



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

FOURTH SECTION

CASE OF BECHI v. ROMANIA

(Application no. 45709/20)

JUDGMENT

Art 3 (substantive) • Degrading treatment • Applicant's material conditions of detention, under semi-open and open regime, not exceeding the unavoidable level of suffering inherent in detention
Art 3 (substantive) • Art 14 • Degrading treatment • Discrimination • Placement of HIV positive applicant in prison hospitals necessitated by the particular circumstances characterising Romanian prisons • Any differential treatment implemented vis-à-vis ordinary detainees meant to provide applicant with better conditions tailored to his medical needs and well-being
• Objective and reasonable justification

Prepared by the Registry. Does not bind the Court.

STRASBOURG

25 June 2024

FINAL

25/09/2024

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

In the case of Bechi v. Romania,

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

Gabriele Kucsko-Stadlmayer, *President*,

Faris Vehabović,

Branko Lubarda,

Anja Seibert-Fohr,

Ana Maria Guerra Martins,

Anne Louise Bormann,

Sebastian Rădulețu, *judges*,

and Andrea Tamietti, *Section Registrar*,

Having regard to:

the application (no. 45709/20) 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 Daniel Bechi (“the applicant”), on 13 January 2021;

the decision to give notice to the Romanian Government (“the Government”) of the complaints concerning the applicant’s alleged poor conditions of detention, his segregation on account of his disease and his transfers to prisons located far away from his family residence and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 4 June 2024,

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

INTRODUCTION

1. The application concerns the allegedly poor conditions of the applicant’s detention in Târgu Ocna and Poarta Albă Prisons and his detention in separate wings of those two prisons without the possibility of coming into contact with other prisoners or of undertaking any work, on account of his having been tested positive for HIV. The applicant invoked Article 3 taken alone and in conjunction with Article 14 of the Convention. Relying on Article 8 of the Convention the applicant also asserted that in view of the fact that the two prisons had been located far from his family residence his right to maintain family contact was infringed.

2. Even though the applicant did not allege a lack of an effective domestic remedy in respect of his complaint under Article 8 of the Convention, the Court decided of its own motion to address a question under Article 13 to the Government.

THE FACTS

3. The applicant was born in 1982 and lives in Reteag. On 14 July 2022 he was granted leave to present his own case in the proceedings before the Court under Rule 36 § 2 *in fine* of the Rules of Court.

4. The Government were represented by their Agent, Ms O.F. Ezer, of the Ministry of Foreign Affairs.

5. The facts of the case may be summarised as follows.

6. The applicant, who had tested positive for HIV, started serving a three-year sentence on 17 September 2019.

7. On 17 January 2020 he was transferred to Târgu Ocna Prison, where he stayed until 9 March 2021, when he was transferred to Poarta Albă Prison.

8. On 3 June 2022 the applicant was released on parole.

I. THE COMPLAINTS LODGED BY THE APPLICANT WITH THE POST-SENTENCING JUDGES AT THE TÂRGU OCNA AND POARTA ALBĂ PRISONS AND WITH THE NATIONAL PRISON ADMINISTRATION

9. Relying on Law no. 254/2013 on the execution of sentences (“Law no. 254/2013” – see paragraphs 24-27 below), the applicant lodged several complaints with the relevant post-sentencing judge concerning the allegedly inhuman conditions of his detention in Târgu Ocna and Poarta Albă Prisons and concerning his segregation in those prisons from other detainees owing to his HIV status.

A. Complaint with the post-sentencing judge at Târgu Ocna Prison

10. The applicant complained of overcrowding and a lack of space in which to store his clothes, of bedbugs, and of insufficient ventilation in his cell and in the bathroom. He also contended that he had had to share the cell with detainees who smoked (even though he did not smoke and had been suffering from a chronic disease). Moreover, he had not been able to take part in any activities, and neither had he been allowed to engage in any work.

11. By a judgment of 3 September 2020, the post-sentencing judge at Târgu Ocna Prison dismissed his complaint but acknowledged, *inter alia*, that the applicant was formally barred from working because of his HIV-positive status. The judge noted that the applicant was detained in a cell located in the section of the prison that was designated for HIV-positive detainees; that cell had an area of 44 square metres and was occupied by seven detainees. Owing to the fact that he was serving his sentence under a semi-open regime, the cell was left unlocked all day, and the applicant had the possibility to walk outside in the fresh air – at any time and for as long as he liked – in a space especially

designated for walking. The post-sentencing judge's judgment was upheld by the Onești District Court on 30 September 2020.

