

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

FOURTH SECTION

CASE OF DORNEANU v. ROMANIA

(Application no. 55089/13)

JUDGMENT

STRASBOURG

28 November 2017

FINAL

28/02/2018

This judgment became final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Dorneanu v. Romania,

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

Ganna Yudkivska, *President,*
Vincent A. De Gaetano,
Faris Vehabović,
Iulia Motoc,
Carlo Ranzoni,
Gabriele Kucsko-Stadlmayer,
Péter Paczolay, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 7 November 2017,

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

PROCEDURE

1. The case originated in an application (no. 55089/13) 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, Ms Florin Liviu Dorneanu ("the applicant"), on 30 July 2013.

2. The applicant was represented by Mr I. Popa, a lawyer practising in Bacău. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, of the Ministry of Foreign Affairs.

3. On 29 January 2014 the Registry was informed of the applicant's death on 24 December 2013. Mr I. Popa informed the Court that the deceased's son, Mr Mircea Dorneanu, wished to continue the proceedings before the Court.

4. Relying on Articles 2 and 3 of the Convention, the applicant, who was suffering from terminal prostate cancer, had complained in his applications about his living conditions in prison and a lack of appropriate medical provision for his illness.

5. On 15 April 2015 the complaints concerning Articles 2 and 3 of the Convention were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1965. When he lodged his application he was in prison serving a sentence for economic offences.

A. The applicant's imprisonment and applications for an interruption of the sentence on medical grounds

7. In 2002 the National Anti-Corruption Prosecution Service commenced proceedings against the applicant on charges of involvement in a vast criminal network operating in the economic field, involving several dozen individuals and some one hundred business companies. With the complicity of bank employees, fraudulent appropriations were granted to those companies, which money was then misused for the benefit of the accused.

8. By final judgment of 28 February 2013 the High Court of Cassation and Justice convicted the applicant on conspiracy charges, sentencing him to three years, four months' imprisonment.

9. Meanwhile, in November 2012, the applicant had been diagnosed with prostate cancer. At that time the illness had already reached an advanced stage and the applicant displayed bone metastases, brain haematoma and intraocular haemorrhages. On 27 November 2012 the applicant had been admitted to the Bucharest Institute of Oncology, from which he had been discharged on 11 January 2013. From 14 to 18 January 2013 he had once again been admitted to hospital. He had undergone prostate surgery and begun chemotherapy. He had subsequently had several short stays in hospital. In January 2013 the diagnosis reached by the oncologist had emphasised the seriousness of the applicant's condition. The prognosis was that he had a short time to live given that the disease had spread to the bone, for which condition the existing treatment was insufficient. On 26 February 2013 the applicant was examined by a medical board, which issued him with a certificate of severe disability.

10. On 28 February 2013 the applicant was taken into Bacău Hospital oncology department. His state had worsened and he was suffering from bone pain. The applicant continued his chemotherapy and remained in hospital until 4 March 2013, when he was handed over to police officers who had come to escort him to Bacău Prison where he was to begin serving his sentence.

11. On the same day the applicant, through the intermediary of his lawyer, applied to the Bacău County Court for an interruption of his prison sentence on health grounds. He pointed out that since he could not receive his treatment in prison, his life would be in danger.

12. On 27 March 2013 he was transferred to the Rahova Prison Hospital. On 5 April 2013 he returned to Bacău Prison. On 15 April 2013 he was readmitted to the Rahova Prison Hospital, and then transferred back to Bacău prison on 28 May 2013.

13. The court commissioned a report on the applicant's condition from a board of the National Institute of Forensic Medicine. At the board's request, the applicant underwent several medical examinations, which showed that his condition required radiotherapy sessions and further chemotherapy. Furthermore, it transpired from the medical documents made available to the committee that the applicant had had chemotherapy sessions at Bacău Hospital on 12 April 2013 and at the Bucharest Institute of Oncology on 10 and 17 May 2013.

14. In its report of 19 June 2013 the board concluded that the applicant's survival depended on the medical care with which he was being provided and a complex form of treatment which he could only receive in specialised clinics operating under the Ministry of Health. Consequently, it considered that the court had to order either an interruption of the applicant's sentence or his hospitalisation under supervision in one of the aforementioned establishments.

15. On 25 June 2013 the court allowed the applicant's request and ordered a three-month interruption of his sentence. Having regard to the seriousness of the applicant's illness, it ruled that hospitalisation under supervision would considerably reduce his chances of survival and recovery owing to the stress and mental suffering caused by the continued execution of his sentence. Moreover, the court emphasised that the applicant posed no threat to public order, that the sentence, one third of which had already been served, was reasonably short and that the applicant's conduct had been good throughout the criminal proceedings. The prosecution appealed.

16. The applicant was released on the same day. On 4 and 19 July 2013 he underwent chemotherapy at Bacău Hospital and continued the treatment on 1 and 16 August 2013 at the Bucharest Institute of Oncology.

