS's hospital network, in particular by a prison hospital unit specialising in chronic illnesses; it was noted that the applicant needed a personal assistant for current activities and that he had had a mild depressive episode; the prostate neoplasm had been diagnosed as a benign hypertrophy of the prostate; lastly, the medical criteria justifying an interruption of the prison

sentence had not been met, the previous interruption having probably been granted on other grounds.

33. On 4 December 2014 the Bucharest County Court found, based on these medical conclusions, that adequate medical care for the applicant was available in the prison hospitals network, having regard also to the fact that the NPS had confirmed that it was able to provide the applicant with a personal assistant. The court further considered that once the medical care or the medical treatment became inadequate or insufficient, the applicant could at all times apply anew for an interruption of his prison sentence.

34. The applicant was imprisoned on 5 January 2015 in execution of the judgment of 4 December 2014 (see paragraph 12 above).

35. The appeal against this judgment lodged by the applicant was dismissed on 26 February 2015 by the Bucharest Court of Appeal, in view of the fact that the medical report of 13 October 2014 (see paragraph 32 above) was evidence of a scientific nature, whose veracity could not be called into question, and therefore its conclusions were the only ones which could be used by the court in its assessment of the application. Furthermore, the seriousness of the crime committed by the applicant was severe enough to justify the need to have him serve his sentence in prison.

3. Third set of proceedings: application for an interruption of the prison sentence on health grounds

36. On 28 January 2016 the applicant lodged another application for an interruption of his prison sentence on health grounds under Articles 589-92 of the CCP (see paragraph 44 below). He pointed out that since he had not been able to receive his treatment in any prison or prison hospital, his state of health had seriously deteriorated, including complications such as hearing impairment, confinement to bed, bouts of confusion.

37. The medical report commissioned by the court on the applicant's condition was drawn up on 25 April 2016 by a board of the NIFM. It concluded that the prison healthcare system could provide the necessary treatment for the applicant's serious ailments and that frequent hospitalisation was necessary in the light of that aim. The report also indicated the applicant's need for constant assistance in his everyday activities.

38. On 2 June 2016 the Argeş County Court dismissed the applicant's application, basing its decision on the conclusions of the last medical report. The court furthermore considered that the fact that the applicant needed a personal assistant at all times did not constitute sufficient reason for the interruption of the prison sentence, in so far as since his reimprisonment, he had had the benefit of such assistance at all times.

39. The applicant appealed. He argued that he had not been granted the benefit of a personal assistant; moreover, since he had been placed in a

room located on the first floor, he could no longer get out for fresh air, as he was confined to the room the whole time.

40. On 27 September 2016 the Pitești Court of Appeal dismissed his appeal as ill-founded, in so far as the medical conclusions did not justify an interruption of the applicant's prison sentence.

4. Fourth set of proceedings: applicant's transfer application

41. On 7 September 2016 the applicant applied to be transferred from Colibași Prison to Colibași Prison Hospital, as his state of health did not allow him to serve his sentence in prison.

42. His application was allowed by the Argeș County Court on 17 October 2016. The court found that in view of the applicant's very precarious state of health, which rendered Article 3 of the Convention applicable, the prison could not provide to him all that was necessary so as not to put his life in danger. The applicant was to be transferred to the prison hospital.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

43. The relevant provisions of Articles 453 and 455 of the old CCP (in force before 1 February 2014), setting out the procedure on how to apply for an interruption of the prison sentence are described in the case of *Dorneanu v. Romania* (no. 55089/13, § 34, 28 November 2017).

44. In Articles 589 and 592 of the CCP in force since 1 February 2014 the parts referring to the said procedure have been slightly amended. In their relevant parts, they provide as follows:

Article 589

“1. Enforcement of a life prison sentence or detention may be suspended in the following cases:

a) where it is noted, on the basis of an expert medical assessment, that the convicted prisoner is suffering from an illness that cannot be treated in the medical network of the NPS and which makes the immediate enforcement of the penalty impossible, if the specificity of such an illness does not allow for its treatment under constant guard in the medical network of the Ministry of Health, and if the court decides that the enforcement suspension and the fact that the convict is released is not a threat for the public. In such cases, sentence enforcement is suspended for a limited duration;

...