12. On 21 September 2020 the applicant lodged another complaint with the post-sentencing judge at Târgu Ocna Prison, complaining of the conditions of his detention and of his having been transferred to a cell that he shared with smokers and with prisoners suffering from hepatitis C. By a judgement of 1 October 2020, the post-sentencing judge dismissed the complaint, pointing out that prisoners were not allowed to smoke in their cells. A challenge lodged by the applicant against that judgment was rejected as ill-founded by the Onești District Court. The judge noted that vulnerable detainees who were suffering from HIV were barred from engaging in any work; however, the judge added that such restriction did not infringe their rights, as the prison authorities' intention was to protect both them and other detainees.

B. Complaint with the post-sentencing judge at Poarta Albă Prison

13. On 17 March 2021 the applicant lodged a complaint with the post-sentencing judge at Poarta Albă Prison. He complained of poor detention conditions: namely, of overcrowding in cell E6.1, a lack of privacy while taking showers and the presence of mold in his cell and under his bed. He also alleged that he was sharing the room with prisoners suffering from hepatitis C and was therefore at a high risk of contamination. He also complained of his transfer to Târgu Ocna and then to Poarta Albă Prisons, which were located far from his family residence; it was therefore difficult for him to remain in contact with his family.

14. His complaint was partially allowed by a judgment of 25 March 2021 issued by the post-sentencing judge at Poarta Albă Prison. The judge noted that the applicant had less than 4 square metres of personal space, but that renovation work had been carried out in the applicant's cell between 12 and 17 February 2021. The judge noted that the applicant had been transferred to Poarta Albă Prison on the basis of a decision issued by the general director of the National Prison Administration (*Administrația Națională a Penitenciarelor* – the “ANP”) and that his placement in a section for sick and vulnerable persons had been aimed at protecting him (rather than discriminating against him compared to other detainees). The judge also found that according to a medical report dated 24 March 2021 the applicant ran no risk of contagion by being detained with detainees suffering from hepatitis C.

15. The applicant lodged a challenge against that decision; the challenge was rejected as ill-founded by the Medgidia District Court on 29 April 2021. The court held that the decision to transfer the applicant to a room especially designated for socially and medically vulnerable prisoners had been legal and

that the intention of the prison authorities had been to protect the applicant in the light of his medical condition.

16. Following a further challenge lodged by the applicant, another judgment of 23 June 2021 delivered by the post-sentencing judge at Poarta Albă Prison confirmed the legitimacy of the applicant's placement in a section designated for sick and vulnerable persons. However, the judge conceded that some of the applicant's allegations were well-founded: he noted the overcrowding of the cell (the applicant had less than the 4 square metres of personal space provided by the domestic law), the unsuitable and only partially functional bathrooms and toilets, the dilapidated furniture and the presence of mold. Following the delivery of the judgment, the post-sentencing judge sent a note to the prison authorities recommending them to move the applicant to a cell that afforded him at least 4 square metres of personal space.

C. Complaint with the ANP concerning the applicant's transfers

17. On an unknown date the applicant lodged a complaint with the ANP concerning his transfer to Târgu Ocna and subsequently to Poarta Albă Prisons. He complained that both prisons were located far away from his domicile. On 9 March 2021 the ANP informed the applicant that, when he had decided his transfers, the director of ANP had taken into account his special medical condition and the fact that both prisons were equipped to accommodate vulnerable detainees.

II. THE GOVERNMENT'S ACCOUNT

A. Târgu Ocna Prison

18. Between 17 January 2020 and 5 March 2021 the applicant was detained in the medical wing of Târgu Ocna Prison in cells E5.1, E5.3 and E5.7. Each detainee had his own bed, and the cells had adequate furniture and met proper hygienic and sanitary standards. The privacy of the detainees in the bathroom was secured.

19. The Government contended that in Târgu Ocna Prison the applicant had had access to warm and cold water, while the conditions in respect of ventilation, lighting and heating had been satisfactory.

