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

FOURTH SECTION

DECISION

Applications nos. 66592/16 and 25457/18
Florin BARONCEA against Romania
and Vasile BALAN against Romania

The European Court of Human Rights (Fourth Section), sitting on 17 November 2020 as a Chamber composed of:

Yonko Grozev, *President,*
Faris Vehabović,
Iulia Antoanella Motoc,
Gabriele Kucsko-Stadlmayer,
Pere Pastor Vilanova,
Jolien Schukking,
Ana Maria Guerra Martins, *judges,*
and Andrea Tamietti, *Section Registrar,*

Having regard to the above applications lodged on 10 November 2016 and 3 May 2018 respectively,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The applicant in the first case, Mr Florin Baroncea ("the first applicant"), is a Romanian national who was born in 1976 and lives in Botoșani. He was represented before the Court by Ms A. Drăgoi, a lawyer practising in Iaşi.

2. The applicant in the second case, Mr Vasile Bălan ("the second applicant"), is a Romanian national who was born in 1987 and lives in Lunca Banului. He was granted leave to represent himself in the proceedings before the Court (Rule 36 § 2 of the Rules of Court).

3. The Romanian Government ("the Government") were represented by their Agent, most recently Ms Oana Florentina Ezer, of the Ministry of Foreign Affairs.

A. The circumstances of the case

4. The applications concern the applicants' complaints raised under Article 3 of the Convention that they contracted tuberculosis while in prison as a result of the improper conditions of detention, which had contributed to the spread of the disease.

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

1. Application no. 66592/16

(a) Background information

6. The first applicant was imprisoned in Botoşani Prison from 30 November 2010 until his release on 20 March 2013. From 1 August 2012 to 8 February 2013 he was in Târgu-Ocna Prison Hospital.

(b) Tuberculosis infection and related domestic proceedings

(i) Tort proceedings before the first-instance court

7. On 9 January 2014 the applicant lodged tort claims (see paragraph 34 below) against several State authorities, namely Botoşani Prison, the National Prison Authority (hereinafter "the NPA") and the Ministry of Justice, asking for 50,000 Romanian lei (RON – approximately 11,100 euros (EUR)) in damages for contracting tuberculosis while in prison. At a further point in the domestic proceedings, the applicant indicated that the claim in respect of non-pecuniary damage was in his own name as well as on behalf of his minor child.

8. Following a request for legal aid lodged in accordance with Emergency Government Ordinance (EGO) no. 51/2008 (see paragraph 38 below), the applicant was exempted from paying half of the amount owed as stamp duty and given permission to pay the other half in three instalments.

9. Without relying specifically on Article 3 of the Convention, the applicant submitted that upon his imprisonment in November 2010, he had undergone several medical examinations, none of them raising any suspicion of tuberculosis. As the imprisonment conditions had been far from adequate, he had started to feel physically unwell; however, his complaints to this effect had been treated lightly by the medical authorities. The tuberculosis diagnosis had been made on 31 July 2012, with the medical authorities allegedly stating that the disease had probably started several months prior to that time.

10. The applicant further mentioned that while he had been ill, he had been allowed to visit his family at their home; following one of these visits, his child had had to take an anti-tuberculosis treatment for three months.

11. He also claimed that after his release from prison on 20 March 2013 he had had difficulties finding a job because of his earlier tuberculosis diagnosis.

12. On 16 June 2014 a social inquiry was carried out at the applicant's home by the social services department of the relevant local authority. The relevant report noted the good living conditions in the house, which was kept very clean. None of the family members living there or their respective neighbours indicated that they were or had been infected with tuberculosis.

13. The Botoşani District Court also ordered a medical expert report to establish the date on which the applicant had contracted tuberculosis, as well as the current stage of the disease. The court also wanted to seek the expert's opinion on whether the disease had any sequelae and if so, what medical treatment was required and whether a specific lifestyle had to be followed.