3. An application for suspension of enforcement of a sentence to life imprisonment or detention may be submitted by the public prosecutor [or] by the prisoner in question ...”

Article 592

“Enforcement of a sentence to life imprisonment or detention may be interrupted in the cases and under the conditions set out in Article 589 ...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

45. The applicant complained that owing to his advanced age, significant health problems, and the alleged inadequacies of the medical treatment received in prison, his continued detention had amounted to an exceptional hardship, in breach of 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. Six months

46. The Government indicated that the applicant had been out of prison for the period between 7 August 2012 and 5 January 2015 (see paragraphs 10-12 above) and that he had subsequently been imprisoned again for four days until 9 January 2015 and then released again until 9 March 2015 (see paragraphs 14-15 above). The Government argued that having regard to the fact that the application with the Court was lodged on 17 May 2017, the applicant’s complaint in respect of the first period of imprisonment, thus the one from 25 February 2011 until his release on 7 August 2012, as well as the one in respect of the second period of imprisonment, namely from 5 to 9 January 2015, were inadmissible as they had been lodged outside the six-month time-limit.

47. The Government thus submitted that the period to be taken into consideration for the assessment of the applicant’s complaints under Article 3 should therefore be from 9 March 2015 (see paragraph 15 above) until the applicant’s release on 20 September 2017 (see paragraphs 16 and 21 above).

48. The applicant argued that his suffering on account of the conditions of his detention which had been incompatible with his state of health had been continuous.

49. The Court firstly notes that the applicant’s complaints, lodged on 17 May 2017 under Article 3, referred to the conditions of his detention from the moment of his imprisonment in 2012 and until his release in 2017. However, in view of the fact that he was released for a period of approximately two years and seven months – between 7 August 2012 and until 9 March 2015 (interrupted by a short reimprisonment period of four days, from 5 to 9 January 2015 – see paragraphs 10 and 14-15 above) – the

Court cannot but consider that the said period brought about significant changes to the conditions of his detention, and that therefore there was not a continuing situation in respect of the period of detention prior to and respectively subsequent to 9 March 2015 (see for instance *Gagiu v. Romania*, (dec.), no. 18869/04, §§ 31-32, 5 October 2010; contrast to *Seleznev v. Russia*, no. 15591/03, §§ 34-36, 26 June 2008, and *Mihai Laurențiu Marin v. Romania*, no. 79857/12, § 30, 10 June 2014).

50. It follows that the applicant's complaint under Article 3 in so far as it relates to the period prior to 9 March 2015 is inadmissible, having been lodged more than six months after the applicant's detention conditions had changed significantly, in the sense that his prison sentence had been interrupted and he had been released.

2. Other grounds of inadmissibility

51. The Court further notes that the complaint relating to the period of detention from 9 March 2015 until 20 September 2017 is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The Government

52. The Government submitted that during the relevant timeframe, totaling 925 days, the applicant had spent only 115 days in prison, meaning he had spent most of the time in prison hospitals or medical units, which had made the need for a personal assistant less severe. In those institutions, the applicant had received adequate medical care and assistance, his state of health either remaining stable or improving slightly. The Government also noted that the applicant's illnesses had predated his imprisonment.

53. The Government argued that while he had been held in Colibași Prison Hospital and in Jilava Prison Hospital, the applicant had been provided with medical assistance also by several of his inmates (see paragraph 17 above).

54. However, the Government submitted that according to the medical documents on file, including the two medical certificates of 2011 and 2012 issued by the Argeș Commission for the Medical Assessment of Adults with Disabilities (see paragraph 9 above), the applicant's state of health had not necessitated a personal assistant. Furthermore, following 9 March 2015, the applicant has not lodged any specific request for a personal assistant with the prison authorities.