B. Poarta Albă Prison

20. The Government indicated that starting on 11 March 2021 the applicant had been detained in Poarta Albă Prison in cells affording him at least 3 square metres of personal space. More specifically, the applicant had been detained:

- from 11 until 26 March 2021 in cell E6.1., which had measured 58.14 square metres and had been occupied by nineteen prisoners (so each prisoner had had 3.06 square metres of personal space);
- from 26 March until 6 July 2021 in cell E6.2, which had measured 56.40 square metres and been occupied by thirteen prisoners (so each prisoner had had 4.33 square metres of personal space);
- from 6 until 8 July 2021 in cell E6.3, which had measured 46.89 square metres and had been occupied by twelve prisoners (so each prisoner had had 3.90 square metres of personal space);
- from 22 July until 20 October 2021 in cell E6.3, which had measured 46.89 square metres and had been occupied by eight prisoners (so each prisoner had had 5.86 square metres of personal space).

21. On 5 March 2021 the post-sentencing judge visited cell E.6.1. He noted that the cell had been recently renovated, the windows had been replaced and the ceiling of the bathroom renovated. However, he noted that despite the renovation work, damp tended to accumulate in one of the corners of the cell. Following his visit, on 12 March 2021 the management of the prison informed the judge that further maintenance and renovation work had been carried out.

22. The Government also contended that the applicant had been serving his sentence under an open regime, which meant that during the period in question he had not been confined to his cell all the time; on the contrary, he had had free access to the courtyard together with all the other prisoners detained in the medical wing of the hospital penitentiary. The applicant had attended educational activities between 1 April and 31 August 2021 and had had access to spaces especially designated for socio-educational programmes – including a “club” located in section 6 of the prison.

23. The Government further submitted that the applicant had not expressed any interest in engaging in any work. According to information provided by the ANP, other HIV-positive prisoners who had been willing to work and had been detained in the same wing with the applicant had been selected by the prison authorities to undertake different activities.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW

A. Law no. 254/2013

24. Article 56 of Law no. 254/2013 on the serving of prison sentences (which entered into force on 1 February 2014) provides that detainees may complain to a post-sentencing judge about measures taken by prison authorities in respect of their rights within ten days of their becoming aware of such measures. The judge’s decision in respect of such a complaint may

be challenged before the domestic courts within five days of the detainee being notified of that decision.

25. Under Article 11 § 5 of Law no. 254/2013, the ANP establishes the prison in which a convicted person shall serve his or her custodial sentence. When establishing the prison, the ANP is obliged to take into account the desirability of that detention facility being located as close as possible to the convicted person's place of residence and to consider the type of regime under which the sentence will be served, the security measures to be taken, and the convicted person's social-reintegration needs, gender and age.

26. Under Article 45 § 2 of the same law a decision to transfer a prisoner (following the determination of or a change to the execution regime in respect of the custodial sentence of the prisoner in question, or for other well-founded reasons) to another prison shall (i) be ordered by the general director of the ANP (upon the proposal of the commission provided for in Article 32), or (ii) at the prisoner's request, after the general director of the ANP has consulted the commission – as provided in Article 32.

27. Article 48 § 8 of Law no. 254/2013 stipulates that “in the event that the [maximum] legal accommodation capacity of the detention facility is exceeded, its governor is obliged to inform the general director of the ANP [that he wishes] to transfer prisoners to other detention facilities. The general director of the ANP shall determine whether the transfer is necessary, [and shall determine] the detention facilities to which the prisoners will be transferred.”

B. Methodological rules for the implementation of Law no. 254/2013

28. Article 108 § 4 of the methodological rules for the implementation of Law no. 254/2013 (as approved by Government Decision no. 157/2016) stipulates that the transfer of a prisoner to another detention facility will take into account the desirability of the new detention facility being located as close as possible to the prisoner's place of residence.

29. Article 345 § 1 of the above-mentioned methodological rules provides that if the maximum legal accommodation capacity of a detention facility is exceeded, its governor is obliged to inform the general director of the ANP of his or her wish to redistribute prisoners to other places of detention. The latter shall decide if a transfer is necessary and the detention facilities to which the prisoners will be transferred.

30. The degree of vulnerability of detainees is determined on the basis of criteria set out by Article 34 of the methodological rules. One of these criteria is that a detainee has tested positive for HIV or AIDS. Under Article 5 of the same methodological rules, special spaces for the sole use of vulnerable detainees may be set up.