14. The report was added to the domestic court's case file on 10 February 2015. The expert found that, in the applicant's case, the disease had become active two years after his imprisonment, while the average time frame for the virus to become active was from 1.2 to 2 months, in the absence of other contributing factors, which in any event had not been identified in the applicant's case. The report also mentioned that, at that time, the applicant was cured of tuberculosis; even if it normally had some pulmonary sequelae, in the applicant's case those were not particularly problematic and did not require any specific medication. The lifestyle requirements referred in particular to the need for the patient to have more rest and to be provided with a high-quality, vitamin-rich diet.

15. On 21 December 2015 the Botoşani District Court partially allowed the applicant's claims and acknowledged that it had been proven that he had contracted the illness while in detention and on account of the conditions therein, which had not been adapted for the prevention and/or the protection against the spread of such a highly contagious disease. The court awarded him RON 10.000 (approximately EUR 2,200) in respect of non-pecuniary damage.

16. In its reasoning, the court referred mainly to the conclusions of the expert report (see paragraph 14 above), as well as on the fact that there was no evidence on file showing that the applicant could have contracted the disease elsewhere than in prison. According to the social inquiry report (see paragraph 12 above), it had been proved that his family had not been infected with the virus at the time when the applicant had visited them; on the contrary, it had been the applicant's son who had had to undergo specific anti-tuberculosis treatment following a visit with his father (see paragraph 10 above).

17. The court also found that during the relevant period of the applicant's imprisonment, several other inmates had been diagnosed with tuberculosis; in spite of this, the prison had seemingly not initiated and implemented any tuberculosis prevention or screening programmes so as to be able to provide immediate medical assistance to those suspected or confirmed to have contracted the disease. The court also found that the prison authorities had not considered any strategy to quarantine inmates transferred from other

prisons until their medical situation had become clear, nor had there been any clear plan to segregate those found to have the infection from other inmates.

18. The court thus concluded that there was a clear causal link between the State authorities' inaction and the applicant's infection with tuberculosis.

19. With regard to the issue of non-pecuniary damage, the court considered that the harm produced by the above-mentioned unlawful conduct was beyond doubt; however, it held that the amount claimed by the applicant (see paragraph 7 above) was too high, considering that, once diagnosed with tuberculosis, he had received prompt and appropriate medical assistance. The duration of the applicant's suffering had therefore been relatively short, due to the fact at the time of the relevant proceedings he had been healthy and had not needed any further treatment for tuberculosis or needed to significantly change his lifestyle. Consequently, the disease had not had irreversible and lasting consequences for the applicant or his family.

(ii) Proceedings before the appellate court

20. All parties appealed against the first-instance court's judgment.

21. The applicant argued that the amount he had claimed in respect of non-pecuniary damage was entirely justified, in view of the permanent sequelae of the disease in his case on the one hand, and the harm suffered on account of the risk that his child might have also contracted the disease on the other. He also argued that he could no longer find a job as a qualified cook, his main profession, because employers hesitated to hire former tuberculosis sufferers.

22. The NPA mainly argued that they could not be held accountable for the action or inaction of each prison in the country. They also considered the amount awarded to the applicant in damages (see paragraph 15 above) too high, taking into account that he had been provided adequate medical assistance and consequently cured within a short time frame. Moreover, the disease had not had any negative impact on his current way of living. Lastly, they submitted that the National Plan for the Control of Tuberculosis implemented in 2004 in prisons nationwide had proved its efficiency by the very fact that the applicant had been screened for and then diagnosed with tuberculosis and treated appropriately.

23. Botoşani Prison argued that the medical report did not establish with certainty the reason why the applicant had fallen ill or indicate any action or inaction on its part which could have triggered the disease. Furthermore, the first-instance court had unjustifiably ignored the fact that the applicant had been a drug user and continued to be a declared smoker, factors largely considered to be potentially conducive to tuberculosis infection. There was no clear evidence on file proving that the disease had been contracted in prison, and even less evidence to show that the prison authorities had been responsible for it.

24. The Ministry of Justice submitted that they lacked legal standing in the proceedings, arguing that the relevant authority in the case was the NPA.

25. By a final judgment of 22 May 2016 the Botoşani County Court dismissed all the appeals and upheld the first-instance court's judgment.