55. The Government concluded that in view of the applicant's state of health – which had been more or less stable and in any case had not

deteriorated, with all his illnesses having been adequately cared for in prison, as revealed by the multiple medical documents in the file – there had been no urgent need to have him released or placed outside the prison system.

(b) The applicant

56. The applicant indicated that his first stroke had occurred in 2005, thus after and because of the allegedly unfair criminal proceedings which had been initiated against him in 2004 (see paragraph 5 above).

57. He argued that as long as he had been in a wheelchair and in need of help for basic tasks, there had been no justification for a personal assistant not being ordered in respect of him. However, he had not benefitted from such help during his detention. He contended that the prisons had had only squat toilets, which had made it impossible for him to use them without help from third parties. He also asserted that the fellow inmates who had helped him in the prison hospitals had not had any elementary medical knowledge; additionally, one inmate had had twenty-five ill inmates in his charge, which had made the said medical assistance illusory.

58. Furthermore, he indicated that the wheelchair he had had to use at all times had been bought and provided to him by his family out of their own resources.

59. He further submitted that the conditions in which he had had to serve his sentence had contributed essentially to the worsening of his state of health, having regard also to the fact that he had not received adequate medical treatment while in prison and in prison hospitals as those facilities had not been equipped for neurological and cardiological procedures.

60. Lastly, he argued that the board of experts which had drawn up the medical reports had mainly relied on the medical documents without personally assessing his state of health and the seriousness of his ailments.

2. The Court's assessment

(a) General principles

61. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must, however, 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, *Enea v. Italy*

[GC], no. 74912/01, § 55, ECHR 2009, and *Bouyid v. Belgium* [GC], no. 23380/09, § 86, ECHR 2015).

62. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure of deprivation of liberty do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention (see *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 116, ECHR 2014 (extracts)), and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Idalov v. Russia* [GC], no. 5826/03, § 93, 22 May 2012). 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, *Mouisel v. France*, no. 67263/01, §§ 39 and 48, ECHR 2012-IX).

63. 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 and the effect on the latter of the manner of his imprisonment, (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, *mutatis mutandis*, *Enea*, cited above, § 59).

64. In respect of the second factor to be considered the Court reiterates that it is not sufficient for the prisoner to be examined and a diagnosis to be made, but that it is vital that treatment suited to the diagnosis be provided, together with appropriate post-treatment care (see *Dorneanu v. Romania*, no. 55089/13, § 79, 28 November 2017).

65. Lastly, although Article 3 of the Convention cannot be construed as laying down any general obligation to release detainees or place them in a civil hospital, even if they are suffering from a disease which is particularly difficult to treat (see *Enea*, cited above, § 58), the Court cannot rule out the possibility that in particularly serious cases, situations may arise where the proper administration of criminal justice requires remedies in the form of humanitarian measures (see *Dorneanu*, cited above, § 80).

(b) Application of these principles to the present case

(i) Continued detention

66. In the instant case the Court considers it undisputed that the applicant was suffering from a number of serious illnesses and that for the relevant period, he was confined to a wheelchair on account of his ailments. These issues were confirmed by the medical reports submitted to the domestic authorities who examined the applicant's applications to have his prison sentence interrupted (see paragraphs 4, 6, 24, 29, 32 and 37 above).

67. In this context, the Court reiterates that severe physical disability, like health and age, is a circumstance giving rise to the question of

suitability for detention under Article 3 of the Convention (see *Mouisel* cited above, § 38, and *Matencio v. France*, no. 58749/00, § 76, 15 January 2004).

68. This question was addressed by the domestic authorities, which however had a divergent approach on the matter, based on their referring exclusively to the medical conclusions formulated by the experts or also on references to humanitarian considerations in justifying their decision.