17. On 29 August 2013 the Bacău Court of Appeal considered the prosecution appeal. By final judgment delivered the same day, it allowed the appeal and dismissed the applicant's request. Relying on Articles 455 and 453 of the Code of Criminal Procedure (hereafter "the CPP" - see paragraph 34 below), the Court of Appeal ruled that the interruption of the applicant's sentence was unjustified provided that his treatment could continue, under guard, in a civil hospital. In a dissenting opinion, one of the judges on the trial bench considered that the sentence should be interrupted on humanitarian grounds; consequently, having regard to the applicant's condition, he considered that his continued detention was in breach of the proportionality principle and reduced his chances of survival.

18. On 31 August 2013 the applicant was imprisoned in Bacău to serve his sentence. On 24 September 2013 he was transferred to Vaslui Prison. On

27 September 2013 he was admitted to the Rahova Prison hospital. On 3 October 2013 he returned to Vaslui Prison.

19. On 4 October 2013 the applicant was admitted to Târgu Ocna Prison hospital, diagnosed with "prostatic neoplasia with bone and brain metastases". On the same day, noting the deterioration in the applicant's general condition, a multidisciplinary team from the Târgu Ocna Prison hospital placed a prisoner on constant standby to assist the applicant in his everyday activities. That prisoner reportedly assisted the applicant up until the day of his last transfer to Bacău Hospital (see paragraph 28 below).

20. On 9 October 2013 the applicant was once again transferred to Bacău Prison, from whence he was taken, on the same day, to the Bacău Hospital oncology department. He was unable to move, was suffering from severe bone pain and had almost completely lost his sight and hearing. Furthermore, he was also showing signs of severe depression. His condition was so severe that he could no longer undergo chemotherapy, which was replaced by palliative care.

21. The applicant remained in the Bacău Hospital oncology department until 24 October 2013, when he was transferred to Iaşi Prison. On 28 October 2013 he was taken into the Iaşi Regional Institute of Oncology for five palliative radiotherapy sessions geared to alleviating his bone pain. He remained in the institute until 1 November 2013. He lost his sight completely and his depression continued.

22. On 5 November 2013 he was transferred to Vaslui Prison. On 6 November 2013 he was admitted to the Târgu Ocna Prison hospital where he stayed until 12 November 2013, when he was transferred to Bacău Prison.

23. On 22 November 2013 the judge delegated to Bacău Prison granted the applicant the most favourable possible detention regime, allowing him to move around inside prison and to take part in outdoor activities unsupervised.

24. Still on 22 November 2013, the applicant was admitted to the Bacău Hospital oncology department. The senior medical officer said that the applicant's condition could deteriorate suddenly and that he therefore needed round-the-clock medical care. From 25 to 27 November 2013 the applicant received palliative care in the same hospital before being transferred to Bacău Prison and then to the Târgu Ocna Prison hospital.

25. In reply to a request from the applicant to be released on licence, the Prison Director told him that his request would be examined in 2015.

26. The applicant wrote to the President of the Romanian Republic and the Director of Târgu Ocna Prison to request their assistance regarding his release. He explained that he was dying and that he wanted to have his family present. He pointed out that he was now bedridden, blind and deaf, and that there was no one in prison to assist him in his everyday activities.

He added that the doctors had been reluctant to treat him because had was keep under guard and in handcuffs.

27. The National Administration of Prison Authorities replied that only a court could order his release.

28. On 4 December 2013 the applicant was transferred to Bacău Prison and then to Bacău Hospital, where he remained until 7 December 2013. On that date he was transferred to the Târgu Ocna Prison Hospital. On 19 December 2013 he returned to Bacău Prison and the same day was admitted to the Bacău Hospital oncology department. He died there on 24 December 2013.

B. The medical reports supplied by the hospitals

29. It transpires from the medical files included in the case file that between 24 January 2013 and 24 December 2013, the date of his death, the applicant was admitted to Bacău hospital eighteen times, including several hospital stays lasting several days. During those stays he had some fifteen chemotherapy sessions, usually at fortnightly intervals: prior to 24 October 2013 in the framework of the cancer treatment, and after that date, in the framework of palliative treatment. He also received various types of treatment for the illnesses caused by the metastatic progression of his prostate cancer.

30. In a report drawn up at the Government agent's request, the senior medical officer at the Bacău Hospital oncology department highlighted certain dysfunctions in the administration of the treatment. Drawing on the medical files relating to the applicant's stays in that hospital, he pointed out that on 14 March 2013 the applicant had begun the chemotherapy without having received the radiotherapy recommended by the doctors in his department. He added that the chemotherapy session scheduled for between 28 and 30 March 2013 had not taken place because the applicant had been absent, having been transferred to the Bucharest Institute of Oncology for examinations. Lastly, he noted that on 18 September 2013 the applicant had arrived late at the hospital to continue his chemotherapy. Furthermore, when the applicant had been hospitalised, he had been guarded by two police officers and had remained handcuffed to the bed, even after he had become blind and deaf and was suffering extreme bone pain.