26. The court held that, according to the medical documents on file, when the applicant had been imprisoned he had been healthy; two years later, while in Botoşani Prison, he had been diagnosed with tuberculosis. The documents also showed that in 2010 he had been declared drug free with no related sequelae; furthermore, the expert report did not identify smoking as a factor which could have contributed to the infection. The court further noted that the defendants, who all had legal standing, did not deny that several other inmates at Botoşani Prison had also been diagnosed with tuberculosis at the relevant time. At the same time, no other potential source of infection had been indicated by any of the defendants or confirmed by the evidence on file. The court thus concluded that the applicant had been infected in prison.

27. In view of that conclusion, the court considered that in establishing liability, it did not have to point to specific action or inaction on the part of the defendants, because its role was not to detect and reveal the relevant vulnerabilities in the prison system.

28. Lastly, the court considered the amount awarded in damages justified, given the fact that the consequences of the applicant's tuberculosis infection for him or his family had been of a short duration and, in any event, had not been of an irreversible nature. Furthermore, there was no proof that the applicant had suffered any actual harm in relation to his search for a job or the need to adjust his lifestyle on account of the disease of which he was already cured. The same was true of the alleged harm suffered by his child, the evidence only showing that he had had to take prophylactic medication, as he had never actually been infected and had had no tuberculosis symptoms.

2. Application no. 25457/18

(a) Background information

29. The second applicant was imprisoned on 27 June 2012 in Iasi Prison. He served his sentence in prisons in Iaşi, Gherla, Galaţi and Vaslui. He was held in several other prisons or prison hospitals in order to take part in court proceedings and for medical reasons.

30. In its judgment of 20 September 2018 the Court found a violation of Article 3 of the Convention on account of the inadequate conditions of detention complained of by the applicant relating to Iaşi and Gherla Prisons for a period of more than three years (see Lungu and Others v. Romania [Committee], no.41744/15 and others, 20 September 2019).

31. He was released from prison on 21 November 2019.

(b) Tuberculosis infection and related medical assistance

32. On 5 and 6 February 2013, while in Iaşi Prison, the applicant went to the prison medical unit complaining of symptoms of tuberculosis; on 7 February he was diagnosed with the illness and immediately admitted to Târgu-Ocna Prison Hospital, where he received medication. He stayed there until 26 July 2013 and again between 2 and 23 August 2013. When discharged, his condition had improved and he was deemed fit for work.

33. The applicant did not lodge any claims in connection with contracting the disease while in prison, either in the form of a complaint to the post-sentencing judge or in the civil courts in tort proceedings. He did not lodge any complaints of a lack of medical assistance in relation to his tuberculosis.

B. Relevant domestic law and practice

1. General provisions of tort law

34. The current Civil Code, in force since 1 October 2011, provides that a person with discernment is liable for all damage caused by his actions or inactions and is bound to make full reparation (Article 1349). The right to lodge an action, including one with a pecuniary scope, is time-barred if not exercised within three years, unless the law provides otherwise (Articles 2500, 2501 and 2517). The time-limit for lodging a claim for compensation for the damage suffered as a result of an unlawful act starts to run from the moment the person becomes, or should become, aware of the damage and knows who caused it (Article 2528; see also *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 70, 25 June 2019).

2. Law no. 254/2013 on the serving of prison sentences

35. Article 56 of Law no. 254/2013 on the serving of prison sentences, entered into force on 1 February 2014, repealing Law no. 275/2006, which contained similar provisions in respect of the procedure before the post-sentencing judge. The applicable rules set out that detainees may complain to a post-sentencing judge about measures taken by the prison authorities in respect of their rights within ten days of becoming aware of such measures. The judge's decision may be challenged before the domestic courts within five days of the detainee being notified of the decision.

36. Article 71 § 2 of the Law provides that medical assistance, treatment and care in prison are to be provided by qualified staff, free of charge, in accordance with the law, upon request or whenever necessary.

3. Stamp duty and legal aid legislation

37. Emergency Government Ordinance (EGO) no. 80/2013, in force as of 29 June 2013, sets out in Article 29 § 1 (j) that all civil actions, including appeals against first-instance court decisions in such actions, concerning the

assessment and award of damages for alleged breaches of the rights protected by Articles 2 and 3 of the Convention, are exempt from stamp duty.