69. Hence, on the one hand, the medical experts consistently expressed their view that the applicant's state of health was compatible with detention, provided that he would be medically supervised in specialist medical units within the prison medical network (see paragraphs 24, 29 and 37 above) and with the assistance of a personal assistant (see paragraph 32 above). These conclusions substantiated the domestic courts' decisions to reject the applicant's application for the interruption of his prison sentence (see paragraphs 33-35 above). At the same time, one court had also indicated that the seriousness of the crime committed by the applicant determined the necessity to have the sentence served in prison (see paragraph 35 above).

70. On the other hand, the Court cannot ignore the fact that in spite of the medical recommendations of the board of experts, some of the domestic courts to whom the applicant applied for the interruption of his prison sentence decided to act based on humanitarian considerations and to allow that application. The Court notes that in their reasoning the domestic courts described the applicant's state of health as being "dreadful" and considered that his release would not represent a public threat (see paragraphs 21, 26 and 30 above). The Court further notes that for the whole duration of his time out of prison, which lasted approximately two years and seven months (see paragraph 49 above), there was no indication that any negative incidents touching on the applicant's behaviour as a convict on temporary release from prison occurred.

71. However, the Court must also observe that such reasoning does not rely on the provisions of domestic law, which require that court decisions refer exclusively to the conclusions drawn by medical experts as to whether the state of health of the applicant is compatible with detention (see paragraphs 43-44 above).

72. Indeed, the relevant domestic law does not set out, either expressly or in substance, the possibility for the courts to rely on humanitarian considerations when deciding on applications such as the one lodged by the applicant in the present case. This is confirmed also by the approach taken by the domestic courts which dismissed the applicant's applications based on precisely the conclusions drawn by the medical expert board, considered to be evidence of a scientific nature, whose veracity could not be called into question (see also paragraph 35 above), thus making it unnecessary to look into the applicant's arguments as to the practical realities of his life in detention.

73. From this perspective and having regard to the fact that the applicant had the opportunity to apply to the domestic courts for an assessment of the compatibility of his detention with his health, the Court takes note that the decisions reached by the domestic authorities were based on the medical reports commissioned in the file which confirmed the applicant's real capacity for remaining in prison under the impugned conditions of detention. The Court also observes that it does not appear from the medical reports in the file that the applicant's health has deteriorated during his detention or that his disability has worsened as a result of the detention conditions (see, *mutatis mutandis*, *Helhal v. France*, no. 10401/12, § 55, 19 February 2015).

74. Accordingly, the present case does not concern the question of the applicant's fitness to serve his sentence, but rather the quality of the care provided, and in particular whether the national authorities did everything that could reasonably be expected of them to provide him with the medical treatment he needed and to offer him some prospect of an improvement in his condition (*ibid.*).

(ii) *Quality of medical care*

75. In connection with the latter aspect, and more specifically with the appropriateness of continuing the applicant's detention, the Court cannot substitute its views for those of the domestic courts. However, it cannot be overlooked that the domestic courts, in rejecting the application for an interruption of the sentence, did not address the issues raised by the applicant concerning the actual conditions of his detention and the inadequate medical treatment he had been provided with, in particular with reference to the fact that no special measures had been taken to accommodate a person with his medical history who was confined to a wheelchair (see paragraphs 39 and 57-59 above).

76. In that respect, the Court notes that, notwithstanding the two certificates issued in November 2011 and March 2012 finding that the applicant's state of health had not necessitated a personal assistant (see paragraphs 9 and 54 above), and which pre-dated the ischemic stroke suffered by the applicant in October 2012 (see paragraph 11 above), several medical reports as well as findings by the domestic courts dating from 2013 onwards confirmed the fact that the applicant needed constant help for current tasks, help that was to be provided by a personal assistant (see paragraphs 29, 32, 33 and 38 above). In spite of this assessment, the applicant did not have the benefit of such assistance, except for when he was helped on an official basis by some inmates who provided collective assistance (see paragraphs 17 and 53 above) or unofficially by fellow inmates (see paragraph 57 above).