C. Decisions by the ANP's general director

31. Under decision no. 704/2016, the general director of the ANP decided to permit Târgu Ocna Prison to join those prisons that had a special wing for HIV-positive detainees (that is to say it would create such a special wing).

32. Paragraph 5 of Article 3 of decision no. 360/2020 issued by the general director of the ANP provides that – in order to balance the number of the prisoners, to reduce overcrowding in some of the detention facilities, and for other well-grounded reasons – the management of the ANP may decide to transfer prisoners to different detention facilities and to different counties than those that are nearest to their respective residences.

II. INTERNATIONAL MATERIAL

33. The relevant Council of Europe and United Nations documents concerning the treatment of vulnerable HIV-positive prisoners are summarised in *Dikaiou and Others v. Greece* (no. 77457/13, §§ 35-38 and 42, 16 July 2020).

34. Excerpts from the relevant reports by the Committee for the Prevention of Torture (CPT) concerning the situation in Romanian prisons are quoted in *Rezmiveş and Others v. Romania* (nos. 61467/12 and 3 others, §§ 48-56, 25 April 2017).

35. In its report on a 7-19 February 2018 visit that it made to Romania, the CPT expressed concern about overcrowding and the segregation of detainees carrying the HIV virus. It noted that HIV-positive detainees were held separately from the rest of the prison population in collective cells, had distinct hours for accessing outdoor yards or the prison shop, and were not permitted to engage in any work. While pointing out that in its view, there was no public health justification for segregating prisoners solely because of their HIV status, the CPT concluded that given the current situation in Romanian prisons – with severe overcrowding, poor material and hygienic conditions, a lack of medical confidentiality and high levels of prejudice against people living with HIV – it might indeed be tolerable for HIV-positive prisoners to be accommodated separately, as long as this accommodation offered conditions conducive to their health and well-being.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 TAKEN ALONE AND IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

36. The applicant complained that during his detention in Târgu Ocna and Poarta Albă Prisons he had been held (1) in poor detention conditions (he referred in particular to overcrowding, unsuitable bathrooms, dilapidated

furniture, poor cell ventilation and the presence of bedbugs, and (2) in separate wings of those two prisons without being able to come into contact with other prisoners, or to work, because of his illness.

37. He alleged a violation of Article 3, taken alone and in conjunction with Article 14 of the Convention.

These provisions read as follows:

Article 3

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

Article 14

“The enjoyment of the rights and freedoms set forth in (this) Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

A. Admissibility

38. The Court notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. These complaints must therefore be declared admissible.

B. Merits

1. The parties' submissions

39. The applicant maintained his complaints. They are mainly the same complaints as those raised before the post-sentencing judge at the two prisons (see paragraphs 10, 12, 13 and 16 above).

40. The Government contended that the applicant had benefitted from adequate detention conditions in both prisons. They argued that in view of the factual details concerning the applicant's detention in Târgu Ocna and Poarta Albă Prisons – in particular, the fact that he had had at least 3 square metres of personal space at his disposal, and most of the time more than that – the Court should apply the principles set out in the case of *Muršić v. Croatia* ([GC], no. 7334/13, 20 October 2016) and find that there had been enough elements present to compensate for the short periods during which he had had between 3 and 4 square metres of personal space.

41. In this connection they pointed out that the applicant had served his sentence in Târgu Ocna Prison under a semi-open regime and in Poarta Albă Prison under an open regime, which meant that he had not been confined to his cell all the time; on the contrary, he had had free access to the courtyard, and the doors to his cell had been left unlocked all day. Moreover, as regards the hygiene conditions that he had experienced in Poarta Albă Prison the Government pointed out that following the visit of the post-sentencing judge

to the prison the sanitary installations had been renovated and the deficiencies noted by him had been remedied (see paragraph 21 above).

42. The Government explained that HIV-positive detainees were accommodated in separate wings of prisons that were better tailored to their medical needs and well-being and that the difference in treatment between the applicant and other detainees without HIV had therefore been objectively and reasonably justified. They pointed out that HIV-positive detainees needed special attention and treatment (such as a specific diet and medical treatment) owing to their vulnerability.