38. The relevant provisions of EGO no. 51/2008 concerning legal aid are set out in *Brudan v. Romania* (no. 75717/14, § 28, 10 April 2018).

4. Domestic practice

39. The Government submitted seven domestic judgments which, in their view, proved that the national case-law dealing with complaints lodged by inmates about various issues pertaining to their allegedly inadequate conditions of detention and based on general tort law was developing in the right direction. They also pointed out that such developments were possible and enhanced by the Court's findings in its judgment in the case of *Fűlöp v. Romania* (no. 18999/04, § 31, 24 July 2012), where the same remedy had been considered, at the time, not be effective in view of the fact that the Government had not submitted a convincing number of relevant domestic decisions.

40. The Government provided the following judgments in this regard, all concerning tort claims lodged by inmates in relation to their detention conditions and/or rights in detention:

(a) a judgment given in 2017 in which the Bucharest County Court, acting as a first-instance court, allowed the claimant's claims of spending over one month in overcrowded cells in the Bucharest police station detention facility and awarded him RON 2,000 (approximately EUR 450) in damages. It further dismissed as ill-founded his claims of allegedly inadequate medical assistance while in prison, in so far as the medical documents proved otherwise;

(b) similar judgments given in 2015 to 2017 in which the same County Court, acting as a first-instance court, awarded the following amounts to the claimants for being detained in overcrowded facilities and/or other breaches of their rights: RON 10,000 (approximately EUR 2,200) for three months of detention in Jilava Prison; EUR 1,000 for detention in overcrowded cells in Jilava Prison and for several breaches of the right to have personal items and access to warm water and appropriate sanitary facilities; and RON 5,000 (approximately EUR 1,100) for spending several months in overcrowded cells in Jilava Prison and being denied dental treatment for a period of some seven months; and

(c) another judgment given in 2017 by the Bucharest County Court, this time acting as an appellate court, in which the claimant was awarded RON 5,000 (approximately 1,100 EUR) in damages for spending 140 days in overcrowded facilities in detention. In similar proceedings, again in 2017, the same court awarded RON 2,000 (approximately 450 EUR) to the claimant for spending over twenty months in inadequate (overcrowded) conditions. A similar judgment given in 2017 sanctioned the State authorities for placing the applicant in overcrowded facilities for a period of about three years, and

for failing, for the same duration, to provide, *inter alia*, appropriate medical assistance, and to secure the right to have personal items and the right to work. The damages awarded were EUR 3,000.

41. With the exception of the first and last judgments mentioned above, the claimants did not rely expressly on the provisions of the Convention; however, with the exception of the first judgment, they relied on previous judgments given by post-sentencing judges who had already found breaches of their respective rights, the tort proceedings being initiated so as to allow them to obtain appropriate compensation for the breaches found.

42. The Government mentioned that wherever necessary, the domestic courts exempted claimants from stamp duty, whether on the basis of EGO no. 80/2013 or EGO no. 51/2008, based on their income (see paragraphs 37 and 38 above).

43. The first applicant, Mr Baroncea, submitted a 2008 first-instance court decision, upheld in 2010 by the Botoşani County Court, in which the relevant claimant's action based on the relevant provisions of tort law was dismissed as ill-founded. The court found that the claimant's allegations of contracting tuberculosis because Botoşani Prison was filthy and because he had been transported in vehicles with other infected inmates had not been substantiated by any evidence. Furthermore, there was no concrete evidence showing that the claimant had been infected in prison, while it had been proven that there had been cases of tuberculosis in his family.

COMPLAINTS

44. The applicants complained under Article 3 of the Convention that they had fallen ill in prison owing to the domestic prison authorities' failure to ensure appropriate detention conditions in which the spread of contagious diseases such as tuberculosis would not become possible.

THE LAW

A. Joinder of the applications

45. Having regard to the similar subject matter of the applications, the Court finds it appropriate to order their joinder (Rule 42 § 1 of the Rules of Court).