31. In a report of 21 September 2015, the Iaşi Regional Institute of Oncology pointed out that between 28 October and 1 November 2013, the applicant had had five radiotherapy sessions, had kept the medical appointments made and had been neither handcuffed nor immobilised during those sessions.

32. In a report of 22 September 2015, the Bucharest Institute of Oncology pointed out that the applicant had been hospitalised several times in the institute between 27 November 2012 and 24 May 2013, primarily for

chemotherapy. The institute's senior medical officer stated in the report that the applicant had duly respected all his medical appointments and that during his stays at the institute he had not been constrained but had been guarded by prison officers.

C. The applicant's conditions of detention

33. According to the information provided by the prison authorities, the applicant had been held in Bacău Prison in a cell measuring 33 m^2, which he had shared with six other prisoners. At Rahova Prison hospital he had shared a 38-m^2 cell with four other prisoners. At Vaslui Prison, where he was held from 24 to 27 September, from 3 to 4 October and from 5 to 6 November 2013, he had occupied a 14.75-m^2 cell with six other prisoners. At Târgu Ocna Prison hospital he had been held in a 48-m^2 cell with eight other prisoners. At Iaşi Prison he had remained from 24 October to 5 November 2013 in a 15.92-m^2 cell with three other prisoners.

II. RELEVANT DOMESTIC LAW

A. CPP

34. The relevant parts of Articles 453 and 455 CPP provide:

Article 453

"1. Enforcement of a sentence to life imprisonment or detention may be suspended in the following cases:

a) where it is noted, on the basis of a medical expert assessment, that the convicted prisoner is suffering from an illness making it impossible for him to serve his sentence. In such cases, sentence enforcement must be suspended until the prisoner is in a position to resume it;

...

2. A request for suspension of enforcement of a sentence to life imprisonment or detention may be submitted by the public prosecutor [or] by the prisoner in question ... ."

Article 455

"Enforcement of a sentence to life imprisonment or detention may be interrupted in the cases and under the conditions set out in Article 453 ... ."

B. Law no. 275 of 20 July 2006 on the enforcement of prison sentences and detention orders

35. The relevant domestic provisions on the remedy available to prisoners to defend their rights, including the right to medical treatment, as

governed by Law no. 275, which came into force on 20 October 2006 and concerns the enforcement of prison sentences and detention orders issued by the judicial authorities in the context of criminal proceedings ("Law no. 275/2006"), are described in the case of *Iacov Stanciu v. Romania* (no. 35972/05, §§ 115 and 116, 24 July 2012). Those provisions allow those concerned to contact the sentence enforcement judge delegated to the prison ("the delegated judge") directly in order to complain of a lack of appropriate medical treatment and ensure that the prison authorities provide them with such treatment. The delegated judge's decision may be challenged before the court of first instance of the district in which the prison is located.

36. Article 159 § 3 of the implementing regulations of Law no. 275/2006 provides that:

> "Metal handcuffs may not be used to constrain persons deprived of their liberty [who are receiving treatment] in a medical facility. The method and mode of utilisation of devices for constraining persons in medical facilities shall be established by decision of the Director General of the National Prison Administration."

THE LAW

I. PRELIMINARY QUESTION

37. The Court notes that the applicant died on 24 December 2013 and that the deceased's son, Mr Mircea Dorneanu, expressed the wish to continue the proceedings before it (see paragraph 3 above).

38. The Court normally permits next-of-kin to pursue an application, provided he or she has sufficient interest, if the original applicant has died after the introduction of the application before the Court (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII; *Larionovs and Tess v. Latvia* (dec.), nos. 45520/04 and 19363/05, § 172, 25 November 2014; and *Paposhvili v. Belgium* [GC], no. 41738/10, § 126, ECHR 2016). Having regard to the subject matter of the application and all the elements in its possession, the Court considers that the applicant's son has a legitimate interest in pursuing the application and that he thus has the requisite *locus standi* under Article 34 of the Convention (see, for example, *Carrella v. Italy*, no. 33955/07, §§ 48-51, 9 September 2014, and *Murray v. the Netherlands* [GC], no. 10511/10, § 79, ECHR 2016).

39. For practical reasons, the present judgment will continue to refer to the late Mr Florin Liviu Dorneanu as "the applicant".

II. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

40. The applicant complained that the authorities had failed to provide him with the medical care necessitated by his state of health, thus endangering his life. He relied on Article 2 of the Convention, the relevant parts of which provide:

Article 2

"Everyone's right to life shall be protected by law."

A. The parties' submissions

41. The Government objected that the applicant had failed to bring an action under Law no. 275/2006 to complain of the authorities' failures in this regard. They added that the applicant's relatives could have brought criminal or civil proceedings in order to establish whether the prison authorities had been responsible for the applicant's worsening state of health and his death.

42. In any event, the Government considered that there was nothing in the applicant's medical file to suggest that the deterioration in his state of health during his imprisonment had been attributable to the domestic authorities. While acknowledging a number of shortcomings in the administration of treatment, they stated that the problems had been minimal and had neither endangered the applicant's life nor affected his life expectancy.