43. As regards the applicant's allegation that he had not been allowed to work while being detained in Poarta Albă Prison (see paragraph 36 above), the Government pointed out that he had never expressed any interest in such activity and that there was no evidence that he had ever asked to be allowed to work. Other HIV-positive detainees who had indeed expressed an interest in working had been allowed to do so, according to information provided by the ANP (see paragraph 23 above).

2. The Court's assessment

44. The Court notes that the applicant complained, essentially, about his general material conditions of detention (these allegations fall to be examined under Article 3 taken alone) and of an alleged segregation and discrimination on account of his being HIV-positive (a grievance to be examined under Article 3 taken alone or in conjunction with Article 14).

The Court will analyse separately these two aspects of the applicant's complaint.

(a) Material conditions of detention

45. The Court reiterates that Article 3 of the Convention imposes a positive obligation on the authorities to ensure that a person is detained in conditions that are compatible with respect for their human dignity, that the manner and method of the execution of the measure of detention do not subject them 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 *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI).

46. The Court principles that are relevant – particularly those relating to prison overcrowding and to factors capable of offsetting a lack of personal space – were summarised by the Court in *Muršić* (cited above, §§ 96-141). It has held, *inter alia*, that where the point at issue is a prison cell measuring in the range of 3 to 4 square metres of personal space per inmate, the space factor shall remain a weighty factor in the Court's assessment of the adequacy of conditions of detention. In such instances a violation of Article 3 will be found if the space factor is coupled with other aspects of inappropriate

physical conditions of detention related to, in particular, access to outdoor exercise, natural light or air, the availability of ventilation, the adequacy of the room temperature, the possibility to use the toilet in private, and compliance with basic sanitary and hygienic requirements (*ibid.*, § 139).

47. Applying those principles to the instant case, the Court notes that in both Târgu Ocna and Poarta Albă Prisons, the applicant did not have less than 3 square metres of personal space. In fact, for short non-consecutive periods of time he had between 3 and 4 square metres – although for most of the time his personal space amounted to more than 4 square metres.

48. In Târgu Ocna Prison the applicant was detained between 17 January 2020 and 9 March 2021 in cells located in the prison section designated for HIV-positive detainees. One of the cells in which he was detained (as noted by the post-sentencing judge in his decision of 3 September 2020) had a surface of 44 square metres and was occupied by seven detainees; accordingly, the applicant's personal space in that particular cell amounted to more than six square metres (see paragraph 11 above).

49. As regards the conditions of his detention in Poarta Albă Prison between 11 March 2021 and 3 June 2022, the Court notes that the applicant was detained in cells that were especially designated for vulnerable detainees and that his personal space for most of the time that he was detained in that prison amounted to more than 4 square metres (see the Government's allegations, not contested by the applicant, resumed in paragraph 20 above). The Court also notes that from 11 to 26 March 2021 the applicant's personal space amounted for 3.06 square metres and from 6 to 8 July 2021 to 3.90 square metres (*ibid.*). However, the Court considers that the periods when the applicant's personal space was less than 4 square metres were short, occasional and minor (see, *mutatis mutandis*, *Muršić*, cited above, § 138).

50. The Court further reiterates that in cases where a detainee has more than 4 square metres of personal space at his disposal in multi-occupancy accommodation in prison – and therefore where no issue arises with regard to the question of personal space – other aspects pertaining to the physical detention conditions shall remain relevant for the Court's assessment of the adequacy of conditions of that applicant's detention under Article 3 of the Convention (see *Muršić*, cited above, § 140).

51. From that perspective, the Court notes that, having regard to the semi-open and open regime under which the applicant served his sentence in, respectively, Târgu Ocna Prison and Poarta Albă Prison (see paragraphs 11, 22 and 42 above), he was able to leave his cell and move freely around the accessible facilities for a significant amount of time. Such a favourable situation has a particular bearing when assessing the conditions of the applicant's detention. In addition, it must be borne in mind that, even when he was in his cell, the applicant could not have been exposed to extreme conditions, given the amount of personal space that he had at his disposal (see, for instance and *mutatis mutandis*, *Yanez Pinon and Others v. Malta*,

nos. 71645/13 and 2 others, § 116, 19 December 2017; see also, *mutatis mutandis*, *Nikitin and Others v. Estonia*, nos. 23226/16 and 6 others, § 193, 29 January 2019).