B. Complaint under Article 3 of the Convention

46. The applicants complained that they had contracted tuberculosis while serving their prison sentences and that the relevant prison authorities had failed to ensure appropriate conditions of detention to prevent the spread of

such a contagious disease. They relied on Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

1. The parties' submissions

(a) The Government

(i) Application no. 66592/16

47. The Government firstly argued that the first applicant had lost his victim status on account of the domestic courts' decision to acknowledge the alleged breach and award him damages of a reasonable amount of RON 10,000 (approximately EUR 2,200 – see paragraph 15 above). Such an amount represented eight times the first applicant's monthly income as an employee in a private company.

48. They also submitted that while in prison, once diagnosed with tuberculosis, the first applicant had received adequate medical assistance. As a result, at the time of his release, he had been completely cured and declared fit to resume any type of work. In the same vein, they indicated that the first applicant had never lodged any complaints with the post-sentencing judge of inadequate medical assistance.

49. The Government further argued that the present case was essentially different to the case of *Fűlöp v. Romania* (no. 18999/04, 24 July 2012), where the Court had awarded EUR 7,500 to that applicant, also infected with tuberculosis, on account of the inadequate conditions of his detention during several years of imprisonment. In the present case, the domestic courts had awarded the first applicant an amount of approximately 2,200 EUR for contracting tuberculosis in prison, also taking into account the fact that he had received appropriate medical care and thus had been cured six months after being diagnosed. That amount was in line with the Court's requirements set out in similar cases (the Government cited *Price v. the United Kingdom*, no. 33394/96, § 34, ECHR 2001-VII, and *Ghavtadze v. Georgia*, no. 23204/07, § 110, 3 March 2009), and had also taken into account the first applicant's personal circumstances.

50. In the Government's view, the civil courts had thus offered appropriate redress for the first applicant's complaints; such a remedy therefore proved to be effective in relation to complaints such as that of the applicant. They contended that the case was inadmissible as incompatible *ratione personae* with the provisions of the Convention.

51. The Government argued that in any event the first applicant had been taken to the prison medical unit on 23 July 2012, complaining of tuberculosis symptoms. A few days and medical examinations later, he had been diagnosed with tuberculosis and had started to follow a specific medication and nutrition programme. Within just six months he had been cured with no

significant sequelae. They therefore considered that the first applicant's complaints were manifestly ill-founded.

52. On a more general level, the National Plan for the Control of Tuberculosis had been launched in 2004 in prisons and had successfully continued to date. Since 2018 several tuberculosis screening programmes had been implemented in some prisons.

(ii) Application no. 25457/18

53. Firstly, the Government argued that the second applicant could no longer claim to be a victim, as immediately after being diagnosed with tuberculosis he had received adequate medical assistance. Consequently, within a short period of time he had been cured and declared fit for work. On the basis of the days worked by him in prison between 2015 and 2019, he had gained 292 days (*zile câştigate*), meaning that he had been released that many days earlier. Moreover, the second applicant had never complained that he had not received appropriate medical treatment for his illness.

54. Secondly, the Government submitted that the second applicant had failed to exhaust the available effective remedies for his complaint. He had never raised any complaints about his tuberculosis infection with the domestic authorities, either in the form of a complaint to the post-sentencing judge about becoming ill or of a lack of appropriate medical assistance, or in the form of a claim for damages in the civil courts based on provisions of tort law.

55. In that connection, the Government referred to the relevant domestic case-law submitted by them in the present case (see paragraphs 39-40 above), which indicated that tort claims in the civil courts had become an effective remedy for complaints such as those of the second applicant.

56. The Government submitted that it could not be established with certainty how and when the second applicant had contracted tuberculosis, and even less that the infection had been caused by his detention conditions. Moreover, during his detention the second applicant had not been in contact with any other inmates who at the relevant time had been diagnosed as having tuberculosis.

(b) The applicants

(i) Application no. 66592/16

57. The first applicant argued that the prison authorities had failed to respond in a timely manner to the risk that he would become infected with tuberculosis. Thus, even though they had known that there were other inmates with the disease, they had made no attempt to limit contact between the inmates or to segregate those already ill. Furthermore, his complaints of feeling unwell had been treated lightly, with no measure being taken until

some months later, when he had finally been diagnosed with the disease (see also paragraph 9 above).