43. The Government concluded that the requirements set out by the Court as regards treatment for prisoners with health problems had been observed, and that the applicant's state of health had therefore been appropriately monitored and dealt with by qualified medical staff.

44. The applicant's son submitted that his father had been so physically diminished that he had been unable to draw up a complaint to the delegated judge under Law no. 275/2006. He argued that in his submissions to the domestic authorities his father had provided sufficient evidence for those authorities to initiate an investigation into the shortcomings in the provision of medical treatment.

B. The Court's assessment

45. The Court reiterates that it has previously held, in connection with alleged failures to provide prisoners with appropriate medical assistance, that a complaint based on the provisions of Law no. 275/2006 was an effective remedy for the purposes of Article 35 § 1 of the Convention (see, among many other authorities, *Szemkovics v. Romania* (dec.), no. 27117/08,

§§ 25 and 26, 17 December 2013, and *Matei v. Romania* (dec.), no. 26244/10, §§ 36 and 37, 20 May 2014).

46. The Court notes that the applicant lodged with the national courts a request to interrupt the enforcement of his sentence for medical reasons and made several submissions for the same purpose (see paragraphs 11, 24 and 26 above). However, those submissions had not directly concerned the lack of medical treatment, but rather the incompatibility of the applicant's state of health with his detention (see, *mutatis mutandis*, *Matei*, decision cited above, § 38, and *Şopârlă v. Romania* (dec.), no. 76884/12, §§ 47 and 48, 2 February 2016).

47. Nevertheless, in the circumstances of the present case, the Court considers it unnecessary to ascertain whether the actions indicated by the Government (see paragraph 41 above) amounted to effective remedies or whether, by exclusively requesting an interruption of his sentence enforcement, the applicant had duly exhausted available domestic remedies in respect of his complaint under Article 2 of the Convention. Even supposing that that was so, the applicant's case does not appear to have comprised any breach of that provision, for the following reasons.

48. The Court reiterates that the obligation to protect the lives of prisoners entails providing them with proper medical care such as to prevent any fatal outcome (see *Taïs v. France*, no. 39922/03, § 98, 1 June 2006, and *Angelova v. Bulgaria*, no. 38361/97, §§ 125-130, ECHR 2002-IV). The obligation to provide appropriate medical care is not confined to prescribing adequate treatment: the prison authorities must also ensure that such treatment is properly administered and followed up (see *Jasińska v. Poland*, no. 28326/05, § 78, 1 June 2010).

49. The Court notes that the applicant was mainly provided with medical assistance in the cancer ward of the Bacau hospital. He was admitted to that ward eighteen times, including several fairly long stays, and benefited from fifteen or so chemotherapy sessions (see paragraph 29 above). On a recommendation from the hospital cancer department, the applicant underwent additional examinations and radiotherapy and chemotherapy in the Bucharest and Iași Institutes of Oncology (see paragraphs 31 and 32 above).

50. The Court observes that the report drawn up by the senior medical officer of the Bacău hospital oncology department (see paragraph 30 above) mentions three instances of shortcomings in the administration of the prescribed treatment.

51. However, the Court notes that none of the medical documents available to it establishes that those shortcomings, however regrettable they may have been, were such as to jeopardise the effectiveness of the treatment and/or the implementation of the protocol for its administration. For the rest, the other chemotherapy and radiotherapy sessions had taken place as scheduled (see paragraphs 31 and 32 above).

52. The Court also attaches importance to the fact that the applicant was affected not by the sequelae of any disease contracted during his time in prison, but by the metastases of his cancer which had predated his imprisonment (see, *mutatis mutandis*, *Gengoux v. Belgium*, no. 76512/11, § 56, 13 December 2016).

53. Having regard to the number of hospital stays and the complexity of the treatment administered to the applicant, the Court does not consider that that it has been established that the domestic authorities are responsible for the applicant's death or that they failed in their positive obligation to protect his health in a manner appropriate to the circumstances.

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

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

55. The applicant complained that his immobilisation in a hospital bed had amounted to inhuman treatment and that his state of health had been incompatible with detention. He relied, in that regard, on Article 3 of the Convention, which provides:

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

56. The Court considers that the compliance of two different situations with Article 3 of the Convention, namely the applicant's immobilisation in hospital, and the compatibility of his state of health with detention, should be assessed separately.

A. The applicant's immobilisation in hospital

57. The Government submitted that that complaint was inadmissible on the grounds of non-exhaustion of domestic remedies. They argued that the applicant had at no stage complained to the judge delegated to Bacău Prison about this measure, which breached the provisions of Law no. 275/2006.

58. The applicant's son submitted that his father had drawn the authorities' attention to his living conditions in the Bacău hospital, where he had been immobilised in bed with handcuffs.