52. Lastly, as regards the hygiene conditions experienced by the applicant in Poarta Albă Prison, the Court notes the Government's submission (which was not contradicted by the applicant) that following the visit of the post-sentencing judge the sanitary facilities had been further renovated and those facilities' deficiencies remedied (see paragraphs 14, 21 and 41 above). As regards the applicant's allegations that he shared his cell in Târgu Ocna Prison with smokers and prisoners suffering from hepatitis C, allegations not corroborated by any objective element (he did not submit any documents in this respect), the Court notes that his complaint with the post-sentencing judge had been dismissed as unfounded. This decision was upheld by the Oneşti District Court (see paragraph 12 above). On account of the unsubstantiated nature of these complaints, the Court finds it difficult to assess the truthfulness of the applicant's allegations.

53. Having regard to the above, the Court is not convinced that the overall conditions of detention in Târgu Ocna and Poarta Albă Prisons caused the applicant distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention.

54. There has accordingly been no violation of Article 3 of the Convention on account of the applicant's material conditions of detention.

(b) Allegation that the applicant suffered segregation and stigmatisation

55. The applicant complained that, due to his condition of HIV-positive detainee, he had been assigned to a special sector of the prisons and segregated from other, not HIV-positive, inmates. Moreover, he could not take part in any activities and/or engage in any work.

56. The Court notes that according to the Government's submissions the applicant's transfer to Târgu Ocna and to Poarta Albă Prisons, respectively, were justified by the need to provide an HIV-positive detainee with better detention conditions than were available to ordinary detainees; he was transferred to premises that were tailored to his medical needs and well-being. It also takes note of the Government's arguments to the effect that the applicant's situation had not been akin to "ghettoisation" because his placement in the prisons' hospitals had been justified by the need to improve his medical treatment and to ensure better nutrition (see paragraph 42 above).

57. In addition, according to the available information, the applicant served his sentence in Târgu Ocna Prison under a semi-open regime and in Poarta Albă Prison under an open regime, which meant that he was not confined to his cell all the time; on the contrary, he had free access to the courtyard, and the doors to his cell were left unlocked all day (see paragraphs 11 and 41 above). The applicant was not completely separated from other detainees, as he was able to take daily walks – together with

prisoners detained in the medical wing of the hospital penitentiary. He also attended educational activities between 1 April and 31 August 2021 (see paragraph 22 above).

58. The Court also takes note of the Government's allegation – not contested by the applicant – that other HIV-positive prisoners who had been willing to work and had been detained in the same wing with the applicant had been selected by the prison authorities to undertake different activities (see paragraph 23 above). In this respect, it observes that the applicant has not shown that he has requested to perform work while detained.

59. In assessing the applicant's situation, the Court also attaches great importance to the findings of the report drafted by the CPT (after its visit to Romanian prisons in 2018 – see paragraph 35 above) in respect of the accommodation of detainees carrying the HIV virus – even though those findings did not refer specifically to Târgu Ocna and Poarta Albă Prisons. Those findings determined that HIV-positive detainees were held separately from the rest of the prison population in collective cells, had separate hours for accessing outdoor yards or prison shops, and were not engaged in any work.

60. While emphasising that there was no public-health justification for detaining HIV-positive prisoners separately from the rest of the prison's population solely because of their HIV status, the CPT pointed out that, given the current situation in Romanian prisons (marked by severe overcrowding, poor material and hygienic conditions, a lack of medical confidentiality and high levels of prejudice against people living with HIV), it might indeed be tolerable for HIV-positive prisoners to be accommodated separately, as long as such accommodation offered conditions conducive to their health and well-being (see paragraph 35 above).

61. In the light of the CPT's findings, the Court considers that the applicant's placement in the prison hospitals in Târgu Ocna and Poarta Albă Prisons was necessitated by the particular circumstances characterising Romanian prisons.

62. Moreover, the Court has no reason to question the prison authorities' intention to transfer the HIV-positive applicant to the prison hospitals in Târgu Ocna and Poarta Albă Prisons in order to provide him with greater comfort and regular follow-up treatment.