58. He also submitted that the inhuman conditions and lack of information about the existence of the disease in prison had contributed to the fact that he had become ill. The disease continued to have repercussions to date, since he had been unable to find a job as a cook, which was his profession. His lifestyle had also been affected, in so far as he needed a lot more rest and a specific diet to remain healthy.

59. Lastly, the first applicant implied that the amount awarded by the domestic courts had not constituted appropriate reparation, given the irreversible harm he had suffered.

(ii) Application no. 25457/18

60. The second applicant submitted that he wanted to be compensated for contracting tuberculosis in prison.

61. He argued that he had not filed a complaint against the prison authorities for fear that he would be considered unfit for parole or of not being allowed to work so as to be able to apply for early release.

2. The Court's assessment

62. The Court notes at the outset that the applicants' complaints refer to their material conditions of detention only as background factual circumstances allegedly favouring their infection with tuberculosis. Even so, it does not find it necessary to examine all the arguments raised by the parties in the present case, because the applicants' complaints are in any event inadmissible for the reasons set out below.

(a) Application no. 66592/16

63. The Court reiterates that it falls firstly to the national authorities to redress any alleged violation of the Convention. In this regard, the question whether an applicant can claim to be a "victim" of the violation alleged is relevant at all stages of the proceedings under the Convention. A decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 179-80, ECHR 2006-V, and *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 259, ECHR 2012 (extracts)).

64. In that connection, the Court notes that the domestic courts expressly acknowledged that the first applicant, Mr Baroncea, had contracted tuberculosis in prison and that they held the prison authorities directly responsible (see paragraphs 18 and 26-27 above).

65. The Court therefore considers that the first condition for the loss of victim status, acknowledgment of a violation by the national authorities, has been fulfilled, albeit only in substance.

66. It remains for the Court to ascertain whether the amount of compensation awarded by the domestic courts was sufficient to compensate the applicant for his grievances under Article 3 of the Convention.

67. The approach followed by the Court in determining the "reasonableness" of compensation paid by a State for a breach of the Convention has been that of equity, which requires that the amount awarded be assessed in the light of all the circumstances of each individual case, due regard being paid to the fact that a remedy in the national system is closer and more accessible than one sought through an application to the Court (see, *mutatis mutandis*, *Scordino*, cited above, §§ 206 and 268; *Firstov v. Russia*, no. 42119/04, § 31, 20 February 2014; and *Gavrylova and Others v Ukraine* (dec.), nos. 1227/06 and 10 others, § 73, 19 December 2017).

68. In determining whether domestic redress could be considered "equitable", the Court has assessed, in particular, whether the applicant received reparation for the damage caused comparable to just satisfaction as provided for under Article 41 of the Convention (see, for example, *Firstov*, cited above, § 31), notwithstanding the fact that a wider margin of appreciation should be left to the domestic courts when assessing the level of compensation (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 80, ECHR 2006-V). Even compensation which is lower than the amount the Court would itself award could be considered reasonable, provided that the relevant decision of the domestic courts was consistent with the legal tradition and standard of living in the country concerned and was speedy, reasoned and executed quickly (see *Scordino*, cited above, §§ 189 and 206, and *Sizarev v. Ukraine*, no. 17116/04, §§ 93-94, 17 January 2013).

69. Nevertheless, the Court has refused to accept that applicants have been provided with sufficient redress where the domestic awards were "incommensurably small" and did not "even approach the awards usually made by the Court in comparable circumstances" (see *Mironovas and Others v. Lithuania*, nos. 40828/12 and 6 others, § 99, 8 December 2015). Where the awards of damages made by the domestic courts are unreasonable in comparison with the awards made by the Court in comparable cases, such damages would not be sufficient to remove the applicants' victim status under Article 3 (see *Nikitin and Others v. Estonia*, nos. 23226/16 and 6 others, §§ 199-200, 29 January 2019).

70. Turning to the facts of the present case, the Court notes that the first applicant's claims against the State authorities were allowed in part. The domestic courts awarded him RON 10,000 (approximately EUR 2,200 – see paragraph 15 above). In assessing the amount of compensation to be awarded, they took into account various factors, including the duration of his suffering from tuberculosis, the alleviating circumstances of that suffering, such as the

appropriate and prompt medical treatment provided to him, as well as the fact that there were no irreversible and lasting consequences for him and his family (see paragraphs 19 and 28 above); in addition, according to the Government, the amount awarded in respect of non-pecuniary damage represented eight times his monthly income (see paragraph 47 above). The first applicant did not dispute this.