59. The Court reiterates that the only remedies which Article 35 § 1 requires to be exhausted are those that relate to the breach alleged and are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports of Judgments and Decisions* 1996-IV, and *McFarlane v. Ireland* [GC], no. 31333/06, § 107, 10 September 2010). It also reiterates that the existence of mere doubts as to

the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust domestic remedies (*Akdivar and Others*, cited above, § 71, and *Brusco v. Italy* (dec.), no. 69789/01, ECHR 2001-IX).

60. The Court observes that at the material time the use of handcuffs to immobilise prisoners in hospital was formally forbidden by the implementing regulations of Law no. 275/2006 (see paragraph 36 above; see also, to converse effect, *Tănase v. Romania*, no. 5269/02, § 84, 12 May 2009, and *Stoleriu v. Romania*, no. 5002/05, §§ 80 and 81, 16 July 2013).

61. In the present case, the Court notes that neither the applicant nor his relatives, who could have acted on his behalf on account of his state of physical and psychological vulnerability, availed themselves of the remedy set out in Law no. 275/2006. It considers that a complaint to the judge delegated to the prison could well have led to a finding against the prison authorities for a breach of the legal provisions concerning the use of handcuffs.

62. It follows that this complaint must be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

B. Whether the applicant's state of health was compatible with detention

1. Admissibility

(a) The parties' submissions

63. The Government considered that, as in the case of *Ceku v. Germany* ((dec.), no. 41559/06, 13 March 2007), the complaint concerning the applicant's continued detention despite his worsening state of health should be declared inadmissible for non-exhaustion of domestic remedies on the grounds that the applicant had failed to submit a further request for the interruption of his sentence.

64. The applicant's son pointed out that in view of the rapid deterioration in his father's state of health he should have been provided with constant emergency care. In view of the length of time required to examine a fresh request for interruption of sentence, which he argued would have been similar to the period required for the first request, which had taken several months to process, he considered that it would have been illusory to submit another request for interruption of sentence.

(b) The Court's assessment

65. The Court notes that the applicant used the only remedy available in domestic law, namely a request for interruption of sentence on health grounds (see paragraph 11 above). In the framework of that remedy he had mentioned the incompatibility which he saw between his illness and the

constraints of imprisonment, thus giving the domestic courts an opportunity to prevent or remedy the alleged violation of the Convention.

66. The Court also notes that the situation in the present case is different from that in the case of *Ceku* relied upon by the Government (see paragraph 63 above). In the latter case the applicant had failed to produce before the German Constitutional Court a number of documents on which the regional court had grounded its decision rejecting his request for the interruption of enforcement of his sentence. However, in the instant case, the fact cannot be overlooked that the applicant's state of health, which was already extremely poor, had been very well-known to the court of appeal which considered the prosecution appeal (see paragraph 17 above).

67. Moreover, having regard to the time required to process the first request, namely from the beginning of March 2013 to the end of August 2013 (see paragraphs 11 and 17 above), the Court considers that it would have been excessive to require the applicant to submit a second request at a time when the likelihood of a fatal outcome had seemed increasingly imminent after the discontinuation of his chemotherapy in October 2013, replaced by palliative care (see paragraph 20 above). Indeed, the applicant was indubitably in an extremely vulnerable situation, and could not have been expected once again to ask the authorities to address a problem to which he had already drawn their attention. It had been incumbent on those authorities to monitor his situation, if only on humanitarian grounds (see, *mutatis mutandis*, *Gülay Çetin v. Turkey*, no. 44084/10, § 113, 5 March 2013, and paragraphs 95 and 99 below).

68. Having regard to the foregoing considerations, the Court holds that the applicant's complaint under Article 3 of the Convention concerning the compatibility of his state of health with detention had been appropriately brought to the attention of the domestic courts.

69. Accordingly, it rejects the Government's objection in respect of the complaint.

70. Furthermore, noting that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds, the Court declares it admissible.

2. The merits

(a) The parties' submissions

71. The applicant considered that he had suffered treatment contrary to Article 3 of the Convention owing to the incompatibility of his state of health with imprisonment. He alleged that his detention while suffering from life-threatening cancer had reduced his chances of survival.

72. The applicant considered that the court of appeal had decided to continue his detention without having regard to his actual conditions of detention. He described those conditions as "inhuman", pointing out that his

recurrent stays in hospital had entailed a large number of transfers and delays in the provision of treatment. He added that that situation had persisted until the terminal phase of the disease, and that it had placed him and his family in a situation of powerlessness and profound distress.

73. The Government did not consider that Article 3 of the Convention had been breached. They pointed out that on his arrival in prison on 4 March 2013 the applicant had already been suffering from a disease which would have fatal outcome in the short term owing to the metastases spreading to his skeleton. They further submitted that neither the Institute of Forensic Medicine nor the doctors had imposed on the authorities any obligation to place the applicant permanently in a civilian hospital (see paragraph 14 above).

74. The Government affirmed that the applicant had been hospitalised whenever his state of health so required. Furthermore, they stated that outside the periods in hospital, the applicant had been housed mainly in the Rahova and Târgu Ocna Prison hospitals, where he had received the appropriate treatment.