63. Therefore, in the light of the above the Court finds that in the present case any differential treatment implemented was meant to provide the applicant with better conditions (better than those available to ordinary detainees) that were tailored to his medical needs and well-being (see *Thlimmenos v. Greece* [GC], no. 34369/97, § 44, ECHR 2000-IV; *Stec and Others v. the United Kingdom* [GC], nos. 65731/01 and 65900/01, § 51, ECHR 2006-VI; and *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, § 44, ECHR 2009).

64. In conclusion, the Court considers that the placement of the HIV-positive applicant in prison hospitals of the two prisons— even supposing that it could be described as constituting a difference in the treatment of the applicant as compared to that afforded to ordinary detainees – was reasonably and objectively justified in the circumstances of the present case.

65. There has accordingly been no violation of Article 3 of the Convention taken alone or in conjunction with Article 14 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

66. The applicant complained that his transfer to Târgu Ocna and Poarta Albă Prisons – both located far away from his family residence – had amounted to a violation of his right to respect for family life under Article 8 of the Convention, which reads:

Article 8

“1. Everyone has the right to respect for his private and family life (...)

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. The parties’ submissions

67. The applicant submitted that the distance between his family residence and the two prisons to which he had been transferred (approximately 500 km in respect of Târgu Ocna and approximately 800 km in respect of Poarta Albă), had rendered it difficult to maintain contact with his family.

68. The Government asserted that the reason for the applicant being transferred from a prison that was located closer to his family residence to the two above-mentioned prisons was the fact that the latter prisons had had special wings designated for detainees who were HIV-positive and who were therefore vulnerable.

69. The Government stated that the domestic authorities had examined the applicant’s allegations: in its judgment of 25 March 2021, the post-sentencing judge had dismissed the challenge lodged by the applicant against his transfer to Poarta Albă Prison on the grounds that that prison was the only detention facility in which vulnerable detainees could be accommodated (see paragraph 14 above).

70. The Government also pointed out that according to information provided by the ANP, while the applicant had been detained in Poarta Alba Prison he had been in constant contact with his family via email, telephone

calls and letters. The applicant had been able to maintain contact with his family while he had been detained in Târgu Ocna Prison.

71. Moreover, the applicant had never lodged a request on the basis of Article 45 § 2 of Law no. 254/2013 (see paragraph 26 above) to be transferred to a prison facility located closer to his family home. Accordingly, there had been no interference with the applicant's right to respect for family life.

B. The Court's assessment

1. The general principles

72. Any detention entails by its nature a limitation on a prisoner's private and family life (see, among other authorities, *Khoroshenko v. Russia* [GC], no. 41418/04, § 106, 30 June 2015, and *Vintman v. Ukraine*, no. 28403/05, § 77, 23 October 2014). It would be fundamentally wrong to analyse each and every case of detention following conviction from the standpoint of Article 8 and to consider the "lawfulness" and "proportionality" of the prison sentence as such (see *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, § 835, 25 July 2013, and *Labaca Larrea and Others v. France* (dec.), no. 56710/13 and others, § 41, 7 February 2017).

73. The Convention does not grant prisoners the right to choose their place of detention, and the fact that prisoners are separated from their families (and at some distance from them) is an inevitable consequence of their imprisonment (see *Vintman*, cited above, § 78; *Rodzevillo v. Ukraine*, no. 38771/05, § 83, 14 January 2016; and *Polyakova and Others v. Russia*, nos. 35090/09 and 3 others, § 100, 7 March 2017). Nevertheless, detaining an individual in a prison that is so far away from his or her family that visits are rendered very difficult or even impossible may in some circumstances amount to interference with family life, as the opportunity for family members to visit the prisoner is vital to maintaining family life (see the above-cited cases of *Vintman*, § 78, and *Rodzevillo*, § 83). It is therefore an essential part of prisoners' right to respect for family life that the prison authorities assist them in maintaining contact with their close family (see, *inter alia*, *Messina v. Italy* (no. 2), no. 25498/94, § 61, 28 September 2000; *Vintman*, cited above, § 78; *Rodzevillo*, cited above, § 83; and *Polyakova and Others*, cited above, § 81).

74. Hence, placing a convict in a particular prison may raise an issue under Article 8 if its effects on the applicant's private and family life go beyond the "normal" hardships and restrictions inherent in the very concept of imprisonment (see *Khodorkovskiy and Lebedev*, cited above, § 837; *Polyakova and Others*, cited above, § 81; and *Klibisz v. Poland*, no. 2235/02, § 355, 4 October 2016).

