

Press release issued by the Registrar

**CHAMBER JUDGMENT
RUPA v. ROMANIA**

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Rupa v. Romania* (application no. 58478/00).

The Court held unanimously that there had been:

- a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights on account of the ill-treatment to which the applicant was subjected on the occasions when he was arrested and detained;
- a **violation of Article 3** of the Convention on account of the lack of an effective investigation into the applicant's allegations;
- a **violation of Article 13** (right to an effective remedy) **in conjunction with Article 3**;
- a **violation of Article 5 §§ 1, 3 and 5** (right to liberty and security);
- a **violation of Article 6 §§ 1** (right to a fair trial), **2** (presumption of innocence) and **3 (c)** (right to legal assistance of own choosing);
- a **violation of Article 8** (right to respect for home); and,
- **no violation of Article 34** (right of individual petition).

Under Article 41 (just satisfaction), the Court awarded the applicant 30,000 euros (EUR) in respect of non-pecuniary damage and EUR 11,374 for costs and expenses. (The judgment is available only in French.)

1. Principal facts

The applicant, Vili Rupa, is a Romanian national who was born in 1973 and lives in Hunedoara (Romania). He has suffered from psychological disorders since 1990 and is registered by the public authorities as having a second-degree disability on that account.

The applicant alleged that he had been ill-treated while being arrested by the police and that he had twice been detained in inhuman and degrading physical conditions at Hunedoara and Deva police stations.

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

The parties' versions of the events differed.

On 28 January 1998, during a police operation, the applicant was arrested by several police officers on suspicion of illegal trading in mercury, a toxic substance. He alleged that the police officers had hit him on the head and in the stomach. After immobilising him on the ground, the officers sprayed tear gas at him and handcuffed him. They seized a bottle of mercury which was on the ground, but the applicant denied that it belonged to him. He was then forcibly placed in the boot of a police car, in which he was taken to Hunedoara police station. An eyewitness confirmed this version of events, and stated that he had seen the police officers beating the applicant even after their arrival at the police station and had heard the applicant crying out. After being questioned, the applicant was detained in a police cell, containing only a few metal benches, until the morning. During that time, he was not informed that he had been arrested and no order for his pre-trial detention was served on him. He was released on 29 January 1998. On 4 February 1998 the applicant was admitted to a psychiatric hospital on account of the persistent pain resulting from the blows to his head.

On 11 March 1998, in the course of the investigation into mercury trading, plain-clothes police officers visited the applicant's home at 5 a.m. The applicant alleged that, as they had not issued a warrant for his arrest, he had refused to accompany them. According to the Government, the applicant threatened a police officer with an axe and a Swiss army knife. According to the applicant, the officers repeatedly kicked him while immobilising him, before taking him to Deva police station. Two eyewitnesses, one of whom was the applicant's mother, confirmed that they had seen the police officers beating the applicant.

Later that day, a public prosecutor remanded the applicant in custody for 30 days for unlawful possession of mercury and insulting a police officer. During his stay in the holding centre at Deva police headquarters, the applicant was held in solitary confinement for 25 days and on a number of occasions was immobilised for several days by handcuffs and by chains around his feet, and also by means of a device which bound his feet and hands together with chains linked to a vertical metal bar. On 4 June 1998 he was transferred to Deva Prison.

According to the applicant, during the criminal proceedings brought against him for possession of dangerous drugs and insulting behaviour, he was not kept informed of the progress of the investigation and was unable to contact a lawyer. Throughout his trial in the Hunedoara County Court, the applicant was escorted to the courtroom in handcuffs and with his feet chained up. The chains and handcuffs were not removed during the public hearings. On 5 May 1999 the court found the applicant guilty of drug trafficking and insulting a police officer and sentenced him to one year and two months' imprisonment. The applicant was released on 10 May 1999. That judgment was upheld on appeal, and subsequently by the Supreme Court of Justice, which found that the applicant's guilt had been proved, despite observing that the investigation had been somewhat flawed and that "the evidence in the file indicated that the police's attitude at the time when the offence was discovered and during the investigation amounted to a breach of professional ethics or even an abuse of authority".

The applicant lodged criminal complaints alleging ill-treatment but the military prosecutor's office declined to take any action on them. The applicant also complained to various authorities about the conditions of his detention, but received no replies from them.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 21 February 1998 and declared partly admissible on 14 December 2004.

Judgment was given by a Chamber of seven judges, composed as follows:

Josep **Casadevall** (Andorra), *President*,
Elisabet **Fura-Sandström** (Sweden),
Corneliu **Bîrsan** (Romania),
Alvina **Gyulumyan** (Armenia),
Egbert **Myjer** (Netherlands),
Ineta **Ziemele** (Latvia),
Luis **López Guerra** (Spain), *judges*,

and also Santiago **Quesada**, *Section Registrar*.

3. Summary of the judgment¹

Complaints

The applicant alleged, among other things, that he had been ill-treated on 28 January and 11 March 1998 while being arrested by the police, and that he had twice been detained in inhuman and degrading physical conditions at Hunedoara and Deva police stations, from 28 to 29 January 1998 and from 11 March to 4 June 1998. He also complained of both the lack of an effective investigation into his allegations of ill-treatment and the lack of an effective remedy in domestic law by which to obtain compensation for such treatment. He relied on Articles 3 (prohibition of inhuman or degrading treatment), 5 (right to liberty and security), 6 (right to a fair trial), 8 (right to respect for home), 13 (right to an effective remedy) and 34 (right of individual application).