(b) The Court's assessment

i. General principles

75. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the applicant's sex, age and state of health (see, among other authorities, *Price v. the United Kingdom*, no. 33394/96, § 24, ECHR 2001-VII, and *Mouisel v. France*, no. 67263/01, § 37, ECHR 2002-IX).

76. As regards, in particular, persons deprived of their liberty, Article 3 of the Convention imposes on the State the positive obligation to ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. The suffering which flows from natural illness, whether physical or mental, may fall foul of Article 3, where it is, or risks being, exacerbated by conditions of detention for which the authorities can be held responsible. The prisoner's health and well-being must be adequately secured by, among other things, providing him with the requisite medical assistance. Thus the detention of a person who is ill in inappropriate material and medical conditions may, in principle, amount to treatment contrary to Article 3 (see *Gülay Çetin*, cited above, § 101, with the references therein).

77. In order to determine whether the detention of a person who is ill complies with Article 3 of the Convention, the Court considers three different factors (see, for example, *Sakkopoulos v. Greece*, no. 61828/00, § 39, 15 January 2004; *Gülay Çetin*, cited above, § 102; *Bamouhammad v. Belgium*, no. 47687/13, §§ 120-123, 17 November 2015; and *Rywin v. Poland*, nos. 6091/06, 4047/07 and 4070/07, § 139, 18 February 2016, with the references therein).

78. The first factor is the applicant's state of health and the effect on the latter of the manner of his imprisonment. Conditions of detention may under no circumstances subject a person deprived of his liberty to feelings of fear, anxiety or inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance. Thus, the detention of a person who is ill under inappropriate material and medical conditions can, in principle, amount to treatment incompatible with Article 3 of the Convention.

79. The second factor to be considered is the adequacy or inadequacy of the medical care and treatment provided in detention. It is not sufficient for the prisoner to be examined and a diagnosis to be made; it is vital that treatment suited to the diagnosis be provided, together with appropriate medical after-care.

80. The third and last factor is the decision whether or not to continue the person's detention in view of his state of health. Clearly, the Convention does not lay down any "general obligation" to release a prisoner for health reasons, even if he is suffering from a disease which is particularly difficult to treat. Nevertheless, the Court cannot rule out the possibility that in particularly serious cases, situations may arise where the proper administration of criminal justice requires remedies in the form of humanitarian measures.

ii. Application of those principles in the present case

81. The Court observes, first of all, that the applicant provided no precise details concerning his material conditions of detention. However, he described those conditions as "inhuman" and complained that the authorities had constantly transferred him to various places of detention, even during the terminal phase of his illness. The Government submitted that in both the civilian and prison hospitals the applicant had enjoyed conditions of detention satisfying the requirements of Article 3 of the Convention. They argued that the transfers had taken place for medical reasons.

82. The Court notes that it transpires from the documents supplied by the prison authorities that the applicant had suffered the effects of a problem of severe overcrowding in Vaslui Prison, where his personal living area had measured under 3 m² (see paragraph 33 above).

83. In that regard, the Court reiterates that the requirement of 3 m² of floor space per prisoner in multi-occupancy accommodation in prisons is the

relevant minimum standard for assessing conditions of detention under Article 3 of the Convention. Where the personal space falls below this minimum standard, the situation is considered so severe that a strong presumption of a violation of Article 3 of the Convention arises (see *Muršić v. Croatia* [GC], no. 7334/13, §§ 110 and 124, ECHR 2016).

84. That presumption may be rebutted if the reductions in the required minimum personal space of 3 sq. m are short, occasional and minor, if they are accompanied by sufficient freedom of movement and if the applicant is not subjected to other aggravating aspects of the conditions of his or her detention (see *Muršić*, cited above, § 138).

85. In the present case, given that the applicant's detention in Vaslui Prison lasted eight days in all (see paragraph 33 above), the Court is prepared to consider that period short, occasional and minor for the purposes of its case-law. However, it emphasises that the lack of sufficient personal space at Vaslui Prison had been exacerbated by detention in ordinary cells unsuited to the applicant's state of health, at a time when his physical capacities had been in constant decline, such that towards the end of his time in prison he had become blind and deaf and was suffering excruciating bone pain. Moreover, the Court reiterates that the unacceptable conditions of detention and overcrowding in Vaslui Prison have already induced it to find a violation of Article 3 of the Convention (see, for example, *Todireasa v. Romania (no. 2)*, no. 18616/13, §§ 56-63, 21 April 2015).

86. The Court therefore reaches the conclusion that despite the short time during which the applicant was detained in a personal space of under 3 m², he was subjected to circumstances which exacerbated the poor conditions of detention. It further notes that the Government have put forward no cogent arguments to rebut the strong presumption of a violation of Article 3 concerning the applicant's detention in Vaslui Prison.