2. *Application of these principles to the present case*

75. In the present case, the applicant, who was serving a prison sentence in another prison, was transferred to Târgu Ocna and subsequently to Poarta Alb Prison, located approximately 500 km and 800 km, respectively, from his family residence. The reason cited by the domestic authorities as justification for those transfers was to secure him specialist medical treatment for his disease and a diet appropriate to his medical condition (see paragraphs 14 and 56 above).

76. Even though it acknowledges that Article 8 does not grant prisoners the right to choose their place of detention (see the case-law cited in paragraph 73 above), the Court considers it reasonable to assume that the applicant's transfer to Târgu Ocna and Poarta Albă Prisons had a certain impact on his ability to maintain contact with his family.

77. The Court notes however the information from the Government indicating that during the time in question the applicant was able to maintain contact with his family via email, telephone calls and letters (see paragraph 70 above).

78. As regards the Government's allegation that the applicant did not lodge a request under Article 45 § 2 of Law no. 254/2013 (see paragraph 71 above), the Court notes that the applicant lodged complaints concerning his transfers with the post-sentencing judge and the ANP. Therefore, the Court deems that the applicant's personal circumstances were taken into account when the applicant's challenge to his transfer was examined by the domestic authorities. By a judgment of 29 April 2021 (see paragraph 15 above), which upheld the decision of the post-sentencing judge, the Medgidia District Court deemed that the decision to transfer the applicant to a room specially designated for socially and medically vulnerable prisoners had been legal. It further noted that the intention had been to protect the applicant in the light of his medical condition. A similar response was provided by the ANP on 9 March 2021 (see paragraph 17 above).

79. The applicant was not sent to a remote detention facility (contrast *Polyakova and Others*, cited above, § 82, and *Khodorkovskiy and Lebedev*, cited above, § 849); he was simply transferred to detention facilities located in different counties than that in which his family residence was located. Moreover, there is no evidence to indicate that the journeys that his close relatives had to make involved any insurmountable or particularly difficult problems (see, *mutatis mutandis*, *Labaca Larrea and Others*, cited above, § 45).

80. Given the overall duration of the applicant's detention in Târgu Ocna and Poarta Albă Prisons (less than two years and five months in total – see paragraph 7 above), together with a lack of evidence indicating that the applicant's links with his family were affected to any significant extent – the Court finds that the restriction complained of does not disclose any appearance of a violation of Article 8 of the Convention. The applicant's

complaint is therefore manifestly ill-founded and should be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

81. Lastly, the Government was asked by the Court, of its own motion, whether the applicant had had at his disposal effective domestic remedies in respect of the alleged violation of Article 8, as requested by Article 13 of the Convention, which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

82. The Government argued in the first place that the complaint under Article 8 was not “arguable” for the purposes of Article 13 of the Convention. In the alternative, they submitted that a complaint with the post-sentencing judge concerning the applicant’s transfers to prisons located far away from his home was an effective remedy. The Government further contended that an action in the administrative courts under Law no. 554/2004 for the annulment of the administrative decision issued by the director general of the ANP on 5 March concerning his transfer to Poarta Albă Prison was another effective remedy for the protection of the applicant’s rights.

83. The applicant did not make further submissions in this respect.

84. The Court reiterates that, according to its established case-law, Article 13 of the Convention applies only where an individual has an “arguable claim” to be victim of a violation of a Convention right (see *Boyle and Rice v the United Kingdom*, 27 April 1988, § 52, Series A no. 131, and *Narcisio v. Netherlands* (dec.), no. 47810/99, 27 January 2005). Having regard to the finding in paragraph 80 above that the applicant’s complaint under Article 8 of the Convention is manifestly ill-founded, the Court concludes that the applicant did not have an “arguable claim” for the purposes of Article 13 (see, *mutatis mutandis*, *Walter v. Italy* (dec.), no. 18059/06, 11 July 2006).

85. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning Article 3 (taken alone and in conjunction with Article 14 of the Convention) admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 3 taken alone and in conjunction with Article 14 of the Convention.

Done in English, and notified in writing on 25 June 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Registrar

Gabriele Kucsko-Stadlmayer
President