77. However, the Court reiterates that it has already voiced doubts as to the adequacy of assigning unqualified people responsibility for looking after

an individual suffering from a serious illness (see *Gülay Çetin v. Turkey*, no. 44084/10, § 112, 5 March 2013). Furthermore, the Court has already found a violation of Article 3 of the Convention in circumstances where prison staff felt that they had been relieved of their duty to provide security and care to more vulnerable detainees whose cellmates had been made responsible for providing them with daily assistance or, if necessary, with first aid (see *Semikhvostov v. Russia*, no. 2689/12, §§ 84-85, 6 February 2014; *Mircea Dumitrescu v. Romania*, no. 14609/10, §§ 59-65, 30 July 2013; and *Kaprykowski v. Poland*, no. 23052/05, § 74, 3 February 2009).

78. In the present case, it cannot be ascertained whether the prisoners who agreed to assist the applicant were qualified to provide appropriate support or whether the applicant actually received such support. Nor does it appear from the case file that the applicant received appropriate psychological support during his periods in hospital or prison, given that he displayed severe psycho-organic syndrome and at times symptoms of depression (see paragraphs 4, 6 and 32 above). Such help cannot therefore be considered suitable or sufficient.

79. Furthermore, the Court cannot ignore the applicant's submissions, uncontested by the Government, that the wheelchair was provided to him at own expense (see paragraph 58 above), in the lack of any assistance to that effect from the prison authorities.

80. While accepting that in the instant case there was no suggestion of intent to humiliate or debase the applicant, the Court reiterates that the absence of such intent cannot conclusively rule out a finding of a violation of Article 3 of the Convention (see, among other authorities, *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 160, 15 December 2016).

81. The Court reiterates that where the national authorities decide to place or keep a person with disabilities in detention, they should demonstrate special care in guaranteeing such conditions as correspond to the special needs resulting from the detainee's disability (see *Zarzycki v. Poland*, no. 15351/03, § 102, 12 March 2013).

82. Having conducted an overall assessment of the relevant facts on the basis of the evidence and submissions presented before it, and having regard in particular to the Government's submissions as to the material conditions of the detention of the applicant as a physically disabled inmate transferred between prison facilities which did not always provide him with personal assistance, or with conditions adapted to disabled inmates (see paragraphs 16-19 and 52-54 above), the Court considers that in the present case the care provided to the applicant in view of his state of health and disability does not demonstrate that the State worked to ensure that the applicant was detained in conditions compatible with respect for his human dignity (see, *mutatis mutandis*, *Farbtuhs v. Latvia*, no. 4672/02, § 61, 2 December 2004).

(iii) Conclusion

83. In view of all the foregoing considerations, the Court concludes that in the present case the applicant's continued detention was not in itself incompatible with Article 3 of the Convention, but that in view of his state of health and disability, the national authorities have not provided him with the care and assistance required to avoid subjecting him to treatment contrary to that provision.

84. There was therefore a violation of Article 3 of the Convention in that regard.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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

86. The applicant claimed 50,000 euros (EUR) in respect of pecuniary damage, consisting mainly of costs and expenses caused by the medical treatment he had had to undergo for his illnesses, treatment which he had paid for out of his own pocket. He also claimed EUR 50,000 in respect of the non-pecuniary damage caused by his suffering during detention.

87. The Government considered that the claim in respect of pecuniary damage had not been substantiated. At all events, they submitted that the causal link between the alleged violation of the Convention and the pecuniary damage had not been proved. As regards the claim in respect of non-pecuniary damage, they deemed the amount claimed excessive.

88. The Court considers, on the one hand, that the applicant has not demonstrated the existence of a causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

89. Since the applicant made no claim in this connection, the Court is not called upon to rule on this point.

C. Default interest

90. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible as far as it concerns the conditions of the applicant's detention from 9 March 2015 until 20 September 2017, and inadmissible for the remainder;
2. *Holds* that there has been a violation of Article 3 of the Convention concerning the compatibility of the applicant's state of health with his detention from 9 March 2015 until 20 September 2017;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 2 June 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Registrar

Jon Fridrik Kjølbro
President