87. As regards Iași Prison, where the applicant allegedly had a personal space of between 3 and 4 m² (see paragraph 33 above), even though that area does not lead to a strong presumption of a violation of Article 3 of the Convention the Court cannot overlook the fact that the ordinary cells in that prison were unsuited to the applicant's severe disability. Furthermore, the poor conditions of hygiene in that prison, which the Court has noted in past cases (see, for example, *Mazalu v. Romania*, no. 24009/03, §§ 52-54, 12 June 2012; *Olariu v. Romania*, no. 12845/08, § 31, 17 September 2013; and *Axinte v. Romania*, no. 24044/12, § 49, 22 April 2014), amount, in the present case, to an exacerbating circumstance, given the applicant's state of health.

Therefore, the Court holds that the conditions of detention in Iași Prison also subjected the applicant to an ordeal of a severity exceeding the unavoidable level of suffering inherent in detention.

88. The Court also notes that from 4 March to 25 June 2013 and from 31 August to 24 December 2013, the date of the applicant's death at Bacău Hospital, he had been transferred seventeen times between prisons and seven times to the medical establishments in Bacău, Iaşi and Bucharest (see paragraphs 12, 18, 21, 22, 24 and 28 above).

89. The Court observes that although most of those transfers were justified on medical grounds, it cannot overlook the fact that those establishments were located far apart, some of them at distances of several hundred kilometres.

90. Having regard to the applicant's ever-worsening state of health, the Court considers that the repeated changes of hospital imposed on the applicant had disastrous consequences for his well-being. It holds that those transfers were such as to create and exacerbate his feelings of anxiety regarding his adaptation to the different places of detention, the implementation of the medical treatment protocol and his continued contact with his family.

91. The Court accepts that in the instant case there was no suggestion of intent to humiliate or debase the applicant. However, the absence of such intent cannot conclusively rule out a finding of a violation of Article 3 of the Convention (see, among other authorities, *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX; *Peers v. Greece*, no. 28524/95, §§ 68 and 74, ECHR 2001-III; and *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 160, ECHR 2016).

92. In the light of the particular circumstances of the present case, the Court, reiterating that it has already ruled that it would be better to avoid imposing very long, arduous journeys on prisoners who are ill (see *Viorel Burzo v. Romania*, nos. 75109/01 and 12639/02, § 102, 30 June 2009, and *Flamînzeanu v. Romania*, no. 56664/08, § 96, 12 April 2011), considers that the frequent transfers of the applicant could not fail to subject him to an ordeal of a severity exceeding the unavoidable level of suffering inherent in detention.

93. As regards the quality of the medical care and assistance provided, the Court first of all reiterates that no one disputes the seriousness of the applicant's illness or the fact that his state of health constantly worsened over time. As the Government in fact noted in their observations, on his arrival in prison on 4 March 2013 the applicant was already suffering from a disease which would be fatal in the short term because of its spread to his skeleton (see paragraphs 9 and 73 above). The Court has already found that, apart from the shortcomings pointed out by the senior medical officer of the oncology department of Bacău Hospital, the applicant had been treated in accordance with the doctors' prescriptions (see paragraph 53 above). However, it does not transpire from the case file that the domestic authorities ever considered the possibility of providing all the different types of treatment in the same place, which would have spared the applicant

some of the transfers, or at least limited their number and reduced the harmful consequences for the patient's well-being. Furthermore, the Court has already expressed the view that during the final stages of the illness when there is no further hope of remission, the stress inherent in prison life can have repercussions on the prisoner's life expectancy and state of health (see, *mutatis mutandis*, *Gülay Çetin*, cited above, § 110).

94. The Court further observes that a time came when the applicant had become very severely weakened and diminished, both physically and mentally (see paragraphs 19, 20, 21 and 24 above), such that he could no longer perform basic everyday activities without assistance, and a fellow prisoner was appointed to assist him (see paragraph 19 above). The Court reiterates that it has already voiced doubts as to the adequacy of assigning unqualified persons responsibility for looking after an individual suffering from a serious illness (see *Gülay Çetin*, cited above, § 112, with the references therein). In the present case, it cannot be ascertained whether the prisoner who agreed to assist the applicant was qualified to provide support for an end-of-life patient or whether the applicant actually received proper moral or social support. Nor does it transpire from the case-file that the applicant received appropriate psychological support during his periods in hospital or prison, given that he was displaying symptoms of depression (see paragraphs 20 and 21 above).

95. The Court notes therefore that as his illness progressed, the applicant could no longer cope with it in prison. The national authorities should consequently have taken specific action based on humanitarian considerations (see *Gülay Çetin*, cited above, § 113).

96. In connection with the latter aspect, and more specifically with the appropriateness of continuing the applicant's detention, the Court cannot substitute its views for those of the domestic courts. However, it cannot be overlooked that the court of appeal, in rejecting the request for an interruption of the sentence, put forward no arguments concerning a possible threat posed to law and order by the applicant's release, having regard to his state of health (see paragraph 17 above; see also, *mutatis mutandis*, *Gülay Çetin*, cited above, § 122). Moreover, the Court notes that the applicant had at first been sentenced to a fairly short prison term, a third of which he had served (see paragraph 15 above). It also observes that the applicant had displayed good behaviour during the trial, that he had been afforded the most favourable detention regime (see paragraphs 15 and 23 above) and that because of his state of health the risk of reoffending could only have been minimal.