71. The Court notes that the damages awarded to the first applicant in the present case were lower than the amounts it has previously awarded in the very few cases brought before it on similar issues and where it has found a breach of Article 3 on account of applicants contracting or developing tuberculosis in the context of their detention in inadequate conditions.

72. Thus, in the case of *Dobri v. Romania* (no. 25153/04, §§ 56 and 62, 14 December 2010), the Court awarded EUR 12,000 to the applicant for the inadequate conditions in which he had been detained and for tuberculosis which lasted eight months; in the case of *Fűlöp* (cited above, §§ 47-48 and 55), it awarded the applicant EUR 7,500 for spending more than five months in overcrowded detention conditions while he was seriously ill with tuberculosis and after spending more than eight years in detention.

73. Nevertheless, the Court also notes that in the two above-mentioned cases, it refrained from concluding with certainty that the disease had been contracted in prison, the violation being of a rather cumulative nature, as it essentially sanctioned the material conditions of detention considered to have contributed to the development of the disease.

74. On the contrary, in several other examples of case-law with respect to Romania, the applicants' allegations that they contracted a contagious illness while imprisoned were not usually supported by sufficient evidence and were consequently dismissed as manifestly ill-founded (see, more recently, *Vartic v. Romania (no. 2)*, no. 14150/08, §§ 61-62, 17 December 2013, and *Cătălin Eugen Micu v. Romania*, no. 55104/13, § 56, 5 January 2016).

75. Furthermore, more recently, the amounts awarded by the Court in respect of non-pecuniary damage for breaches of Article 3 on account of inadequate conditions of detention in cases against Romania, in as much as such cases may be considered to illustrate "comparable situations" (see paragraph 69 above), have not exceeded EUR 5,000 for applicants who spent several years in inappropriate conditions (see *Rezmiveş and Others v. Romania*, nos. 61467/12 and 3 others, § 132, 25 April 2017).

76. The Court also notes that the amounts awarded in damages at domestic level in cases raising issues under Article 3 of the Convention related to various aspects of the conditions of detention in Romanian prisons, as shown by the few examples of domestic decisions made available by the Government, are sensibly in line with or lower than what was awarded to the first applicant in the present case (see paragraphs 40 and 68 above).

77. In view of the above, the Court considers that the amount of approximately EUR 2,200 awarded to the first applicant for contracting

tuberculosis while in prison, followed by a period of six months of adequate and efficient medical treatment, was not in itself "incommensurably small" (see the case-law cited in paragraph 69 above).

78. Moreover, in assessing the fairness of the approach taken by the domestic courts in order to determine the amount of non-pecuniary damage to be awarded to the first applicant, the Court observes that they referred to evidence adduced by all the parties in the proceedings, as well as on social inquiry and medical expert reports commissioned in order to clarify the factual basis of the case (see paragraph 16 above).

79. While the applicant argued that the degree of actual health damage suffered by him had been underestimated (see paragraphs 58-59 above), the Court is mindful of its subsidiary role in addressing these arguments. Taking into account the aforementioned procedural safeguards in domestic proceedings leading to the determination of the award made, the Court considers that it is not itself in a position to re-examine the factual conclusions reached by the competent domestic authorities as to the seriousness of the damage suffered by the applicant (see, for instance and *mutatis mutandis*, *Gavrylova and Others*, cited above, § 78).

80. In view of all the foregoing, the Court concludes that the approach taken by the domestic judicial authorities in determining the first applicant's award was not arbitrary; furthermore, the award was granted with sufficient promptness, that is, approximately two years and four months after the introduction of his civil claim, examined by two domestic courts (see paragraphs 7 and 25 above).