Decision of the Court

Article 3

Alleged ill-treatment

The applicant's arrest on 28 January 1998

The Court noted, firstly, the successive statements by an eyewitness, one of which unequivocally corroborated the applicant's account and all of which were borne out by the observation made by the Supreme Court of Justice; it also had regard to the applicant's admission to a psychiatric hospital five days after his arrest, and the fact that he had not undergone a medical examination immediately after being arrested. Furthermore, although it appeared that the police had been informed of the applicant's psychological problems for several years, the Court noted that no special measures had been envisaged to avoid the risks inherent in the arrest of a person with behavioural disorders. Lastly, the Court observed that, despite its request to that effect, the Government had not submitted the file on the applicant from the time of his admission to the psychiatric hospital. The Court thus concluded that the applicant had been ill-treated during his arrest, in breach of Article 3.

¹ This summary by the Registry does not bind the Court.

The applicant's detention until 29 January 1998

The Court observed that the applicant had spent the night following his arrest in the police holding room, which was furnished only with metal benches that were manifestly unsuitable for the detention of a person with the applicant's medical problems, and that he had not undergone a medical examination on that occasion. Having regard to the applicant's vulnerability, the Court considered that the state of anxiety inevitably caused by such conditions had undoubtedly been exacerbated by the fact that he had been guarded by the same police officers who had taken part in his arrest. The Court therefore concluded that the conditions in which the applicant had been held from 28 to 29 January 1998 had constituted degrading treatment, in breach of Article 3.

The applicant's arrest on 11 March 1998

The Court observed that the applicant's allegation that the police officers had repeatedly kicked him before taking him to the police station was corroborated by the statements of two eyewitnesses. The Government, for their part, admitted that force had been used to immobilise the applicant. Again, no measures had been taken by the authorities in relation to the applicant's personality disorder; on the contrary, by appearing at the applicant's home at 5 a.m. in plain clothes without a search or arrest warrant, the police officers had increased the tension of the moment, thus making the applicant's resistance predictable. The Court considered that, as there had been no effective official investigation into the applicant's allegations and the Government had not produced any evidence to rebut them, it had no option but to conclude that this complaint was well-founded. It further noted that the Supreme Court of Justice had found that the police officers' actions on both occasions when the applicant had been arrested had amounted to an abuse of authority, which confirmed that the security forces' intervention had been disproportionate to the resistance offered by the applicant. The Court therefore again held that the applicant had been subjected to inhuman treatment, in breach of Article 3.

The applicant's detention until 4 June 1998

The Court noted firstly that the Government had maintained that the applicant's placement in solitary confinement and immobilisation had been ordered as a sanction. However, the Court pointed out that the treatment complained of had consisted not only in immobilising the applicant with handcuffs but also in chaining up his feet, for a period exceeding the 25 days which he was ordered to spend in solitary confinement. The Court further considered that, in view of the applicant's behavioural disorders, which had manifested themselves immediately after he was remanded in custody and which could have endangered his own person, the authorities had been under an obligation to have him examined by a psychiatrist as soon as possible in order to determine whether his psychological condition was compatible with detention, and what therapeutic measures should be taken. In conclusion, the Court considered that the Government had not shown that the measures of restraint applied to the applicant during his detention at Deva police station had been necessary. This treatment had been exacerbated by the lack of appropriate medical attention in view of the applicant's vulnerable psychological state and the fact that he had been displayed in public, before the court, with his feet in chains. There had therefore been a violation of Article 3 on account of the circumstances surrounding the applicant's detention from 11 March to 4 June 1998.

Alleged lack of an effective investigation

As regards the investigation into the applicant's allegations relating to his arrest on 28 January 1998 and his subsequent detention, the Court observed that it had already held

that investigations by military prosecutors raised serious doubts as such prosecutors were not independent from the police officers whose actions they were required to investigate.

As regards the applicant's arrest on 11 March 1998 and his detention until 4 June 1998, the Court noted the total lack of response to the applicant's allegations on the part of the authorities before which they had been brought.

The Court therefore held that there had been a violation of Article 3 on account of the lack of an effective investigation by the authorities into the applicant's allegations of ill-treatment.

Article 13

The Court found a violation of Article 13 in that there had not been a remedy affording the applicant effective access to the investigatory procedure or the possibility of compensation.

Article 5

The Court considered that there had been a "failure to comply with the procedure prescribed by law" in respect of both the applicant's arrest on 28 January 1998 and his arrest on 11 March 1998. It therefore found a violation of Article 5 § 1.

Observing that the overall length (approximately four months) of the applicant's detention before he had been brought before a judge following his arrest on 11 March 1998 was excessive, the Court found a violation of Article 5 § 3.

The Court further noted that the statutory provisions in force at the time of the events had not afforded the possibility of compensation for unlawful detention unless the person concerned had been acquitted or the proceedings had been discontinued. It therefore held that there had been a violation of Article 5 § 5.

Article 6

The Court noted, among other things, that the courts had based the applicant's conviction solely on the statements by the police officers, without any other evidence being adduced or any witnesses examined. It found it regrettable that the Supreme Court of Justice had failed to draw inferences in terms of the rights of the accused after noting that the investigation had been flawed and that the police officers had abused their authority. It also noted that the domestic authorities had not taken any steps to ensure the applicant's effective defence and representation.

Accordingly, the Court held that there had been a violation of the applicant's right to a fair trial, in breach of Article 6 §§ 1, 2 and 3 (c).

Article 8

The Court noted that the police officers had entered the applicant's home on 11 March 1998 without a search warrant. It accordingly held that there had been a violation of Article 8 on account of the interference with the applicant's right to respect for his home.

Article 34

The Court considered that there was insufficient factual evidence for it to conclude that the Romanian authorities had intimidated or harassed the applicant in circumstances calculated to induce him to withdraw or modify his application or otherwise interfere with the exercise of his right of individual petition. There had therefore been no violation of Article 34.

Judge Myjer expressed a concurring opinion, which is annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.