97. The Court also reiterates that the prisoner's clinical picture is now one of the aspects to be taken into account in the procedure for enforcing a prison sentence, particularly as regards the continued detention of individuals suffering from a life-threatening pathology or persons whose condition is incompatible in the long term with prison life (see *Gülay Çetin*,

cited above, § 102, and the references therein). According to the case file, however, in the present case the authorities called upon to act did not have proper regard to the realities imposed by the applicant's individual case and failed to consider his real capacity for remaining in prison under the impugned conditions of detention. Even though in its judgment of 29 August 2013 the court of appeal found that the applicant could be provided with the prescribed treatment in detention (see paragraph 17 above), it did not consider the practical conditions and methods for administering the complicated treatment in the applicant's specific situation. It failed to assess the material conditions under which the applicant was being held or to ascertain whether, in view of his state of health, those conditions were satisfactory in the light of his specific needs. Nor did it have regard to the conditions of the transfers to the various prisons and hospitals, the distances to be covered between these establishments or the number of hospitals attended by the applicant in order to receive his treatment, nor again the combined effect of all these elements on his already precarious state of health. The fact is that under such exceptional circumstances as those encountered in the present case, the said elements should, if only on humanitarian grounds, have been examined by the court of appeal in order to evaluate the compatibility of the applicant's state of health with his conditions of detention. It was never argued that the national authorities could not have coped with those exceptional circumstances by taking due account of the serious humanitarian considerations at issue in the case. On the other hand, the Court considers that the decisions reached by the domestic authorities show that the impugned proceedings were conducted with the emphasis on formalities rather than on humanitarian considerations, thus preventing the dying applicant to live out his last few days in dignity (see, *mutatis mutandis*, *Gülay Çetin*, cited above, §§ 120-124).

98. Moreover, the Court has already noted that the length of the proceedings brought by the applicant seeking an interruption of the enforcement of his sentence on medical grounds had been excessive in the light of the applicant's terminal illness (see paragraph 67 above). Similarly, it notes that the answers provided by the prison authorities, from whom the applicant had requested help in seeking his release, were characterised by their scant consideration of the applicant's specific situation (see paragraphs 25 and 27 above).

99. Finally, the Court reiterates that the increasingly high standard required in the area of the protection of human rights and fundamental liberties necessitates greater firmness in assessing breaches of the fundamental values of democratic societies (see, *mutatis mutandis*, *Selmouni v. France* [GC], no. 25803/94, § 101, ECHR 1999-V). In the instant case, the applicant had been imprisoned despite his end-of-life situation and the effects of serious medical treatment in difficult prison

conditions. The Court takes the view that in such a context, lack of diligence on the authorities' part renders the person even more vulnerable and robs him of his dignity in the face of the fatal outcome towards which his illness is ineluctably progressing (see, *mutatis mutandis*, *Gülay Çetin*, cited above, § 122).

100. Having conducted an overall assessment of the relevant facts on the basis of the evidence presented before it, the Court finds that the national authorities failed to provide the applicant with treatment compatible with the provisions of Article 3 of the Convention, and that they inflicted inhuman treatment on someone who was suffering from a terminal illness, owing to his detention under the conditions described above.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

101. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

102. The applicant's son claimed 3,000 euros (EUR) in respect of the pecuniary damage which he considers that he sustained. That amount corresponded, in his view, to the loss of the financial support which his father would have provided to him had he remained alive, and to the funeral expenses. He further claimed EUR 500,000 in respect of the non-pecuniary damage caused by his father's suffering during his detention.

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

104. As regards pecuniary damage, the Court does not discern a sufficient causal link between the applicant's death and the violation found. It therefore rejects the applicant's son's claim in that respect.

105. On the other hand, the Court considers that the applicant sustained substantial non-pecuniary damage from his subjection to treatment contrary to Article 3 of the Convention during his detention. Consequently, making its assessment on an equitable basis, it finds it appropriate to award the applicant's son, Mr Mircea Dorneanu, EUR 9,000 in respect of non-pecuniary damage.

B. Costs and expenses

106. Since the applicant's son made no claim in this respect, the Court is not called upon to rule on this point.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that Mircea Dorneanu, the applicant's son, has *locus standi* to maintain the application before the court

2. *Declares* the application admissible as regards the complaint under Article 3 of the Convention concerning the compatibility of the applicant's state of health with his detention, and inadmissible for the remainder;

3. *Holds* that there has been a violation of Article 3 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay Mr Mircea Dorneanu, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 9,000 (nine thousand euros) in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable on this amount;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in French, and notified in writing on 28 November 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli Registrar	Ganna Yudkivska President