81. The Court therefore considers that the Government's objection as regards the loss of victim status must be upheld.

82. It follows that application no. 66592/16 is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

(b) Application no. 25457/18

83. At the outset, it should be emphasised that the Court is not a court of first instance; it does not have the capacity, nor is it appropriate to its function as an international court, to adjudicate on large numbers of cases which require the finding of basic facts or the calculation of monetary compensation – both of which should, as a matter of principle and effective practice, be the domain of domestic jurisdictions. The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be made subsequently before the Court should have been made to the appropriate domestic body, at least in substance (see

Vučković and Others v. Serbia (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 70-72, 25 March 2014).

84. Turning to the facts of the present case, the Court notes that in 2013 the second applicant was diagnosed by doctors as suffering from tuberculosis and that he has alleged that he contracted this illness in prison. However, he failed to raise a complaint relating to his tuberculosis with the domestic authorities (see paragraphs 32-33 above).

85. In that connection, the Court reiterates that how and when an inmate becomes infected with tuberculosis is a controversial issue of a medical nature (see, *mutatis mutandis*, *Dobri*, cited above, § 52, et *Fülop*, cited above, § 42), and that in principle it is not equipped, in the absence of any relevant factual basis established by the domestic authorities, to draw pertinent conclusions in this regard.

86. Even if claiming damages for alleged breaches of Articles 2 and/or 3 of the Convention in detention is not normally subject to the payment of any stamp duty and, in any event, is normally subjected to the granting of legal aid (see paragraphs 37-38 and 42 above), the second applicant failed to ever raise his complaint relating to the disease he had allegedly contracted while in prison with the domestic authorities – whether to the post-sentencing judge in the procedure set out by Law no. 254/2013 (see paragraph 35 above) or in the civil courts in tort law proceedings, which could have provided him with appropriate redress (see paragraph 34 above). The second applicant claimed that his failure to try those remedies was due to his fears to be considered unfit for parole or of not being allowed to work in prison, a pre-condition to apply for early release (see paragraph 61 above). However, the Court cannot accept such arguments as reasonable and it considers in any event that they do not constitute objective justifications for not attempting to put matters right through the domestic legal system.

87. Such a step on the applicant's behalf would have allowed the domestic courts to seek information from the prison authorities and hospitals, to assess the case and, if necessary, to order the administration to take specific steps in order to redress his situation (see, for instance, paragraphs 16-18 and 43 above). The Court would have been able, if it had been aware of this information, evidence tested at domestic level, to better examine and draw more pertinent conclusions as to the alleged failure on the State's part to honour its positive obligations (see, *mutatis mutandis*, *Cătălin Eugen Micu*, cited above, § 56).

88. At this juncture, the Court notes that the Government and the first applicant have provided domestic case-law showing that tort claims asking for compensation for lack of medical care and assistance in prison, are properly examined and dealt with by the domestic courts; such assessment is done on the basis of relevant evidence, essentially medical reports, which enable to courts to clarify and draw appropriate conclusions relating to the health situation of the claimants in each case (see paragraphs 39-43 and 78

above). Notwithstanding the limited number of relevant examples submitted, proving that such practice has not yet become stable and widespread, the Court is ready to accept that tort proceedings, if sufficiently used by claimants such as the second applicant (see paragraph 44 above), appears to have become, at least since 2015, effective and capable of providing a reasonable possibility of redress (see, concerning the effectiveness of a compensatory remedy for situations where the alleged breach has already ended, *Shmelev and Others v. Russia* ((dec.), no. 41743/17 and 16 others, § 87, 17 March 2020). In that connection, the Court reiterates that doubts about the prospects of a remedy which appears to offer a reasonable possibility of redress, are not a sufficient reason to eschew it (see, among many other authorities, *Shtolts and Others v. Russia* (dec.), nos. 77056/14 and 2 others, § 111, 31 January 2018).

89. In the same vein, the Court also refers to its conclusions as to the appropriateness of the redress offered by the tort proceedings in connection with similar claims lodged by the applicant in application no. 66592/16 (see paragraphs 77-80 above).

90. In view of the above, and noting that there were no special circumstances that could have dispensed the second applicant from filing a tort claim with the civil courts, the Court finds that the Government's objection must be allowed because the second applicant did not exhaust the domestic civil-law remedy available to him.

91. It follows that application no. 25457/18 must be declared inadmissible under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 10 February 2022.

Andrea Tamietti Registrar	Yonko Grozev President